

# 2012 Summary of Legislation



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## INTRODUCTION

This publication includes summaries of the legislation enacted by the 2012 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 140.

During the 2012 Session, 603 bills were introduced: 217 in the Senate and 386 in the House. In addition, 190 Senate bills and 340 House bills were carried over from the 2011 Session, for a grand total of 1,191 bills that were alive during the 2012 Session. Of these 1,191 bills, 295 (24.8 percent) became law: 119 Senate bills and 176 House bills. Further, of the 295 bills becoming law, 276 (94.6 percent) were introduced by committees and 19 (6.4 percent) were introduced by individual legislators.

The Governor vetoed three bills and fourteen line items. All vetoes were sustained. No bills will be carried over to the 2013 Session of the Legislature.



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## **ADMINISTRATIVE RULES AND REGULATIONS**

### **Rules and Regulations Filing Act; SB 252**

**SB 252** makes several changes to the Kansas Rules and Regulations Filing Act. The bill updates the names of the Kansas Department of Wildlife, Parks and Tourism and the Division of Health Care Finance of the Kansas Department of Health and Environment.

The bill amends the Act to change notice requirements from 30 days to 60 days for new rule-making proceedings when the agency proposes to adopt a final rule and regulation that:

- Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and
- Is not a logical outgrowth of the rule and regulation as originally proposed.

In addition, the bill changes the Act by striking existing language that states the period for public comment may be shortened to no less than 30 days, as the Act already states the notice provided by state agencies constitutes a public comment period of 60 days.

## **AGRICULTURE AND NATURAL RESOURCES**

### **Division of Water Rights and Water Permits for Sand and Gravel Operations; House Sub. for Sub. for SB 148**

**House Sub. for Sub. for SB 148** addresses the division of water rights and the issue of the treatment of water permits for sand and gravel operations.

#### ***Division of Water Rights***

The bill explicitly codifies the authority to divide water rights by stating that an owner of a water right that is not abandoned may divide the water right into two or more distinct water rights without losing priority. In order to divide the water right, the owner must:

- Notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture (Chief Engineer), in writing of the proposed division, with the written consent of all persons who have an ownership interest in the water right;
- Designate the relative priority of the divided water rights;
- Demonstrate to the Chief Engineer the division is reasonable and would not increase consumptive use; and
- Demonstrate to the Chief Engineer the request does not violate the Kansas Water Appropriation Act.

If the Chief Engineer finds the above four requirements are met, the Chief Engineer then must issue an order dividing the water right and describing the terms and conditions of each water right. Acceptance of the request to divide a water right would not authorize any change in the place of use, point of diversion, or the use made of the water. Upon a finding the four requirements are not met, the Chief Engineer would return the division request and take no action.

The bill provides that if a judicial determination should occur regarding ownership interests and the determination results in a partition of a water right not deemed abandoned, the Chief Engineer then must issue an order dividing the water right in accordance with the judicial determination, to the extent the determination does not violate the provisions of the Kansas Water Appropriation Act.

The bill states each division request submitted to the Chief Engineer will be assessed a \$300 fee. Funding from the fee is to be remitted to the State Treasurer.

### ***Water Permits for Sand and Gravel Operations***

The bill also addresses permits to appropriate water for sand and gravel operations by requiring that the permit authorize net evaporation as the primary use and hydraulic dredging and sand washing as a secondary use of water if the secondary uses of water are located within the same source of supply and are associated with the operation. Secondary uses would use water in a manner in which there is not significant net consumptive use. The secondary uses would be granted for the proposed life of the project or the exhaustion of reserves. If a permit is denied, the Chief Engineer is required to set forth all reasons for the denial. Applicants who are denied a project permit by a final order of the Chief Engineer will be able to appeal the decision. The bill provides for a project application permit fee of \$500, with any request for modification to be accompanied by a \$250 fee.

The bill establishes the initial period of time allowed for completion of construction of diversion works to be reasonable and consistent with the proposed use. Additionally, it allows for the Chief Engineer to authorize two ten-year extensions if it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area.

The bill also authorizes the Chief Engineer to reduce the required offset of net evaporation for the operation, as currently provided for in law, based on the estimated use of groundwater by the existing vegetation.

### **Creating the Laboratory Testing Services Fee Fund; House Sub. for SB 191**

**House Sub. for SB 191** authorizes the Secretary of Agriculture to fix, charge, and collect fees for requested laboratory testing to recover all or part of the costs incurred to provide services and any other necessary and incidental expenses incurred in conjunction with such laboratory testing. The bill authorizes the Secretary to adopt rules and regulations to establish fees and to implement and administer such laboratory testing.

### **Multi-Year Flex Accounts for Water; SB 272**

**SB 272** amends existing law in the Kansas Water Appropriations Act that authorizes and governs multi-year flex accounts.

The bill establishes an opportunity for water management practices to enable multi-year flexibility in the use of water authorized to be diverted under a groundwater water right, provided such flexibility does not impair existing water rights or increase the total amount of water diverted.

The bill also establishes definitions for the terms "base water right," "multi-year flex account," "base average usage," "flex account acreage," and "net irrigation requirement." In addition, the bill provides the various conditions under which term permits may operate.

A multi-year flex account, as defined by the bill, is a term permit that suspends a base water right during its term, except when the term permit may no longer be exercised because of an order of the Chief Engineer, Division of Water Resources, Department of Agriculture. Existing law provides for multi-year flex accounts that allows water right holders to exchange annual pumping maximums for a five-year pumping maximum, enabling flexibility in year-to-year pumping.

The bill removes the 10.0 percent reduction requirement on multi-year flex account users. The bill provides three options for the calculation of the amount of water a water user may place into a multi-year flex account:

- Option 1 - use the average annual historic usage of a water right, based on the years 2000 to 2009, multiplied by five;
- Option 2 - use the normal irrigation requirement for crops in the water user's county, multiplied by the water user's maximum irrigated acres, multiplied by five; or
- Option 3 - where available, use a groundwater management district (GMD)-developed alternative, provided that it does not increase long-term water use.

The quantity of water deposited into a multi-year flex account is reduced by the quantity of water used in excess of the base water right during 2011, provided that an application for a multi-year flex account is filed with the Chief Engineer on or before July 15, 2012.

If a base water right is suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012 and the water right holder applies for a multi-year flex account on or before July 15, 2012, that quantity of water that was used in excess of the base water right is not deducted from the quantity of water that is deposited into the multi-year flex account.

Applications for multi-year flex accounts shall be filed with the Chief Engineer on or before October 1 of the first year of the multi-year flex account term for which the application is being made.

If a base water right is currently suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012, and the water right holder applies for a multi-year flex account, a fee of \$200 will be assessed.

If water use under the authority of the base water right exceeded the maximum annual quantity authorized by the base water right during 2011, the water right holder did not have a two-year term permit in a designated drought emergency area for 2011 and 2012, and the water right holder applies for a multi-year flex account, a fee of \$600 will be assessed.

The bill allows the Chief Engineer to require any additional measuring devices and any additional reporting of water use for term permits issued in accordance with the language of the bill. Failure to comply with any measuring or reporting requirement can result in a penalty. In addition, the Chief Engineer is required to submit a written report on the implementation of the bill to the House Committee on Agriculture and Natural Resources and the Senate Committee on Natural Resources on or before February 1 of each year.

### **Veterinary Practice Act; SB 289**

**SB 289** amends provisions of the Veterinary Practice Act to allow the Board of Veterinary Examiners to inspect and audit the records and compliance with the standards of practice of any veterinarian, as well as to take any disciplinary action against the licensed veterinarian consistent with the provisions of the bill and any rules and regulations adopted by the Board.

Additionally, the bill establishes a fee for the inspection and audit of records and compliance with standards of practice, which may not be less than \$50 and no more than \$150.

The bill gives the Board the authority to refuse or restrict a license to practice because an applicant had entered into a plea agreement or a diversion agreement in lieu of further criminal proceedings on a complaint alleging a felony violation.

Finally, the bill also allows the Board to examine and determine the qualifications and fitness of applicants for registration, to register veterinarian technicians, and to issue, renew, deny, and take other actions toward the registration of veterinary technicians in the state.

### **Establishment of Local Enhanced Management Areas; SB 310**

**SB 310** sets up a process by which a local enhanced management area (LEMA) can be established within a groundwater management district (GMD). The process for establishment of a LEMA requires a GMD to recommend a plan to the Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources. The Chief Engineer reviews the plan for clear geographic boundaries within the GMD, and ensures the plan includes a compliance monitoring and enforcement element, as well as proposed corrective control provisions that meet the goals of the plan. The Chief Engineer is required to conduct public hearings on the reasonableness of the geographic boundaries of the plan, whether public interest requires corrective control provisions be adopted, and whether groundwater conditions exist in the area so as to warrant a local enhanced management plan. The Chief Engineer then has the option to accept the LEMA plan as submitted, reject it as insufficient to address the conditions, or return it with the option for the GMD to revise and resubmit the plan.

If the Chief Engineer accepts the local enhanced management plan, the Chief Engineer then issues an "order of designation" designating the area in question as a LEMA. The designation order defines the boundaries of the LEMA and includes the corrective control provisions as set forth in the local enhanced management plan. Corrective control provisions can include the following:

- Closing the LEMA to any further appropriation of groundwater;
- Determining the permissible amount of groundwater to be withdrawn within the LEMA, with the permissible withdrawal amount to be apportioned by the Chief Engineer among groundwater right holders in accordance with priority dates;
- Reducing the permissible withdrawal of groundwater by any one or more appropriators within the LEMA;
- Requiring and specifying a system of rotation of groundwater use in the LEMA; or
- Any other provisions needed to protect the public interest.

A groundwater right holder can stay the order of designation by applying for a review of the order. Additionally, a public hearing to review the designation of a LEMA must be conducted within seven years after the order of designation is final, with a subsequent review to occur no later than ten years after the initial review.

## **Hunting and Fishing Licenses for Resident Seniors; Pre-rut Antlerless Deer Rifle Season; Crossbow Use; Trespassing and Big Game Hunting; SB 314**

**SB 314** amends the law regarding hunting and fishing license fees for resident seniors; requires the Secretary of Wildlife, Parks and Tourism to develop and implement a pre-rut antlerless deer rifle season by deer management units and allow for crossbow use during an archery big game season by anyone issued a big game permit; and impacts trespassing and big game hunting.

### ***Hunting and Fishing Licenses for Resident Seniors***

The bill amends the law regarding hunting and fishing license fees for resident seniors. Specifically, the bill:

- Increases the age of a person exempt from purchasing hunting or fishing licenses from 65 or more years of age to 75 or more years of age;
- Creates a resident senior hunting and fishing pass (senior pass) for those 65 years old or older, at a cost that does not exceed one-eighth of the fee for a general combination lifetime hunting and fishing license;
- Establishes an annual hunting or fishing license fee for residents who are 65 to 74 years of age at a cost of an amount equal to one-half the fee for a general annual hunting or fishing license;
- Establishes an annual combination hunting and fishing license for residents who are age 65 to 74 that will cost an amount equal to one-half the fee for a general annual combination hunting and fishing license;
- Sunsets the provisions of the senior pass and the annual hunting, fishing, and combination license fees on June 30, 2020; and
- Provides authority to the Secretary of Wildlife, Parks and Tourism (Secretary) to establish rules and regulations for various classes and types of licenses, permits, stamps, and other agency issuances.

### ***Pre-rut Antlerless Deer Rifle Season; Crossbow Use***

The bill also requires the Secretary to develop and implement a pre-rut antlerless deer rifle season by deer management units prior to April 30, 2013. Provisions authorizing the pre-rut antlerless deer rifle season will sunset on July 1, 2015. The bill requires the Secretary to develop and implement a combination antlered and antlerless deer permit prior to April 30, 2013, through the adoption of rules and regulations.

In addition, the bill requires the Secretary to develop and implement a deer crossbow hunting pilot project, which could be implemented in no more than four deer management units. The Secretary will be required to study the effects of the pilot project on the state's deer

population and the number of crossbow users in each deer management unit where the pilot project is conducted. A report with these findings is required to be submitted to the House Committee on Agriculture and Natural Resources and the Senate Committee on Natural Resources by January 31, 2014. The provisions authorizing the pilot project will sunset on January 31, 2014.

The bill also allows any person who has been issued a big game permit to use a crossbow during an archery big game season.

### ***Trespassing and Big Game Hunting***

The bill further makes amendments to the law impacting trespassing and big game hunting. Among those changes are the following:

- Clarifies that nothing in the provisions of KSA 58-3201 *et seq.*, and amendments thereto, is to be construed as granting an easement over land by the landowner or over land by adverse possession;
- Provides that, if premises or property are posted as provided by provisions in the statutes dealing with wildlife and parks, individuals could be guilty of criminal trespass;
- Permits a court convicting a person of the crime of commercialization of wildlife to not only confiscate all equipment used in the commission of the crime (continuing law), but to revoke all licenses and permits issued to the convicted person by the Kansas Department of Wildlife, Parks and Tourism (KDWPT) for a period of up to 20 years;
- Modifies the penalty for the unlawful intentional taking of a trophy big game animal from \$5,000 to not less than \$5,000;
- Creates restitution values for deer, elk, and antelope if taken in violation of certain statutes relating to KDWPT by using a gross score for each (if more than 125 inches for deer, more than 250 inches for elk, and more than 75 inches for antelope);
- Provides that the Secretary establish rules and regulations to determine gross scores by taking measurements;
- Establishes formulas governing calculation of the restitution value for each species;
- Provides that no drying time be required for the measurement to occur; and
- Requires that moneys collected from restitution penalties be dedicated to the Wildlife Fee Fund.

## **Kansas Storage Tank Act; SB 406**

**SB 406** amends the Kansas Storage Tank Act to provide a reimbursement fund to assist property owners where abandoned underground storage tanks (USTs) are present.

The bill defines several terms, including the "Underground Storage Tank Redevelopment Fund," "abandoned underground storage tank," and "property owner." A "property owner" is defined as a person who owns real property on which an abandoned UST is located.

Specifically, the bill provides an opportunity for property owners to be eligible for reimbursement for expenses associated with the removal of abandoned USTs.

The following requirements must be met by a property owner in order to qualify for reimbursement:

- The property owner has never placed petroleum in the UST or withdrawn petroleum from the UST;
- The property owner is not the U.S. government or any of its agencies;
- The property owner is in substantial compliance with the Kansas Storage Tank Act;
- The property owner provides 30-day notice and access to the Kansas Department of Health and Environment (KDHE) to perform an environmental assessment of the site during UST removal; and
- If petroleum contamination was discovered during the environmental assessment of the site, the property owner would apply to the UST Fund to perform corrective action to address the contamination.

Property owners are not eligible for reimbursement unless the UST owner or operator was unable or unwilling to perform corrective action or cannot be found. In such cases KDHE is able to recover all reimbursements paid and any related administrative and legal expenses from the UST owner or operator.

If a property owner is eligible for reimbursement, then an application and UST removal plan needs to be submitted to and approved by KDHE. Upon approval of the UST removal plan, the property owner obtains and submits at least three bids to perform the UST removal. The Secretary of KDHE then has the discretion to reimburse the property owner for permanent closure expenses based on the following criteria:

- Whether the UST facility was registered with KDHE on or after May 1, 1981;
- The UST contained petroleum products; and
- A deed restriction was placed on the property prohibiting the installation of USTs for 10 years following the date of the UST removal.

Only expenses for activities that are reasonable and necessary to permanently close a UST facility are eligible for reimbursement. Reasonable and necessary activities eligible for reimbursement can include the following:

- Removal of the tank and piping system;
- Cleaning and disposal of tanks; and
- Disposal of waste petroleum and other waste material, including concrete.

The bill extends the sunset for the underground and above ground reimbursement funds from July 1, 2014, to July 1, 2024.

The bill also makes several technical changes to update references to federal code and associated effective dates. Technical changes also include references to the UST Redevelopment Fund named in existing statutes.

### **Groundwater Rights—Due and Sufficient Cause for Nonuse; HB 2451**

**HB 2451** amends a section of law dealing with the abandonment of water rights by deleting a requirement that, to avoid the abandonment process, the owner of groundwater rights in an area declared closed to further appropriation has a means of diversion available "to put water to beneficial use within a reasonable time." When the bill is in effect, groundwater rights in these areas will have due and sufficient cause for nonuse and therefore not be subject to abandonment.

### **Lawfully Carrying a Handgun While Hunting; HB 2491**

**HB 2491** prohibits the Kansas Department of Wildlife, Parks and Tourism from making any rule or regulation that prevents an individual from carrying a handgun while lawfully hunting, fishing, or fur harvesting.

### **Swine and Dairy Production Facilities; HB 2502**

**HB 2502** makes amendments to the provisions of law which permit certain dairy production facilities and swine production facilities to be established in counties under the Kansas Corporate Farming Law. The bill aligns the approval process for the establishment of a swine production facility with that of a dairy production facility by giving the decision-making power to county commissions and under certain conditions to qualified electors.

Provisions relating to dairy production facilities are amended to clarify that if an election is needed, it is held during the next state, county, or special election. In addition, these provisions are amended to allow a board of county commissioners to either permit (continuing law) or deny by resolution the establishment of a dairy production facility in its county. Commissioners will decide or place on the ballot whether to permit the establishment of a dairy production facility by only "a corporation, trust, limited liability company, limited partnership or corporate partnership."

With respect to the establishment of swine production facilities in counties, the current provisions of law which require a vote by the electors of a county are repealed. Under the new provisions, a board of county commissioners is authorized by resolution to permit or deny a swine production facility within its county. The permission or denial is subject to a petition protesting the decision within 60 days of the resolution signed by five percent of the county voters in the last election for Secretary of State. Under the bill, provisions relating to the petition and ballot language questions regarding swine production facilities become identical to those of dairy production facilities regarding whether a corporation, trust, limited liability company, limited partnership, or corporate partnership, either directly or indirectly, own, acquire, or otherwise obtain or lease agricultural land in the county. The bill does not impact the authority of a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust, or testamentary trust to own, acquire, or otherwise obtain or lease, either directly or indirectly, agricultural land for either dairy or swine production facilities.

The bill adds that denial by the county commissioners of such a production facility, which had been an absolute rejection, also is subject to a petition protesting said denial following the guidelines of a petition protesting the establishment of such a facility.

### **Agriculture-Related Advisory Boards and Technical Changes; HB 2503**

**HB 2503** amends statutes regarding various boards and advisory bodies relating to agriculture. The bill also makes numerous technical changes to the existing statutes, resulting from 2011 Executive Reorganization Order No. 40 (ERO No. 40), which transferred the Animal Health Department and the State Conservation Commission to the Kansas Department of Agriculture (KDA).

#### ***Agriculture-Related Advisory Boards and Advisory Bodies***

The bill modifies the law with respect to the Kansas Agricultural Remediation Board to remove the requirement that members be subject to Senate confirmation.

Other amendments modify the statutes relating to the Grape and Wine Industry Advisory Council (Advisory Council) and provide that there be no fewer than nine members. In addition, the Secretary of Agriculture; the Secretary of Wildlife, Parks and Tourism; and the Director of Alcoholic Beverage Control will be *ex officio* members on the Advisory Council. Further, the bill requires the KDA to provide administrative assistance to the Advisory Council until the Secretary of Agriculture determines the Advisory Council has the resources to provide its own staffing. Provisions relating to the Advisory Council expire on July 1, 2016.

The bill also renames the Agriculture Products Development Advisory Board as the Agriculture Marketing and Promotions Advisory Board (Board). Members will be appointed by the Secretary of Agriculture rather than by the Governor. The Board will consist of not less than nine members and no more than 12 members who represent various agricultural sectors outlined in the bill. The Board will elect its own chairperson, vice-chairperson, and any other officers.

Finally, the bill repeals statutes relating to the Dairy Marketing Advisory Board, which had as its main duty the study and evaluation of the need for establishing a statewide milk marketing order.

### ***Technical Changes to Existing Statutes***

The bill makes numerous technical changes to the existing statutes which pertain to the previous Animal Health Department and the former Livestock Commissioner to conform to 2011 ERO No. 40, which transferred the Animal Health Department to the KDA and created the Division of Animal Health within the agency.

Similar changes are made to the statutes relating to the previous State Conservation Commission, to conform to its transfer to the KDA and the creation of the Division of Conservation within the agency. Additional statutory amendments reflect the transfer of the prior Agriculture Marketing Division of the Department of Commerce to the KDA. The former Agriculture Marketing Division is now known as the Agriculture Marketing and Promotions Program within the KDA.

### **Water Banking Act—Amendments; HB 2516**

**HB 2516** amends the statutes relating to the establishment of water banking, which is an optional program to allow irrigators an opportunity to bank water for future use.

Specifically, the bill deletes language which limited the number of banks. In addition, the bill clarifies that when a water bank is subject to review after its initial charter, a review team determines whether the bank's initial charter would lapse or whether the water bank would be chartered.

The water bank review team, already existing in law, submits to committees of the Legislature and others a report which contains certain information that is expanded under provisions of the bill. Under the bill, the report also includes an evaluation as to whether the charter of the bank should lapse, or the bank should become or remain chartered. If a bank is chartered, it will be subject to review not less frequently than every five years by the review team.

Finally, the bill changes from February 10 to April 15 the date by which a water bank is to submit its annual report to the Chief Engineer and provide information including water rights or portions of water rights on deposit and the quantity of water in each safe deposit account.

### **Water Right Transition Assistance Program—Amendments; HB 2517**

**HB 2517** extends the Water Right Transition Assistance Program (WaterTAP), for which the pilot program was set to expire on June 30, 2012. The program was designed to permanently retire all or portions of irrigation water rights. The bill establishes a new sunset date for the program of July 1, 2022.

In addition, the bill:

- Provides that permanent retirement of partial water rights will be approved only when the local groundwater management district (GMD) has the metering and monitoring capabilities to ensure compliance;

- Provides that the application for permanent water right retirement will be prioritized based on the following:
  - The applicant's bid price;
  - The timing and extent of the impact of the application on aquifer restoration or stream recovery; and
  - The impact on local water management strategies designated by the board of the local GMD or the Chief Engineer (water rights with similar hydrologic impacts would be based on seniority of the water right [current law]);
- Clarifies the target areas as those designated by the GMD districts and the Chief Engineer and eliminates specific target areas (Prairie Dog Creek and Rattlesnake Creek) established in the law for the pilot water right transition assistance program;
- Requires that target areas are to be in areas closed to further appropriation of water by the Chief Engineer;
- Requires that only vested or certified water rights which are in good standing will be eligible for water right retirement grants; and
- Establishes a formula for calculating the historic consumptive water use of a water right.

### **Kansas Wheat and Watermelon Festivals; HB 2563**

**HB 2563** designates the annual Kansas Wheat Festival held in Wellington as the official Kansas Wheat Festival. Additionally, the bill designates the annual Watermelon Festival held in Clyde as the official Kansas Watermelon Festival.

### **Animal Definitions; Public Livestock Markets; Pet Animal Act; Animal Health Statutes; Senate Sub. for HB 2596**

**Senate Sub. for HB 2596** enacts new statutes and amends various statutes regarding animal health.

#### ***Definitions***

The bill amends the definition for "livestock" within KSA Chapter 47 to mean any cattle; bison; swine; sheep; goats; horses; mules; domesticated deer; camelids; all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus, and rheas; and any other animal deemed necessary by the Animal Health Commissioner (Commissioner), Animal Health Division, Kansas Department of Agriculture (KDA), through rules and regulations.

In addition, the bill defines feral swine as members of the species *sus scrofa lineas*, including swine known as old world swine, Russian wild boar, European wild boar, Eurasian wild boar, and razorbacks. The bill excludes from the definition members of the species *sus domestica*, which are involved in domestic hog production. Additionally, the bill prohibits the

operation of a contained hunting preserve of swine. This provision becomes effective January 1, 2013.

### ***Public Livestock Markets***

The bill also amends the public livestock market statutes to allow bond equivalents, making Kansas law consistent with the federal law. Bond equivalents are required to be in one of the following forms:

- A trust fund agreement governing funds actually deposited or invested in fully negotiable obligations of the U.S. of federally-insured deposits or accounts; or
- A trust agreement governing funds which may be drawn by a trustee under one or more irrevocable, transferable, standby letters of credit, issued by a federally-insured bank or institution.

In addition, the bill authorizes the Commissioner to refuse to grant, suspend, or revoke a public livestock market license if there has been a failure to timely remit fees or a failure to properly maintain custodial accounts or bonds. The Commissioner is authorized to issue an emergency order to suspend the license if bonds expire without suitable replacement or if a shortage exists in custodial accounts which creates a danger to public welfare.

In addition, the Commissioner is authorized to apply for an injunction restraining any person from violating the public livestock market statutes.

### ***Kansas Pet Animal Act***

The bill makes various changes to the Kansas Pet Animal Act (Act):

- Removes the exemption for greyhounds from the definition of "dog," and adds language stating the Act will not apply to any farm or kennel which is registered with, and inspected by, the National Greyhound Association, and which is used solely for breeding, maintaining, training, or selling greyhound dogs. The Commissioner will have the authority to enter into agreements with the National Greyhound Association regarding registration and inspection procedures, including the Commission having access to records and complete inspections of the premises;
- Adds language requiring adequate records to be kept for animals provided with veterinary care. Additionally, the bill allows for a license to be suspended if a license or permit holder fails to provide adequate medical care to animals or fails to maintain or provide records of that medical care. Further, veterinary care is to be documented and maintained on the premises for diseased, ill, lame, or blind animals. All documentation is to be available for the Commissioner's inspection and is to be maintained for three years after the date of administering the veterinary care;
- Clarifies that no license or permit will be issued by the Commissioner under the Act until the premises for which the application is made has passed a licensing or permitting inspection;

- Adds an animal breeder's license to the list of prohibited licenses that an animal control officer could not be granted under the Act;
- Adds language to the Act stating no license or permit shall be issued until the applicant has passed a licensing inspection; as well as simplifying language to allow the Commissioner to inspect licensed premises at his or her discretion;
- Adds language authorizing the Commissioner to issue a quarantine order for regulated premises where animals are found to be infected with a contagious or zoonotic disease that could infect animals or humans;
- Adds language that, if access to any location where access is authorized under the Act is denied, the Commissioner is authorized to apply for an administrative search warrant; and
- Removes the staggered terms of the Kansas Pet Advisory Board (Board) and makes other clarifying changes to the statutes of the Board.

### ***Other Statutory Changes***

Finally, the bill makes various other statutory changes to animal health statutes:

- Clarifies the statutes included in the Farm Animal and Field Crop and Research Facilities Protection Act;
- Adds composting as an option for the various ways persons may dispose of dead animals;
- Clarifies that the term "garbage" means all waste material derived in whole or in part from the meat of any animal, other animal waste material, and other refuse resulting from the handling, preparation, cooking, or consumption of food, and does not include pasteurized dairy products;
- Adjusts certain fine levels for misdemeanor crimes to be made consistent with fine maximums of other similarly classified misdemeanors and authorizes the Commissioner to impose civil penalties for certain violations;
- Authorizes the brand book and supplement to be distributed in electronic format;
- Clarifies that, for administrative proceedings of the Division of Animal Health, "agency head" would mean the Secretary of Agriculture or the Commissioner, when acting on behalf of the Secretary;
- Updates references pertaining to the former Kansas Animal Health Department, Kansas Animal Health Board Commissioner, and the Livestock Commissioner; and

- Includes numerous technical changes, repeals statutes that the language of the bill replaces, updates or deletes references to federal statutes, and updates references to the Kansas Administrative Procedure Act.

**Land-spreading of Oil and Gas Production Waste; Holding Money in Trust for Counties from the Oil and Gas Valuation Depletion Trust Fund; Senate Sub. for HB 2597**

**Senate Sub. for HB 2597** enacts provisions of law relating to the disposal of solid waste generated by drilling of oil and gas wells, through land-spreading, and changes the process for holding money in trust for individual counties in the Oil and Gas Valuation Depletion Trust Fund.

***Disposal of Solid Waste Generated by Drilling of Oil and Gas Wells through Land-spreading***

The bill allows the Secretary of Health and Environment (Secretary) to authorize persons to carry out activities without a solid waste permit, which includes allowing the disposal through land-spreading of solid waste generated by drilling oil and gas wells. The land-spreading is to be done in accordance with best management practices and maximum loading rates developed by the Secretary. For areas that receive more than 25 inches of precipitation annually, solid waste disposed of through land-spreading is required to be incorporated into the soil. Additionally, no land-spreading is to be allowed to occur on any area where the water table is less than ten feet below the surface, or on an area where there is documented groundwater contamination, as determined by the Kansas Department of Health and Environment (KDHE).

For each land-spreading location, an application is to be filed with KDHE and contain the location, soil characteristics, waste characteristics, waste volumes, drilling mud additives, and land-spreading method to be used on the land. A fee of \$250 will be assessed for each application. A land-spreading application will not be approved for the same location unless a minimum of three years has passed since the previous land-spreading occurred on that location. In addition, a post-land-spreading report will need to be filed once the land-spreading has been completed.

The Secretary will enter into an agreement with the Kansas Corporation Commission (KCC) to administer the program, monitor compliance, and establish mechanisms for enforcement and remedial action. In addition, on or before January 1, 2014, the Secretary, in coordination with the KCC, is required to adopt rules and regulations governing land-spreading. In the development of rules and regulations, the Secretary and the KCC will seek the advice of and comments from groundwater management districts and from other groups or persons who are knowledgeable and experienced in this subject matter. The KCC is required to present a report on or before January 30, 2013, and January 30, 2014. The report is to include information on the costs associated with the regulation of land-spreading, but is not limited to this type of information. The report is to be presented to the Senate Committee on Natural Resources, the Senate Committee on Ways and Means, the House Committee on Agriculture and Natural Resources, and the House Committee on Appropriations.

These provisions take effect upon publication in the *Kansas Register*, with the provisions expiring on July 1, 2015.

***Process for Holding Money in Trust for Individual Counties in the Oil and Gas Valuation Depletion Trust Fund***

The bill also changes the process for holding money in trust for individual counties in the Oil and Gas Valuation Depletion Trust Fund. Under prior law, money credited to those trust accounts was held in the State Treasury until a county met the statutory criteria for a distribution from its trust account.

The bill annually transfers to each affected county the funds held in its trust account in the State Treasury. The bill requires each county that is to receive moneys from the Oil and Gas Valuation Depletion Trust Fund to establish a county oil and gas valuation depletion trust fund, to be administered by the county treasurer. On October 1 of each year, the Director of Taxation, Kansas Department of Revenue, will certify the amount in each county's trust account within the State Treasury, and the State Treasurer will issue a warrant to the county for deposit by the county treasurer in the county's oil and gas valuation depletion trust fund. The statutory criteria for a county to receive a distribution from the trust fund will not change.

The Director of Taxation is directed to impose and collect an administrative fee equal to two percent of the amount credited to the Oil and Gas Valuation Depletion Trust Fund, prior to crediting any amounts to the individual trust accounts in the Fund.

All moneys in the Oil and Gas Valuation Depletion Trust Fund trust accounts on the effective date of the bill will be distributed to the applicable counties within 30 days of the effective date, for deposit in each county's oil and gas valuation depletion trust fund.

**Fertilizer Law and Seed Law; HB 2604**

**HB 2604** repeals the statute which relates to the creation of the Fertilizer and Pesticide Compliance and Administration Fund and expenditures from the fund.

In addition, the bill repeals statutes concerning an agricultural seed laboratory, seed testing, the seed examination fee fund, and the publication of reports of inspections and examinations on the sale and distribution of agricultural seeds.

**Kansas Food Service and Lodging Act; Kansas Meat and Poultry Inspection Act;  
Senate Sub. for HB 2730**

**Senate Sub. for HB 2730** amends various sections in the Kansas Food Service and Lodging Act, and the Kansas Meat and Poultry Inspection Act.

***Kansas Food Service and Lodging Act***

The bill renames the Kansas Food Service and Lodging Act as the Kansas Lodging Inspection Act. In addition, the bill clarifies current practice by establishing a definition for the term "guest house" to mean every building or other structure where sleeping accommodations are furnished for pay. To meet the definition, a guest house could accommodate no more than seven guests in no more than three rooms. Under the provisions of the bill, guest houses are not required to have a lodging license, but are required to be inspected if there is a complaint.

The bill also:

- Clarifies that any lodging establishment which also has a food establishment license will have fees set by rule and regulation;
- Clarifies that a lodging establishment operated in connection with any premise licensed, registered, or permitted by the Secretary of Health and Environment, Secretary of Aging, the Secretary of Corrections, or the Secretary of Social and Rehabilitation Services is not required to obtain a license, nor is the Secretary of Agriculture authorized to inspect these premises;
- Gives express authority to the Secretary of Agriculture (Secretary) to promulgate rules and regulations with respect to the licensure of lodging establishments and fees related to licensure and inspection; and
- Clarifies authority to seek injunctive relief when the operator has failed to comply with the standards established or the rules and regulations.

### ***Kansas Food, Drug and Cosmetic Act***

The bill also makes numerous amendments to the Kansas Food, Drug and Cosmetic Act, under which certain food establishments and food processing plants are regulated.

The bill:

- Allows the Secretary to impose a civil penalty, after providing notice and an opportunity for a hearing, and establishes a cap on civil penalties at \$1,000 per violation;
- Provides that any location that meets the definition of both a food processing plant and a food establishment must have licenses for both; and
- Establishes an application fee for each food establishment and food processing plant location not to exceed \$350.

Further, the bill statutorily establishes annual license fees for each food establishment, clarifies that elementary and secondary schools that have a school lunch program have separate application and license fees, and establishes in statute the list of business entities that are exempt from licensing and inspection. Those exempt business entities are:

- Registered nonprofit organizations that provide food without charge;
- Locations where prepackaged individual meals are distributed;
- Persons who produce food for distribution directly to the end consumer;
- Persons who serve food exclusively on interstate conveyances;
- Persons operating a food establishment for less than seven days in any calendar year;
- Persons who prepare, serve, or sell food for the sole purpose of soliciting funds;
- Persons operating a food vending machine;

- Persons providing only complimentary coffee;
- Persons operating a farm winery;
- Retailers who sell only alcoholic liquors and cereal malt beverages;
- Food establishments that sell or offer for sale only packaged certain foods that are non-hazardous and are received directly from a licensed food production facility in packaged form;
- Persons who provide food samples, without charge; and
- A guest house, as defined in the bill.

Other amendments clarify administrative and enforcement provisions in a manner consistent with the Kansas Administrative Procedure Act and repeal unnecessary statutes.

### ***Kansas Meat and Poultry Inspection Act***

The bill adds new sections to and amends existing sections in the Kansas Meat and Poultry Act (Act).

#### ***Voluntary Inspections***

The bill provides for voluntary inspections of animals other than livestock, poultry, or rabbits which can or may be used in and for the preparation of meat or meat products and poultry or poultry products. The voluntary inspections provide greater flexibility for operations wanting to slaughter the animals listed above under inspection.

The requests for voluntary inspections are to be submitted to the Secretary of Agriculture who then can refuse the request due to issues of staffing, inspector expertise, or any other good cause shown. Priority in scheduling the inspections is to be given to those inspections mandated by the Act. The Secretary also has the power to establish fees for voluntary inspections. In addition, the Secretary has the authority to prescribe rules and regulations for implementing the provisions of voluntary inspections.

#### ***Inspection Services***

The bill contains provisions for when inspection services are required and instructs the Secretary to take into account the efficient and effective use of personnel when approving inspection work schedules.

Specifically, the bill clarifies that operations requiring inspections under the Act cannot proceed unless operated under the supervision of a representative of the Secretary. All slaughtering of animals is to be done under the direct supervision of a representative of the Secretary and with reasonable speed.

The bill establishes the procedures for establishing and approving a work schedule for processing and slaughter operations. Each official establishment applying the mark of inspection is required to submit a work schedule to the Secretary for approval upon the occurrence of any of the following:

- Prior to the inauguration of the inspection;

- When a change in work schedule is requested, except for minor deviations from a daily operating schedule approved by the area supervisor; or
- Upon request by a representative of the Secretary.

The submitted work schedules are required to specify the daily clock hours of inspected operations.

The bill requires the Secretary to take into account the efficient and effective use of inspection personnel when approving work schedules, as well as to consult with the establishments involved when designating work schedules. In addition, the bill requires establishments to maintain consistent work schedules. The Secretary is authorized to prescribe, through rules and regulations, the process by which an establishment may request a change in its work schedule.

### *Inhumane Slaughter and Inhumane Handling*

The Secretary, for purposes of preventing the inhumane slaughter or inhumane handling in connection with the slaughter of livestock, domestic rabbits, or poultry must authorize inspectors to perform an examination and inspection of the method by which those animals are slaughtered and handled. In addition, the Secretary is authorized to prescribe rules and regulations for the examination and inspection of methods by which livestock, domestic rabbits, or poultry are slaughtered.

### *Custom Slaughter*

The bill amends portions of the Act with regard to custom slaughter. Any carcass, meat, or meat products prepared on a custom basis, including any containers or packages containing such products, must be plainly marked "Not for Sale" immediately after being prepared and kept identified as such until delivered to the owner.

Custom slaughter and preparation also is subject to the humane slaughter and humane handling provisions of the Act.

### *Definitions*

The bill updates existing sections of the Act by updating definitions, deleting obsolete definitions, and defining new terms, including "public warehouseman," "slaughter facility," "processing facility," "wholesaler," and "Humane Slaughter Act."

### *Fees*

The bill establishes a \$25 registration fee for all registrations, including for those facilities operating on a custom basis and facilities operating in conjunction with and under the jurisdiction of the Kansas Board of Regents. The bill removes the provisions for the registration fee and other calculations that previously had been required by the Kansas Department of Agriculture.

### *Records*

The bill requires any person registered or required to be registered under the Act to keep records that fully and accurately disclose transactions related to animals prepared for and capable for use as human food. All persons, firms, and corporations subject to this requirement will provide access to their places of business and provide an opportunity to examine the facilities, inventory, and records, and to copy records.

Any records required to be maintained shall be maintained for a period of time as the Secretary shall prescribe by rules and regulations.

## **ALCOHOL, DRUGS, AND GAMBLING**

### **Bingo; SB 270**

**SB 270** allows the Secretary of Revenue to release or publish certain charitable gaming information obtained in bingo licensee and registration applications and renewals. The information will be limited to the name, address, phone number, license or registration number, and email address of the organization, distributor, or premise lessor.

### **Railway Cars, Tasting Samples, Special Event Permits, Salesperson's Permits, Microdistilleries, Happy Hour, Public Venues, Recreational Areas, Manufacturer Samples, Farm Wineries, Products Grown; Sub. for HB 2689**

**Sub. for HB 2689** contains the following provisions dealing with alcoholic beverages:

#### ***Railway Cars***

The bill allows railway cars to be licensed as drinking establishments under the Club and Drinking Establishment Act. The bill defines a railway car to include a locomotive-drawn conveyance used for the transportation of people that is confined to a fixed route, deriving at least 30.0 percent of its gross receipts from all sales of food and alcoholic beverages on the railway car in a 12-month period.

Taxation on alcoholic liquor for consumption on licensed railroad cars conforms to those taxes applied to other drinking establishments. Under the bill, 70.0 percent of the revenue collected from sale of liquor in railway cars is divided equally among counties through which the railway car passes if the counties have approved the sale of liquor-by-the-drink.

#### ***Tasting Samples***

The bill allows any person or entity who is licensed to sell alcoholic liquor in the original package at retail to conduct wine, beer, and distilled spirits tasting on a licensed premise or adjacent premises. Such activity is monitored and regulated by the Director of Alcoholic Beverage Control and subject to the provisions in the Kansas Liquor Control Act. The bill prohibits any charge for sample servings, and a person could be served more than one sample. The bill also prohibits any samples from being removed from the premises. Finally, the bill exempts an entity providing samples from the requirement of holding a Kansas food service dealer license.

#### ***Special Event Permit***

The bill allows a temporary permit for a special event for selling and serving alcoholic liquor for consumption at an unlicensed premise. The temporary permit is valid at the Director of Alcoholic Beverage Control's discretion for the entire period of the special event, but not exceeding 30 days.

The bill also allows a temporary permit holder to resell unused alcoholic beverages within three days after the end of the event to the licensee from whom the alcoholic beverages were purchased.

### ***Repeal Salesperson's Permit***

The bill repeals KSA 41-333 through -341 that authorizes issuance of a salesperson's permit for the sale of, or the taking or soliciting of orders for the sale of, alcoholic liquor or cereal malt beverages in Kansas.

### ***New Microdistilleries***

The bill creates a microdistillery license which allows a licensee to manufacture and store not more than 50,000 gallons of spirits per year. A microdistillery is defined as a facility which produces spirits from any source or substance licensed by the Director of Alcoholic Beverage Control. The licensee is allowed to sell spirits manufactured by the microdistillery and serve free samples of spirits on the licensed premises and at special events monitored and regulated by the Division of Alcoholic Beverage Control. In addition, the licensee is allowed to sell spirits and other alcoholic liquor for consumption on the licensed premises if the microdistillery also is licensed as a club and drinking establishment.

The bill also creates a microdistillery packaging and warehouse facility license which allows the microdistillery licensee to transfer manufactured spirits from the microdistillery's licensed premise to the licensed packing and warehouse facility, transfer spirits from the licensed packing and warehouse facility to the licensed microdistillery, and remove spirits from the licensed packing and warehouse facility for delivery to a licensed spirits wholesaler.

The microdistillery license fee is \$500 and the microdistillery packaging and warehouse facility license fee is \$200. Each licensee has to post a bond of \$2,000.

The Division of Alcoholic Beverage Control is allowed to issue to the Kansas State Fair or any *bona fide* group of distillers a permit to import small quantities of spirits to be used for educational and scientific tasting programs.

A microdistillery is prohibited from hiring persons under 21 years old for certain duties and persons under 18 years old for the manufacture, sale, or serving of any alcoholic liquor. The licensee is prohibited from hiring any person who had been convicted of a felony.

The bill conforms the provisions that apply to a microdistillery license to provisions that apply to a microbrewery license.

### ***Individual Drinks, "Happy Hour"***

The bill allows clubs, drinking establishments, caterers, or temporary permit holders to sell or serve beer or cereal malt beverage in a pitcher containing not more than 64 fluid ounces.

The bill clarifies that an *individual* drink is defined as a beverage containing alcoholic liquor or cereal malt beverage served to a single individual, but which is not intended to be consumed by two or more people. An *individual* drink is defined as a beverage containing not more than eight ounces of wine, 32 ounces of beer or cereal malt beverage, or four ounces of a single spirit.

The bill also allows the sale of individual drinks at different prices throughout the day. The bill deletes the proportionate pricing requirement as applied to an alcoholic drink or a cereal malt beverage.

### ***Public Venue License***

The bill amends the Liquor Control Act and the Club and Drinking Establishment Act by creating a new class of license for a public venue. A public venue is defined as an arena, stadium, hall, or theater, used primarily for athletic or sporting events, live theater productions, and live concerts, containing not less than 4,000 permanent seats and not less than two private suites. The public venue licensee is subject to taxes in the same manner as other licensees selling liquor by the drink under the Club and Drinking Establishment Act.

The licensee is allowed to sell and serve alcoholic beverages in designated areas by individual drinks, unlimited drinks for a fixed price, unlimited drinks in inclusive packages, and liquor in the original container for consumption in private suites. A "designated area" is defined as an area identified in the license application, that may include private suites, that has a controlled access, and that is separated from the general admission area by a barrier. The licensee also is allowed to store alcohol in private suites. The fee for a public venue license is set at \$5,000 for facilities with a maximum capacity of not more than 10,000 people; \$7,500 with a maximum capacity of not more than 25,000; and \$10,000 with a maximum capacity exceeding 25,000 people.

The bill also allows a city or county to levy a biennial occupation or license tax of not more than \$1,000 on the public venue licensee. The bill adds restrictions for the offering and serving of alcoholic liquor or cereal malt beverages at a public venue in general admission areas.

### ***Consumption in Certain Recreation Areas***

Additional provisions of the bill allow a person to consume alcoholic liquor on the premises of any land or water owned or managed by the Kansas Department of Wildlife, Parks and Tourism (Department), except where prohibited by rules and regulations of the Department. The effective date of this portion of the bill is January 1, 2013.

### ***Manufacturer Samples***

The bill allows the holder of a manufacturer's license to offer free samples of alcoholic liquor manufactured by the licensee on the licensed premise. No samples are allowed be served to a minor and samples could not be removed from the licensed premise. The licensee is not permitted to sell any alcoholic liquor for consumption on the premise.

### ***Farm Wineries***

The bill allows a farm winery licensee to sell wine manufactured by the licensee for consumption on the licensed premise, provided the licensed premise is located in a county where the sale of alcoholic liquor is permitted in licensed drinking establishments. The wine sold for consumption is not to be considered liquor-by-the-drink and therefore is exempt from the liquor-by-the-drink tax. The bill also allows the sale of wine from a farm winery in the original, unopened container at special events monitored and regulated by the Division of Alcoholic Beverage Control.

This section of the bill is effective upon publication in the *Kansas Register*.

### ***Percentage of Products Grown***

The bill requires not less than 30.0 percent of the products utilized in the manufacture of Kansas wine by a farm winery to be grown in Kansas. The production requirement is based on the annual production of wine by a farm winery and the availability of Kansas-grown products in sufficient quantity to meet the 30.0 percent standard. The Director of Alcoholic Beverage Control may waive the 30.0 percent requirement in years when insufficient Kansas-grown product is available for a farm winery.

## ARTS

### **Creative Arts Industries Commission—Kansas Arts Commission; Senate Sub. for HB 2454**

**Senate Sub. for HB 2454** creates the Creative Arts Industries Commission (CAIC) within the Department of Commerce. The bill merges the existing powers, functions, and duties of the Kansas Arts Commission and the Kansas Film Commission. Under the bill, CAIC is the official state program for the arts and is charged with promoting, supporting, coordinating, fostering, developing, and measuring the outcomes of the arts. The Kansas Arts Commission and the Kansas Film Services Commission are abolished.

The CAIC is administered under the authority of the Kansas Department of Commerce. Under the provisions of the bill, the Department of Commerce shall provide staff consisting of a director and other assistance as may be required by the CAIC in performance of its duties.

#### ***Kansas Creative Arts Industries Commission***

The bill creates the CAIC. The CAIC consists of 11 members, who serve for terms of three years and could be reappointed to a term of three years. Under the provisions of the bill, members may not serve more than two terms. Additionally, there will always be at least one member from each congressional district. All members appointed by the Governor shall be appointed to terms of three years. However, in the initial appointment, three of the gubernatorial appointees shall be appointed for two-year terms and two shall be appointed to three-year terms. The Governor shall designate the term for which each of the members first appointed shall serve. The members of the CAIC include the following:

- Two members appointed by the President of the Senate;
- One member appointed by the Minority Leader of the Senate;
- Two members appointed by the Speaker of the House;
- One member appointed by the Minority Leader of the House; and
- Five members appointed by the Governor.

The bill directs that members of the CAIC should broadly represent the major fields of the arts and related creative industries. Additionally, the bill directs the appointees shall be appointed from among private citizens who are widely known for having competence and experience in connection with the arts and related creative industries or business leaders with an interest in promoting the arts and the creative industries.

The CAIC shall meet on the call of the chair, but not less than four times during each calendar year and meetings may take place in various locations across Kansas.

### ***Tax Checkoff***

The bill also creates a new individual income tax checkoff program to provide an additional funding source for the CAIC. Beginning in tax year 2013, individual income taxpayers will have the option of donating to the Kansas Creative Arts Industries Commission Checkoff Fund. All moneys deposited in the fund will be used to fund the CAIC. CAIC can authorize the use of its logo to be affixed on license plates issued to support the Kansas arts according to KSA 2011 Supp. 8-1,161. Any royalty payment to CAIC derived from the sale of the Kansas arts license plates will be credited to the CAIC special gifts fund.

## **BUSINESS, INDUSTRY, COMMERCE, AND LABOR**

### **Kansas Appraisal Management Company Registration Act; SB 345**

**SB 345** creates the Kansas Appraisal Management Company Registration Act to provide a process for registration and regulation of entities conducting, performing, or engaging in real estate appraisal management services as real estate appraisal management companies in the state of Kansas.

The bill requires registration of appraisal management companies by the Kansas Real Estate Appraisal Board (Board). The bill defines appraisal management companies (AMC) as entities acting as extended third parties authorized to perform appraisal management services, either by a creditor in a consumer credit transaction that is secured by a consumer's principal dwelling, or by an underwriter or a principal in the secondary mortgage market when such entity oversees more than 15 licensed Kansas appraisers or more than 25 appraisers licensed in Kansas and another jurisdiction. Appraisal management services consist of administering an appraiser panel, recruiting qualified appraisers, assigning appraisal orders, and submitting completed appraisals to clients.

The bill prohibits any AMC from engaging in appraisal management services without first registering with the Board. The registration period will run from October 1 to September 30 of the following year. The application for registration must include contact information and other specific information. The bill exempts any AMC that is a subsidiary of a financial institution regulated by a federal financial institutions regulatory agency, AMCs that exclusively employ appraisers, and Kansas licensed appraisers actively engaged in real estate appraisals if the entity does not have more than 15 appraisers. The fees for registration and renewal of registration are set by the Board in an amount not to exceed \$3,500. The initial registration fee will be prorated if the applicant applies with less than 11 months left in the registration period. Late renewal fees will not be more than \$500. Registration fees will be deposited in the Appraiser Fee Fund and civil fines will be deposited in the State General Fund. The AMC federal registry fees will be deposited into the State Treasury in the AMC Federal Registry Clearing Fund, which will not be subject to limitation by appropriations acts.

The bill places several limitations on ownership interests in an AMC. No interest in excess of 10 percent of the AMC may be held by individuals or entities that have had their appraisal credentials revoked or suspended, or otherwise are not in good standing. Individuals owning more than 10 percent interest will have to be of good moral character, will be required to be fingerprinted, and will submit to the Board a national background check. Any AMC having one controlling person designated as the main contact with the Board will be subject to fingerprinting and background check requirements.

AMCs are required to:

- Use Kansas licensed appraisers;
- Certify annually if a system is in place to verify that each appraiser on their panels has a license in good standing and is geographically competent;

- Certify annually that it maintains detailed records of each appraisal service request received by the AMC;
- Maintain records for five years;
- Have a system in place to ensure that client fees are disclosed to the client; and
- Not prohibit an appraiser from disclosing the appraiser's fee in an appraisal report submitted to the client.

The bill sets forth unlawful acts, such as influencing the development, reporting, result, or review of an appraisal report through coercion, extortion, collusion, or intimidation. The bill also makes it unlawful for an AMC to require an appraiser to indemnify the AMC or to hire or to contract with an appraiser that is not properly credentialed and not in good standing. In addition, the bill makes it unlawful to violate any provisions of the Act or any order by the Board, or not fully cooperate in any investigation by the Board. Under the bill, any unlawful act will be a Class C misdemeanor.

## CHILDREN AND YOUTH

### **Revised Code for Care of Children—Consideration of Grandparent Custody; SB 262**

**SB 262** requires substantial consideration of a grandparent who requests custody when a court evaluates what custody, visitation, or residency arrangements are in the best interest of a child who has been removed from custody of a parent and not placed with the child's other parent. The court must consider the wishes of the parents, child, and grandparent; the extent that the grandparent has cared for the child; the intent and circumstances under which the child is placed with the grandparent; and the physical and mental health of all involved individuals. The court is required to state this evaluation on the record.

If the court does not give custody to a grandparent, but places the child in the custody of the Secretary of Social and Rehabilitation Services (Secretary) for placement, then a grandparent who requests placement shall receive substantial consideration in the evaluation for placement, using the factors listed in the bill. If the grandparent is not selected for placement, the Secretary shall prepare and maintain a written report with specific reasons for the finding.

These provisions do not apply to actions filed under the Kansas Adoption and Relinquishment Act.

### **Probable Cause Determination in Juvenile Offender Proceedings; SB 320**

**SB 320** incorporates a probable cause determination in juvenile offender proceedings, as follows:

- The bill raises the standard for one of the conditions for placement in a juvenile detention facility from an allegation to probable cause that the juvenile has committed an offense that would be a felony if committed by an adult;
- The bill moves the statutory provisions for detention hearings and incorporates the probable cause determination into such hearings; and
- The bill clarifies the detention hearing is an informal procedure to which the ordinary evidentiary rules do not apply, allowing the court to consider affidavits, professional reports, and representations of counsel in making the necessary findings.

If the juvenile contests that probable cause exists, the juvenile is allowed to present contrary evidence or information. If such evidence cannot reasonably be produced at the detention hearing, the juvenile is allowed to request a rehearing to contest probable cause within 14 days.

Finally, the bill amends the rules of evidence statute in the Revised Kansas Juvenile Justice Code to accommodate the relaxed evidentiary standards for detention hearings and dispositional hearings.

## DISABILITY RIGHTS

### **Statutory Reference Changes from Mental Retardation to Intellectual Disability; Sub. for SB 397**

**Sub. for SB 397** replaces statutory references to "mental retardation" and similar terms with "intellectual disability," as well as terms such as "mentally retarded" with "person or people with intellectual disability," and enacts law to establish the change in terminology as the official state policy. The term "handicap" is to be replaced by "disability" in the statutes addressed by the bill previously referencing mental retardation. The bill also directs that when the terms "mental retardation" or "retardation" appear in the Kansas Administrative Regulations, the state agencies read and use the term "intellectual disability." Further, the bill directs state agencies to update terminology to reflect the state policy, as rules and regulations are naturally updated.

## ECONOMIC DEVELOPMENT

### **STAR Bonds—Extending the Sunset Date; Senate Sub. for HB 2382**

**Senate Sub. for HB 2382** extends the sunset date for Sales Tax and Revenue (STAR) Bonds from July 1, 2012, to July 1, 2017. The bill also extends the sunset date for the maximum stated rate of interest that may be fixed on fixed-rate or variable-rate bonds issued by a municipality or taxing subdivision of Kansas from July 1, 2012, to July 1, 2017. Under continuing law, the specified maximum stated interest rate is to be determined on the day the bonds are sold and shall not exceed the daily yield for the ten-year treasury bonds published by the Bond Buyer in New York, New York, plus 6.0 percent (if the interest on the bonds is excluded from gross income for federal tax purposes) or 7.0 percent (if interest is included).

## **EDUCATION**

### **Transportation of Non-Resident Pupil, Special Education State Aid Formula, Alternative Formula for Calculating Local Option Budget, Contingency Reserve Fund, and Use of Unencumbered Funds; SB 11**

**SB 11** deals with transportation of non-resident pupils, the special education state aid formula, an alternative formula for calculating the local option budget, flexibility in the use of unencumbered funds, and balances in the contingency reserve fund.

#### ***Transportation of Non-Resident Pupils***

The bill changes the school finance law to redefine non-resident pupil. The bill defines a non-resident pupil as a student or member of the student's family who lives 2.5 or more miles from the attendance center the student would attend in the district in which the student resides. (Prior law defined a non-resident pupil as a student or member of the student's family who lives ten miles or more from the resident attendance center.) The bill clarifies that provisions of the bill do not apply to school districts located in Johnson, Sedgwick, Shawnee, or Wyandotte counties.

#### ***Special Education State Aid Formula***

The bill repeals the portion of the special education state aid formula that determines the minimum and maximum amount of special education state aid a school district may receive.

#### ***Alternative Formula for Calculating Local Option Budget***

The bill provides an alternative formula for calculation of the local option budget of a school district. The bill allows a school district to choose the 2008–09 special education state aid or the current year's special education state aid, whichever amount is greater, to calculate the amount of state aid that the district receives for its local option budget.

#### ***Flexibility of Unencumbered Funds***

The bill allows a school district to continue to transfer unencumbered cash balances for the 2012–13 school year for general operating expenses of the district from each of the following funds: at-risk education, bilingual education, contingency reserve, driver training, parent education program, preschool-aged at-risk education, professional development, summer program, textbook and student materials, special education, virtual school, and vocational education. Up to one-third of the textbook and student materials and special education funds could be transferred for general operating expenditures of the district.

The maximum allowed to be transferred from the unencumbered funds could not exceed \$250 multiplied by the adjusted enrollment of the district.

### ***Contingency Reserve Funds***

Finally, the bill allows a school district to keep up to 10.0 percent of the district's general fund budget in a contingency reserve fund. The bill does not have an expiration date related to this provision. (Prior law would have reduced the amount to six percent for the 2012–13 school year and the years thereafter.)

### **Career Technical Education for Secondary Students; Technical College Boards; At-Risk Students; High-Density At-Risk Pupil Weighting; SB 155**

**SB 155** concerns career technical education for secondary students, amends the powers and duties of technical college boards by allowing the technical college boards to acquire property by lease-purchase, makes changes to the school finance formula related to at-risk students, and revises the provision in the school finance law concerning the calculation of the high-density at-risk pupil weighting.

### ***Career Technical Education***

The bill requires the State Board of Education (State Board) to conduct or contract for a study of the implementation of a new requirement that each school district maintain an individual career plan of study for each student enrolled in grades 8 through 12. The State Board must submit findings from the study to the Legislature by January 15, 2014. This provision will go into effect on July 1, 2013. The State Board also is required to report to the Legislature by January 15, 2014, regarding a proposed strategy and a proposed plan for providing state aid to career technical education programs or courses in school districts and shall consider the funding scheme under the Postsecondary Tiered Technical Education State Aid Act.

The bill also requires the State Board of Regents to establish a career technical education incentive program, which will award \$1,000, subject to appropriation, to a school district for each high school graduate who graduates from that district with an industry-recognized credential in a high-need occupation, as identified by the Secretary of Labor, in consultation with the State Board of Regents and the State Board. The bill allows the State Board of Regents to adopt rules and regulations necessary to administer the program. A school district must reimburse a pupil who has not obtained a high school diploma and is currently or previously was enrolled in a career technical education course or program in the district an amount up to half of the cost of the industry-recognized credential assessment (assessment). This reimbursement will be taken out of the \$1,000 incentive award to the school district. No school district will be required to pay for three or more assessments for the same or substantially the same credential if the pupil fails to earn the credential within two attempts of taking the assessment. After payment for assessments, the school district is allowed to use any remaining portion of the \$1,000 award for the district's operating expenses.

The same provisions apply to students from a private secondary school, attending a community or technical college or institute of technology, except that the State Board of Regents must reimburse a community or technical college or institute of technology for payment of the cost of assessments up to \$1,000 per student. The bill also clarifies that the State Board of Regents is required to distribute state funds to community colleges, technical colleges, and the Institute of Technology at Washburn University for the costs associated with secondary students

enrolled at postsecondary career technical educational programs, to the extent sufficient moneys are appropriated to the program.

The bill allows the governing board of a community college, technical college, or institute of technology to apply to the State Board of Regents for permission to establish a career technical education program outside of the institution's service area if the program is not currently being offered in that service area. The provisions of this section go into effect on July 1, 2013.

High school students admitted to a vocational education course or program conducted by a community college, technical college, or institute of technology may be charged fees, but not tuition. Tuition for secondary career technical education students is subject to appropriation.

The bill requires the State Board of Regents to initiate the development of a statewide articulation agreement on career technical education programs among high schools, community colleges, technical colleges, and the Institute of Technology at Washburn University. This provision goes into effect on July 1, 2013.

The bill maintains the vocational education program weighting of 0.5 which is used to compute the full-time equivalent enrollment in any approved vocational education program, with no sunset on this provision.

### ***Technical College Boards' Ability to Acquire Property by Lease-Purchase***

Additionally, the bill amends the powers and duties of technical college boards by allowing the boards to acquire any property by lease-purchase which is necessary or desirable for technical college purposes. The lease-purchase agreement is limited to ten years, may provide for annual or other payment of rent or rental fees, including maintenance or other expenses, and is subject to change or termination at any time by the Legislature; the agreement must contain a clause containing such termination language.

### ***At-Risk Students***

The bill also makes changes to the school finance formula related to at-risk students. If a student submits an application for free meals under the National School Lunch Act, and it is later determined that the student should not have been eligible, the school district or the State Department of Education must notify the State Board. After the notification, the State Board must recompute the general fund budget of the school district based upon the adjusted enrollment, excluding the at-risk student. The amount of state aid to the affected district is adjusted accordingly.

In addition, if a student became ineligible to receive free meals under the National School Lunch Act for failure to submit, in a timely manner, documentation necessary for verification of eligibility, the district has until January 14 of the school year to submit the student's required documentation and avoid exclusion from the district's at-risk student count.

This portion of the bill becomes effective in school year 2012–13.

### ***High-Density At-Risk Pupil Weighting***

Finally, the bill provides for a linear transition formula to calculate the high-density at-risk pupil weighting for districts having between 35.0 percent and 50.0 percent at-risk pupils. For those districts having an at-risk pupil percentage of 50.0 percent or more, or for districts having an enrollment of at least 35.1 percent at-risk pupils and an enrollment density of at least 212.1 pupils per square mile, the district will multiply the number of at-risk pupils by 0.105 to determine the high-density at-risk weighting. For those districts having between 35.0 percent to less than 50.0 percent at-risk pupils, the district will subtract 35.0 percent from the percentage of at-risk enrollment in the district and multiply that result by 0.7. The product of this calculation multiplied by the at-risk student enrollment is the high density at-risk weighting.

### **Postsecondary Savings Accounts Incentive Program; Senate Sub. for Sub. for HB 2004**

**Senate Sub. for Sub. for HB 2004** amends statutes governing the low-income family postsecondary savings accounts incentive program. The bill allows a third-party contributor, other than the account owner, to contribute money to a family postsecondary savings account.

The bill clarifies the terms "account holder" and "participant" and defines "third-party contributor." The bill defines an individual or family qualified to establish a postsecondary savings account to mean an individual or family residing in Kansas and having a household income that is positive and not more than 200.0 percent of the federal poverty level for the tax year prior to the year in which the application is submitted.

### **State Educational Institution Project Delivery Construction Procurement Act; HB 2429**

**HB 2429** removes the expiration date on the State Educational Institution Project Delivery Construction Procurement Act, which applies only to university construction projects and services funded totally with non-state money.

### **Vocational Education Scholarship, Negotiated Contracts at State Universities, Private and Out-of-State Postsecondary Fees, Remedial Education, and Qualified Admissions; HB 2435**

**HB 2435** amends the Vocational Education Scholarship statutes, deals with state universities and negotiated contracts, extends a sunset on private and out-of-state postsecondary fees, changes requirements related to remedial education and the qualified admissions standards at state education institutions, and authorizes individual plans for success for students admitted under the minimum admissions standards.

### ***Vocational Education Scholarship***

The bill replaces the existing Vocational Education Scholarship with the new Career Technical Workforce Grant. The grant is available for students at or accepted into a designated career technical education program at the postsecondary level as designated by the Kansas Board of Regents. The Kansas Board of Regents, within the limits of appropriations, could award grants to those applicants who exhibit financial need. Under the bill, a grant for a full-time student will be up to \$1,000 per year, but could not exceed the cost of tuition and fees.

The Kansas Board of Regents will administer the grant using guidelines detailed in the bill. The Career Technical Workforce Grant will be evaluated by the Kansas Board of Regents each year and a report will be provided to the Governor and the Legislature. The bill allows the Kansas Board of Regents to adopt rules and regulations to carry out its duties.

If a student were to discontinue attendance, the refunded tuition and fees will go to the Career Technical Workforce Grant Discontinued Attendance Fund to be used for future grants. This also would be true for the state's share of any federal funding involved.

### ***State Universities and Negotiated Contracts***

The bill allows a state university employee to provide factual information, advice, or recommendations related to the negotiated terms of a technology licensing agreement or other research or development agreement between the university and a company in which the employee has a substantial interest, with two exceptions: employees who have the authority to negotiate or to approve the agreement on behalf of the university will not be allowed to provide factual information, advice, or recommendations; and any employee acting as a state university employee and who would receive a direct financial benefit will be limited to providing factual information in relation to the negotiated terms of an agreement.

The bill will become part of the governmental ethics laws.

### ***Private and Out-of-State Postsecondary Fees***

The bill extends the authority until June 30, 2017, for the Kansas Board of Regents to fix, charge, and collect fees for Kansas private and out-of-state postsecondary institutions operating in Kansas. Without passage of this bill, this authority would have expired on June 30, 2012.

### ***Remedial Education, Qualified Admissions Standards, and Individual Plans for Success***

The bill prohibits State General Fund dollars from being used for remedial courses at state universities effective August 15, 2015, but does not prohibit the courses from being provided with funding from other sources. Exceptions to this provision include a student who is in military service, is 21 years of age or older, or is an international student enrolled in a remedial English as a second language course. (State General Fund moneys could be used for remedial courses offered to those in the exception categories.)

Also, the bill allows the development of individual student plans for success by each state educational institution admitting a student under the 10.0 percent exception to the minimum admissions standards. In academic years 2012–13 and 2013–14, development of the plans is voluntary. In academic year 2014–15, individual plans for success become a requirement, prior to enrollment, of students admitted under the 10.0 percent exception window. An individual plan for success will be reviewed by the student and the student's advisor at least once during the 12-month period immediately preceding the initial adoption of the plan. The plan can be revised upon mutual agreement of the student and the student's advisor.

An individual plan for success will be a written statement jointly developed by the student, student's advisor, and any other employee designated by the state educational

institution for the purpose of developing the plan. The plan can address a student's extracurricular activities, financial needs, and any other aspect of student life having a bearing on a student's academic success.

The bill requires the Kansas Board of Regents to conduct a study regarding the retention and graduation rates of students who are accepted into state universities through the exception to the minimum admissions standards. The Kansas Board of Regents is required to report the study's findings to the Senate and House Committees on Education by January 13, 2014.

### **Alternative Learning Plans; Sub. for HB 2477**

**Sub. for HB 2477** requires that students age 16 or 17 who withdraw from school be informed of educational alternatives during a final counseling session, which includes an alternative learning plan for the student. The alternative learning plan identifies educational programs located in the area where the student resides and designed to aid the student in obtaining a high school diploma, general educational development (GED) credential, or other completion certificate. Prior law required other items be discussed in the final counseling session.

### **Payment for Paraprofessional Services to Districts; HB 2777**

**HB 2777** includes special teachers who assist in providing special education and related services to students at the Kansas State School for the Blind (KSSB) and Kansas State School for the Deaf (KSSD) when calculating special education state aid for each district and allows KSSB and KSSD to receive payment from the district for providing services to students at each of the schools.

## **ELECTIONS AND ETHICS**

### **Elections-Related Provisions: Extension and Drainage District Elections; Voter Identification; Campaign Contributions for State Board of Education Candidates; House Sub. for SB 129**

**House Sub. for SB 129** amends requirements for extension and drainage district elections, adds a form of identification acceptable for voting, provides for free birth certificates for purposes of voting, and increases the campaign contribution limit for State Board of Education candidates from \$500 to \$1,000.

#### ***Extension and Drainage District Elections***

The bill changes the filing deadline for extension and drainage district governing body candidates to not later than noon of the Tuesday ten weeks preceding the first Tuesday in April in election years. For extension district candidates, the revision changes "odd-numbered years" to "election years"; the remainder of this deadline change was made in 2011. For drainage district candidates, the law had set a deadline of noon on the Wednesday following the primary election. The bill also requires each extension or drainage district candidate filing be accompanied by a \$5 filing fee. The county election officer is required to remit the filing fees to the county treasurer for deposit in the county general fund.

#### ***Photo Identification for Voting***

The bill adds an identification (ID) card issued by an Indian tribe to the list of photo ID documents acceptable for proving a voter's identity when voting in person. The bill defines "Indian tribe."

The bill also extends the provision of a free certified copy of a birth certificate to any person who is 17 years of age or older only for registering to vote to also include for the purposes of voting, if the applicant for the free copy lacks the photo ID required.

#### ***Campaign Contribution Limits for State Board of Education***

The bill increases the campaign contribution for State Board of Education candidates from \$500 to \$1,000 for each primary or general election. This limit applies to these types of contributions:

- The aggregate amount contributed to a candidate, the candidate's candidate committee, and all party committees and political committees dedicated to the candidate's campaign, by any political committee or any person except a party committee, the candidate, or the candidate's spouse; and

- The amount contributed by each individual party committee of the same political party other than a national party committee to any candidate for office, for any primary election at which two or more candidates are seeking the party's nomination.

## EMPLOYERS AND EMPLOYEES

### Professional Employer Organization Registration; Senate Sub. for HB 2077

**Senate Sub. for HB 2077** creates the Professional Employer Organization (PEO) Act. A person or business that enters into an ongoing co-employment relationship with an employer-client is defined as a PEO. Prior to providing professional employee-related services for client businesses, a PEO shall register with the Commissioner of Insurance (Commissioner) by providing the following applicant information:

- Names by which the PEO conducts business;
- Principal address and the address of any field office in the state;
- Taxpayer or employer identification number;
- A list, by jurisdiction, of each name under which the PEO has operated in the preceding five years;
- A statement of ownership from owners with 15.0 percent or more equity in the business;
- A statement of management, including the names and business experience of senior executive officers; and
- A financial statement, which would include the latest annual audit and evidence of:
  - Positive working capital; or
  - If there is insufficient working capital, the submission of a bond, an irrevocable letter of credit, or securities with a minimum market value which would be equal to positive working capital plus \$100,000. Such a bond would be held by a depository designated by the Commissioner.

PEOs already doing business in the state shall register within 60 days after the bill's enactment date. Each PEO is required to renew its annual registration within 60 days after the end of its fiscal year. If a PEO discovers a client has covered employees in Kansas, the PEO either may decline to provide services or notify the Commissioner within five business days after the discovery and file for a limited registration or a full registration if there were more than 50 covered employees. An annual, limited registration is applicable to a PEO that:

- Is located outside Kansas and registered as a PEO in another state;
- Does not have a presence in Kansas or directly solicits clients in the state; and
- Does not have more than 50 covered employees in any one day.

A professional employer group, composed of two or more PEOs owned or controlled by the same person, may register on behalf of its members, provided each PEO has the ability to guarantee its financial capacity obligations.

The Kansas Insurance Department maintains a list of registered PEOs that is available to the public. An initial application fee may not exceed \$1,000. Fees for renewal or limited registration, either for initial or renewal applications, may not exceed \$500. Moneys collected from fees and penalties are deposited in the newly created Professional Employer Organization Fee Fund. The fund is under the control of the Commissioner for administration of the bill.

Under the PEO Act, an employer may not knowingly enter into a co-employment relationship that either covers less than a majority of the employer's in-state employees or in which less than half of the employer's Kansas payroll is attributable to covered employees. A PEO provides written notice of the professional employer arrangement to each covered employee. Neither the bill nor any professional employer agreement affects:

- Collective bargaining agreements;
- The rights of covered employees;
- The contractual relationship between a covered employee and any client;
- The creation of new enforceable rights for a covered employee against a PEO;
- Any licensing, registration, or certification requirement of the employer-client or the covered employee;
- An employer-client's designation as woman, minority-owned, veteran, service-disabled veteran, or small business enterprise; and
- An employer-client's eligibility for state or local economic development or incentive programs.

The PEO and the employer-client are responsible for sponsoring retirement and employee welfare benefit plans. A professional employer agreement may require the PEO to make payments for covered employees' benefits. A professional employer agreement between a PEO and its employer-client includes:

- The allocation of rights, duties, and obligations;
- The PEO's responsibility to pay the wages of covered employees, along with payroll-related withholding and unemployment taxes; and
- The PEO's right to hire, discipline, or terminate a covered employee.

Unless a professional employer agreement specified differently, the relationship between an employer and a PEO may:

- Allocate rights, duties, and obligations between the employer-client and the PEO;
- Assign to the PEO the responsibility to pay wages for covered employees, withhold and remit funds for taxes, and pay for benefits;
- Assign to the PEO the right to exercise employment decisions over covered personnel;
- Assign to the employer-client the responsibility for the employees' production of goods and services. The employer-client is not liable for an employee when that person is acting under the direction and control of the PEO;
- Classify a covered employee to not be an employee of the PEO for liability or workers compensation purposes;
- Prohibit a PEO from selling insurance on behalf of an employer-client, but it sponsors health and workers compensation plans for its covered employees from an insurance carrier admitted to do business in Kansas (if such policies are canceled or non-renewed, the PEO must notify affected clients within seven days);
- With regard to any gross receipts tax imposed upon a PEO, exclude gross income derived from professional employer services performed for an employer-client; and
- Assign to the employer-client the responsibility for collecting sales tax and paying any tax imposed on a per-employee basis.

If it is determined in a civil hearing by the Commissioner that a person or PEO violated the bill or promulgated rules and regulations, the result may be:

- Denial of application for registration;
- Revocation of, restriction of, or refusal to renew a registration;
- A civil fine not to exceed \$10,000 per violation;
- Probation; or
- A Cease and Desist Order issued by the Commissioner.

The Commissioner is required to adopt rules and regulations to implement the provisions of the PEO Act.

## ENERGY AND UTILITIES

### Pipeline Safety Program Amendments; SB 374

**SB 374** amends the law regarding the pipeline safety program operated by the Kansas Corporation Commission (KCC). The bill makes the following changes:

- Citations of the federal statutes referenced as the source of Kansas' pipeline safety regulations are updated;
- The aggregate maximum civil penalty for any related series of violations is increased from \$500,000 to \$1.0 million; and
- The requirement to pay an annual fee to the KCC to recover a portion of the costs of safety inspections is extended to all pipeline operators subject to KCC regulatory oversight. Currently, 55 of the 127 operators of intrastate natural gas pipelines are not assessed a fee for safety inspections.

### Kansas 911 Act Amendments; SB 384

**SB 384** clarifies several provisions in the 911 Act, which was enacted by the 2011 Legislature. The bill modifies the definition of the term "subscriber account," adds a definition for the term "multi-line telephone system," staggers the terms of office for voting members of the 911 Coordinating Council, and further specifies the process by which revenues from prepaid wireless are distributed to Public Safety Answering Points (PSAPs). The specific changes are as follows:

- The definition of "subscriber account" is modified to specify the 911 fee will be imposed on the maximum number of simultaneous outbound calling capabilities of a multi-line telephone system or equivalent service. Multi-line telephone service is defined in the bill. (Prior law called for the fee to be assessed on every 10-digit access number assigned to a service user.)
- The initial terms of office of 911 Coordinating Council voting members will be for two, three, or four years. The bill staggers terms of office: the four members with an initial two-year term of office include those members representing information technology personnel from governmental units, the Adjutant General's Office, PSAPs in counties with less than a population of 75,000, and PSAPs in counties with a population greater than 75,000. The four members with an initial three-year term of office include those members representing information technology personnel from governmental units, the Emergency Medical Services Board, PSAPs in counties with less than a population of 75,000, and PSAPs in counties without regard to size. The four members with an initial four-year term of office include those members representing a fire chief, a law enforcement officer, the Commission for the Deaf and Hard of Hearing, and PSAPs in counties with a population exceeding 75,000.

The bill further specifies the distribution method for prepaid wireless fees that are distributed to PSAPs. (The first \$2.0 million of prepaid wireless revenue is placed in a grant fund; revenues in excess of \$2.0 million are distributed.) Prior law called for the excess to be distributed to PSAPs based on place of primary use; however, that distribution was not available for prepaid wireless. The bill distributes the prepaid wireless revenues in excess of \$2.0 million to counties based on their percentage share of the state population. In counties with more than one PSAP, the county share will be divided among the PSAPs based on the PSAP's share of the county population. In a county with no PSAP, the county share will be distributed to the PSAP providing service to such county.

#### **KAN-ED; Senate Sub. for HB 2390**

**Senate Sub. for HB 2390** amends the KAN-ED Act to phase out the KAN-ED network. The bill provides funding for the KAN-ED program from the Kansas Universal Service Fund (KUSF) for fiscal year 2013, subject to the provisions of appropriations acts. The purpose of the program is to facilitate use by schools, libraries, and hospitals of broadband technology-based video communication for distance learning and telemedicine.

The bill directs the Kansas Board of Regents (Board) to administer the KAN-ED program and authorizes the Board to contract for goods and services necessary to administer the program. The program cannot provide for the following:

- Impairment of any existing contract for telecommunications or internet service to any school, library, or hospital;
- State ownership or construction of any network facilities other than those owned or under construction on the effective date of the act;
- Switched voice access, except to the extent it is being provided by state facilities on the effective date of the act;
- Transmission of voice over internet protocol (VoIP), except to the extent necessary to facilitate interactive two-way video;
- Content; or
- Use of the program for purposes inconsistent with the purposes of the act.

The Board will transition schools, libraries, and hospitals with a KAN-ED connection as of January 1, 2012, to a commercial broadband internet connection by June 30, 2013. Participants will receive up to \$350 per month for the cost of broadband service from the time they transition off the KAN-ED network until June 30, 2013. The Board will assist schools, libraries, and hospitals in applying for federal grants, including e-rate, consistent with the purposes of the act.

The Secretary of Commerce (Secretary) will contract for a needs assessment for schools, libraries, and hospitals connected to the network as of January 1, 2012. For each such entity, the assessment will include current and future broadband service and quality needs, as well as a determination of all KAN-ED expenses for shared services or infrastructure that are

providing services and network connections. The contractor is required to have expertise in telecommunication services for educational institutions.

Based on the results of the needs assessment, the Secretary, in coordination with the contractor, shall create a report that includes the analysis described below. The cost of the needs assessment and report will be paid by the Board, cannot exceed \$250,000, and must be submitted to the Board by January 1, 2013. The report will:

- Compare the utilization, efficiency, and effectiveness of KAN-ED to other similar programs in other states for schools, libraries, and hospitals;
- Determine if the KAN-ED program, as of the effective date of this act, is worth its cost in terms of price, service, quality, needed network upgrades, and increased utilization of broadband by schools, libraries, and hospitals;
- Determine whether there are alternative models or opportunities for broadband procurement by schools, libraries, and hospitals;
- Determine if the services and applications offered by KAN-ED lead to full utilization of broadband technology by schools, libraries, hospitals and their surrounding communities; and
- Recommend any cost-effective broadband services that are available.

The Board is required to develop a plan, based on the needs assessment or collected data, to facilitate distance learning and telemedicine by schools, libraries, and hospitals and to transition entities with a direct KAN-ED connection as of January 1, 2012, to a commercial broadband internet connection no later than June 30, 2013.

The Board must submit a report to several legislative committees by January 15, 2013, that addresses, among other things, distance learning and telemedicine usage, options for a shared fee structure, options for funding the program for fiscal year 2014, and the transition plan described above.

The bill creates two new definitions. "Program" is defined as the KAN-ED program, created to facilitate schools', libraries', and hospitals' use of broadband technology-based video communication for distance learning and telemedicine. "Broadband technology-based video communications" is defined as a class of communications technologies which may include switched ethernet services, digital subscriber line (DSL), cable modem, private line service, multiprotocol label switching based networks, managed or dedicated internet technologies, and other future technologies capable of supporting such applications.

## **Rural Water Districts; HB 2472**

**HB 2472** changes the definition of a "participating member" of a rural water district by removing the requirement that such members own land within the district. By removing this requirement, "participating member" includes non-landowners who own meters with the right to connect to the district's water system.

## **Deregulation of Natural Gas Cooperative Public Utilities; HB 2489**

**HB 2489** allows a natural gas cooperative public utility to be exempt from the rate-making jurisdiction of the Kansas Corporation Commission (KCC), subject to the affirmative vote of a majority of the cooperative's members voting on the proposal. The utility continues to be subject to KCC jurisdiction for such issues as pipeline safety, customer complaints, and certificated territory.

If rate deregulation is approved, the bill requires notice to customers of proposed rate changes and a public schedule of rates and charges. A cooperative that fails to provide either the required notice or the schedule of rates and charges is subject to civil penalties. In addition, the bill outlines the process by which cooperative members could request a KCC investigation of changes in rates, and gives the KCC authority to remedy rates, charges, or classifications it deems unjust.

## **Powers and Duties of the Kansas Corporation Commission—Amendments; Senate Sub. for HB 2526**

**Senate Sub. for HB 2526** amends several statutes regarding energy and the powers and duties of the Kansas Corporation Commission (KCC). The bill provides explicit authority for the KCC to regulate hydraulic fracturing, imposes a time limit of 180 days for the KCC to act on applications for certificates of public convenience, broadens the definition of renewable energy resources in the Renewable Energy Standards Act to include storage connected to any renewable generation by means of energy storage equipment, and requires the KCC to annually determine and report the statewide retail rate impact of compliance with the Renewable Energy Standards Act.

### ***Regulation of Hydraulic Fracturing***

The bill gives the KCC explicit authority to promulgate rules and regulations necessary for the supervision and disclosure of any hydraulically fractured well. (Continuing law authorizes the KCC to promulgate rules and regulations for the construction, operation, and abandonment of any well and the protection of the usable water in this state from any well.)

### ***Time Limit for Issuance of Certificate of Convenience***

KSA 66-131 is amended to impose a 180-day time limit for the KCC to act on applications for certificates of public convenience. (Any common carrier or public utility that wishes to operate in Kansas is required to obtain such a certificate from the KCC.) Upon mutual agreement between the KCC and the carrier or utility, the deadline may be waived.

### ***Energy Storage as a Renewable Resource***

The bill broadens the definition of renewable energy resources in the Renewable Energy Standards Act. Energy storage connected to any renewable generation by means of energy storage equipment is considered a renewable resource for purposes of the Act. In addition, the bill removes prior limitations on the types of new hydropower that qualify as renewable energy resources.

This bill allows utilities to count energy produced by renewable sources and stored for later use toward the utility's net renewable generation capacity in order to comply with the renewable portfolio standards. (Utilities, except those owned by municipalities, are required to have net renewable generating capacity constituting a certain percentage of their peak demand.)

### ***Statewide Retail Impact of Compliance with the Renewable Energy Standards Act***

The bill amends KSA 66-1260 to require the KCC to annually determine the annual statewide retail rate impact that results from affected utilities meeting the renewable portfolio requirements of the Act. The KCC establishes the requirements for submission of necessary information either in rules and regulations or by order of the Commission.

The KCC is required to submit an annual report of the retail rate impact for the previous year to the Governor, the Senate Committee on Utilities, and the House Committee on Energy and Utilities by March 1 of each year, beginning in 2013.

### **Water Districts and the Issuance of Revenue Bonds; HB 2588**

**HB 2588** gives the governing body of a water district the authority to issue revenue bonds in order to repay any outstanding bonds, warrants, or loans owed to the Kansas Department of Health and Environment or to the United States Department of Agriculture. The bill also gives a water district the authority to issue revenue bonds for the refinancing of up to 95.0 percent of the original cost of any project.

### **Allowing Eligible Water Right Holders To Create Reservoir Improvement Districts; HB 2685**

**HB 2685** establishes the procedures to allow eligible water right holders to create a reservoir improvement district on any particular reservoir, similar to a district created by the Watershed District Act. Water right owners and eligible water right holders can petition to form a district if a petition is signed by the owners or holders of more than 20.0 percent of the combined quantities of water rights within the proposed district. Eligible water right holders includes persons who hold a water right according to the Water Appropriation Act, the Water Storage Act, or the Water Assurance Program Act.

If the petition is deemed sufficient by the Secretary of State and approved by the Director of the Kansas Water Office, the steering committee of the proposed reservoir improvement district will hold an election for eligible water right holders in the proposed district to vote either in favor or against the proposed district. If holders of more than 50.0 percent of the combined quantities of water rights within the proposed district vote in favor, the district will be formed.

Once the district has been incorporated, the eligible water right holders will elect a board of three to five directors. Each holder will receive one vote and one additional vote for every 10.0 percent of the combined quantities of water rights that holder has within the district.

The board will be tasked with developing a general plan and an estimate of costs to implement its plan. The Director of the Kansas Water Office will be required to approve the

general plan. Upon approval, the board will adopt a resolution that imposes a charge to each eligible water right holder of the district in proportion to each holder's total quantity of water rights to provide funding. The district also can be dissolved by the board.

## FEDERAL AND STATE AFFAIRS

### Licenses and Permits for Nonresident Military Spouses; Sub. for HB 2178

**Sub. for HB 2178** requires state licensing agencies, defined in KSA 74-146, to issue a license to a nonresident military spouse for the spouse to lawfully practice a regulated profession in Kansas. The licensee must meet certain requirements as enumerated in the legislation, including:

- Hold a current license in another jurisdiction;
- Not had the license limited, suspended, or revoked;
- Not been disciplined in another jurisdiction;
- Pay required fees by the Kansas licensing agency; and
- Submit a signed application and affidavit that the application information provided is correct.

## FINANCIAL INSTITUTIONS

### Credit Unions—Credit Committees, Loans; SB 263

**SB 263** makes several amendments to the laws governing credit unions. Among the amendments, the bill:

- Deletes the requirement that the bylaws state the manner of appointment or election of the credit committee, and instead states that if the bylaws provide for a credit committee, the committee may be appointed by the board of directors or elected by the members of the credit union;
- Clarifies the suspension procedures under KSA 17-2208 (members of the credit and supervisory committees for failure to perform their duties). Any person suspended is given the right to appear and be heard at the next meeting of the members of the credit union;
- Eliminates the requirement that a credit union use a credit committee only for the approval of every loan or advance of the credit union. The bill instead authorizes the credit committee, credit manager, or loan officer to have the general supervision of all loans to members; and
- Provides that any person who is denied a loan by the credit committee, credit manager, or loan officer will have the right to appeal the decision to the board of directors (if the credit union's bylaws allow for such appeal).

The bill also requires a two-thirds, rather than a unanimous, vote by the supervisory committee to suspend any officer of the credit union, member of the credit committee, or member of the board of directors. Any person suspended will have the right to appear and be heard at the next meeting of the members of the credit union.

### Credit Unions—Amendments to Bylaws; SB 265

**SB 265** amends the procedure provided in statute for amending the bylaws of a credit union. The bill provides two exceptions to the existing approval process:

- If the Administrator disapproves any proposed amendment, the credit union will be permitted to appeal the decision of the Administrator in accordance with the Kansas Administrative Procedure Act; and
- If the Administrator has not acted upon a proposed amendment within 60 calendar days, the amendment will be considered approved.

**Credit Unions—Private Share Insurance; Kansas Money Transmitter Act—Amendments; Fingerprinting of Certain Financial Services Representatives; Salary Schedules for Certain Unclassified Positions; and Kansas Credit Services Organization Act—Exemption; House Sub. for SB 287**

**House Sub. for SB 287** makes several changes to the laws governing financial services in Kansas, including the regulation of credit unions in Kansas by amending share insurance coverage requirements and establishing a salary schedule for certain persons employed by the State Department of Credit Unions; provisions in the Banking Code by revising and updating regulation of money transmitters (Kansas Money Transmitter Act), authorizing the fingerprinting and completion of criminal background checks for certain persons, and allowing the establishment of a salary schedule for certain positions in the unclassified service; and a statutory exemption to the Kansas Credit Services Organization Act.

**Regulation of Credit Unions**

***Private Share Insurance***

Under the bill, credit unions will be required to insure shares through the National Credit Union Share Insurance Fund (NCUSIF) or its successor. A credit union also will be permitted to do all things necessary to obtain, continue, pay for, and terminate private insurance coverage of its shares and share certificates in excess of the coverage provided by the NCUSIF. The private insurer providing excess share insurance coverage will be required to be approved by the Commissioner of Insurance.

The bill clarifies that the application for NCUSIF insurance must be filed with the State Department of Credit Unions (Department) and then forwarded to the National Credit Union Administration.

The bill repeals KSA 17-2250 through 17-2259, KSA 17-2261, and KSA 17-2265 through 17-2267. Under the prior law, state-chartered credit unions were permitted to obtain share insurance through NCUSIF or private insurance (either an insurance company or a guarantee corporation). Under the bill, credit unions are permitted to purchase excess share insurance from a private insurer.

***Unclassified Service; Salary Schedule – State Department of Credit Unions***

The bill grants the Credit Union Administrator (Administrator) the authority to appoint financial examiners and an administrative assistant in the unclassified service. These persons will receive an annual salary fixed by the Administrator in accordance with an equitable salary schedule established by the Administrator and approved by the Governor for all unclassified positions. The provision authorizing the Administrator's appointments for these positions will not affect the classified status of any person employed with the Department on the day immediately preceding the effective date of this act.

The bill also grants the Administrator, subject to appropriations, the authority to appoint financial examiners, financial examiner administrators, case managers, and a business

manager within the Department, as determined necessary by the Administrator. Each position appointed after the effective date of the bill will be in the unclassified service, have special training and qualifications for the appointed position, serve at the pleasure of the Administrator, and receive compensation in accordance with an equitable salary schedule established by the Administrator and approved by the Governor.

The Administrator is required to prepare and maintain an equitable salary schedule for persons appointed in the unclassified service. The bill also provides that the average of the amount of compensation in the salary schedule could not exceed the average compensation of corresponding state regulatory positions in similar areas. Under the bill, the salary schedule must be reported to the Credit Union Council on an annual basis.

### **Banking Code Amendments**

#### ***Updates to the Kansas Money Transmitter Act***

The bill adds the definition of “agent” to the Kansas Money Transmitter Act (Act); the term means “an entity or person designated by the licensee, or by an exempt entity, to engage in the business of transmitting money on behalf of the licensee, or an exempt entity, at one or more physical locations throughout the state or through the internet.” The bill also revises the definition of “permissible investments” to delete certain investment types, revise current investment types, and insert additional investment types including:

- Deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposits;
- Debt obligations of a domestic federally insured depository institution;
- Any investment bearing a rating of one of the three highest grades, as defined by a nationally recognized organization that rates such securities;
- Investment grade bonds and other legally created general obligations of a state, an agency, or political subdivision of a state, the United States, or an instrumentality of the United States.; and
- Obligations that a state, an agency, or political subdivision of a state, the United States, or an instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee, and that bear a rating of one of the three highest grades, as defined by a nationally recognized organization that rates securities.

The bill also updates the definition of the term “person.”

#### ***Fee Structure***

The bill deletes a provision that allowed the license application fee to be established by agency rules and regulations. Instead, the bill allows the State Bank Commissioner

(Commissioner) to prescribe the form and manner for submission of the application. A nonrefundable fee for each agent and location, as established by the Commissioner, will be required to be submitted with the application and will be due annually on July 1. The Commissioner is authorized to determine the amount of the fees, in order to provide sufficient funds to meet the budget requirements associated with administering and enforcing the Act for each fiscal year. “Each agent location” is defined by the bill to mean “each physical location within the state where money transmission is conducted, including, but not limited to, branch offices, authorized vendor offices, delegate offices, kiosks and drop boxes.”

A license must be renewed by filing with the Commissioner a complete application and nonrefundable fees at least 30 days prior to expiration of the license.

### ***Investigatory Powers***

In addition to an existing authority to examine books and records of persons operating in accordance with the Act, the bill grants the Commissioner the authority, for the purposes of investigation, examination, or other proceeding under the Act, to administer oaths, subpoena witnesses and documents, take evidence, and require the production of any document that is determined to be relevant to the inquiry.

### ***Enforcement Authority; Violations of the Act; Unlicensed Activity***

The bill also grants the Commissioner the power to issue an order to address any violation of the Act by:

- Assessing a fine against any person who violates the Act, or rules and regulations adopted thereto, in an amount not to exceed \$5,000 per violation;
- Assessing the agency's operating costs and expenses for investigating and enforcing the Act;
- Requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation;
- Barring the person from future application for licensure pursuant to the Act; and
- Requiring such affirmative action as in the judgment of the Commissioner will carry out the purposes of the Act.

The Commissioner will be permitted to enter into a consent order at any time with a person to resolve a matter arising under this act, rules and regulations adopted thereto, or an order issued pursuant to this act.

The bill also allows the Commissioner to bring an action for injunctive relief to enjoin a violation (or a likely violation of the Act) or enforce compliance, regardless of whether criminal proceedings have been instituted. Any person engaging in activities that are regulated and

require licensure under the Act will be considered to have consented to the jurisdiction of the courts of this state for all actions arising under the Act.

### ***Disciplinary Action; License Revocation***

The bill expands the list of prohibited actions under the Act that could result in license revocation to include having:

- Filed a document or statement falsely representing or omitting a material fact;
- Concealed a fact or a condition exists which would clearly have justified the Commissioner's refusal to grant a license had the fact or condition been known to exist at the time the application for license was made;
- Engaged in any transaction, practice, or business conduct that is fraudulent and deceptive in connection with the business of money transmission;
- Advertised, displayed, broadcast, or televised any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for the transmission of money;
- Failed to keep and maintain sufficient records to permit an audit to satisfactorily disclose to the Commissioner the licensee's compliance with the provisions of the Act; or
- Been the subject of any disciplinary action by this or any other state or federal agency.

The list of other prohibited acts also includes instances where a final judgment has been entered against the person in a civil action and the Commissioner finds the conduct (subject of the judgment) indicates it would be contrary to the public interest to permit the person to be licensed or in instances where the person has violated any order issued by the Commissioner, any provision of this act, any rule and regulation adopted thereto, or any other state or federal law applicable to money transmission.

### ***Examination Reports***

The bill permits the Commissioner to accept an examination report or investigation report from another state or federal licensing agency, in which the accepted report is an official report of the Commissioner. Acceptance of the report, however, would not waive any fee required by the Act.

### ***Technical Corrections; Reorganization***

The bill makes several technical amendments, including the reorganization of provisions in the existing Act.

### ***Fingerprinting and Criminal History Record Checks of Certain Money Transmitters and Certain Trust Company Applicants***

The bill also amends the Kansas Money Transmitter Act to permit the Commissioner to require fingerprinting of any individual, officer, director, partner, member, shareholder, or any other person related to the application deemed necessary by the Commissioner. The bill exempts applicants who are a publicly traded corporation or a subsidiary of a publicly traded corporation from the fingerprint check.

The bill also allows, in instances where notice is given for the acquisition of a bank by a trust company, the Commissioner the authority (permissive) to require fingerprinting of any proposed officer, director, shareholder, or any other person deemed necessary by the Commissioner.

The bill permits the State Banking Board (Board) to require fingerprinting of any officer, director, incorporator, or any other person of the proposed trust company related to the application deemed necessary by the Board.

The bill allows the submission of an applicant's fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national criminal history record check. The fingerprints will be used for the purposes of identifying the person and determining whether the person has a record of arrests and convictions in Kansas or other jurisdictions. The Commissioner or Board would be permitted to use this information for the purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person or, in the case of a trust company, the persons associated with either the notice of acquisition of a trust company or the applicant trust company to be issued a charter. The bill requires that all costs associated with the fingerprinting and criminal background checks be paid by the applicant or the parties to the application.

### ***Unclassified Service; Salary Schedule - Office of the State Bank Commissioner***

The bill grants the Commissioner authority to appoint certain positions in the unclassified service, subject to appropriations. Those positions include case managers, examiners, and a business manager within the Office of the State Bank Commissioner. Under the prior law, the Commissioner was allowed to appoint only regional managers and financial examiner administrators.

The bill also allows the Commissioner to establish an equitable salary schedule for all unclassified positions. The average of the salaries established by the Commissioner, however, would not be permitted to exceed the average compensation of corresponding state regulatory positions in similar areas. Under the bill, the salary schedule must be approved and be reported to the Board on an annual basis.

### **Kansas Credit Services Organization Act Exemption**

The bill amends the Kansas Credit Services Organization Act (KCSOA) to clarify an exemption provision in the KCSOA. Specifically, the bill modifies an existing exemption from the KCSOA for individuals licensed to practice law in Kansas acting within the course and scope of such individual's practice as an attorney, by adding law firms of such individuals to this exemption from the KCSOA.

The term, "law firm," is defined to mean "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization."

Under the prior law, any person licensed to practice law in Kansas, when the person is acting within the course and scope of such person's practice as an attorney, is exempt from the KCSOA.

### **Banking Code Amendments—Derivative Transaction and Lending Limits; Reciprocity for Certain Trust Companies; HB 2505**

**HB 2505** amends and inserts definitions in the provisions of the Banking Code that apply to lending limits to include derivative transactions and also amends the Code to create an exception to the provisions that apply to a prohibition on the establishment or operation of a trust company by an out-of-state trust entity.

#### ***Legal Lending Limits***

The bill will, from and after January 21, 2013, add a new provision to the meaning of the term "loan" to include "any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a bank and that borrower."

The bill also creates a definition in the Code for the term "derivative transaction" and assigns the following definition: any transaction that is a contract agreement, swap, warrant, note, or option that is based in whole, or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest, or other rates, indices, or other assets.

#### ***Interstate Branching, Trust Departments; Reciprocity Requirement***

The bill modifies a provision in the Code which prohibits any out-of-state trust company, trust department of a bank, or similar entity from establishing or operating a trust facility in Kansas, to create an exception for certain out-of-state trust entities. The exception will allow out-of-state trust entities to establish or operate a trust facility in Kansas if the laws of the state of the home office of the trust company or similar business entity reciprocally authorize a Kansas-chartered trust company or similar entity to establish or operate a trust facility within that state.

The bill requires these non-resident trust entities to file a copy of the application submitted to the home state and proof that the home state has reciprocity with Kansas with the Bank Commissioner, before the entity establishes a trust facility in Kansas. Further, a Kansas trust company can not establish an out-of-state trust facility until an application has been filed with the Bank Commissioner and approval has been received; the application would be subject to the provisions of the Code regulating the establishment of trust service offices (KSA 9-2108). Similarly, a Kansas bank with a trust department can not establish an out-of-state trust facility until an application has been filed with the Bank Commissioner and approval has been received; this application will be subject to the provisions of the Code regulating the establishment of a trust branch bank (KSA 9-1135).

For the purposes of the reciprocity provisions in the bill, a "trust facility" means any office, agency, desk, or other place of business at which trust business is conducted.

### **Bank Commissioner—Review of Acquisitions by Bank Holding Companies; HB 2593**

**HB 2593** amends provisions of the Banking Code that apply to the review of applications associated with acquisitions by a bank holding company of a bank whose home office is located in Kansas. The bill requires the Office of the State Bank Commissioner to review only those applications that involve Kansas state-chartered banks.

Under the prior law, the Office of the State Bank Commissioner was required to review the applications for acquisitions by both an in-state and out-of-state bank holding company of either a Kansas state-chartered bank or a national bank that has a home office in Kansas.

## HEALTH

### **Kansas Newborn Screening Fund; SB 14**

**SB 14** amends a statute governing the Newborn Screening Program (Program) and certain newborn screening tests to establish a new fund and funding mechanism for the Program.

Specifically, the bill establishes the Kansas Newborn Screening Fund (Fund) in the Kansas Department of Health and Environment (KDHE) and creates a mechanism for depositing a portion of the privilege fees received by the State from Health Maintenance Organizations (HMOs) into the new Fund. All expenditures from the Fund must be used for the Program.

The bill requires the Director of Accounts and Reports, Division of Accounts and Reports, Department of Administration, to determine, on a monthly basis, the amount of receipts from HMOs' privilege fee collections and to transfer the amount necessary to fund the Newborn Screening Program for the preceding month as certified by the Secretary of Health and Environment, or designee. The transfer cannot exceed the amount credited to the State General Fund pursuant to KSA 40-3213.

KSA 2011 Supp. 40-3213 requires HMOs to pay, on an annual basis, a privilege fee in an amount equal to 1.0 percent per annum of the total of all premiums, subscription charges, or other similar charges made by the HMO to its enrollees. Under the prior law, the entire amount of the collected privilege fees was deposited into the State General Fund.

### **Pharmacy Act of the State of Kansas and Uniform Controlled Substances Act— Electronic Prescription Amendments, Free Sample Distribution of Schedule V Nonnarcotic Depressants, and Addition of Controlled Substances; Prescription Monitoring Program Act Amendments; SB 134**

**SB 134** amends the Pharmacy Act of the State of Kansas and the Uniform Controlled Substances Act regarding electronic prescriptions and amends the Prescription Monitoring Program (PMP) Act to authorize the State Board of Pharmacy (Board) to pursue and accept grant funding and accept donations, gifts, or bequests; add two entities authorized to obtain information from the PMP; create a penalty for obtaining or attempting to obtain PMP information without authority; and authorize the PMP Advisory Committee to identify and review concerns involving controlled substances and drugs of concern, through the use of volunteer peer review committees, and to notify the appropriate entities. The bill adds one new substance each to Schedules IV and V of the Uniform Controlled Substances Act and allows for the distribution of free samples of Schedule V nonnarcotic depressants by manufacturers or distributors.

### ***Definitions, Electronic Prescriptions***

The bill adds the following key definitions, generally found in federal regulations related to electronic orders of controlled substances and electronic prescriptions for controlled substances, to the Pharmacy Act of the State of Kansas and the Uniform Controlled Substances Act:

- An "electronic prescription" is electronically prepared and authorized and transmitted from the prescriber to the pharmacy using electronic transmission;
- A "pharmacist intern" includes a pharmacy student, a pharmacy resident, or a foreign pharmacist graduate;
- A "prescriber" includes a practitioner or a mid-level practitioner; and
- A "valid prescription order" requires the prescription to be issued for a legitimate medical purpose by an individual licensed prescriber acting within such prescriber's scope of practice. Prescriptions issued without an appropriate prescriber-patient relationship, but instead issued only on an internet-based questionnaire or consultation, are not valid.

Other definitions which also are added and are based on federal regulations related to electronic orders and electronic prescriptions of controlled substances include "application service provider," "Drug Enforcement Agency," "electronic prescription application," "electronic signature," "electronically prepared prescription," "facsimile transmission," "intermediary," "pharmacy prescription application," and "readily retrievable."

The following definitions are expanded by the bill:

- "Electronic transmission" is defined and distinguished from a facsimile transmission;
- The definition of "pharmacist" is expanded in the Uniform Controlled Substances Act to mirror the definition in the Pharmacy Act of the State of Kansas; and
- "Prescription" or "prescription order" are combined as one definition to clarify no distinction is made with regard to the manner in which the prescription is communicated.

Some definitions are moved to re-alphabetize the definitions within the Acts.

### ***Writing, Filling, Refilling, and Recording of Prescriptions Under the Pharmacy Act of the State of Kansas***

The bill also moves most of the language found in KSA 2011 Supp. 65-1637 related to the writing, filling, refilling, and recording of prescriptions to a new section, thereby placing all language referring to such current practices together. New language is added to the new section

to incorporate requirements pertaining to electronic prescribing of controlled substances found in federal law as follows.

#### *Validity of Prescriptions*

A valid prescription must meet the following requirements:

- Pharmacists must exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription order consistent with federal and state laws and rules and regulations;
- A pharmacist is prohibited from dispensing a prescription drug if a pharmacist exercising professional judgment determines a prescription is not a valid prescription order;
- The prescriber may authorize an agent to transmit to the pharmacy a prescription order orally, by fax, or by electronic transmission with the first and last name of the transmitting agent included;
- A new written or electronic prescription must be signed manually or electronically by the prescriber and include the first and last name of the transmitting agent;
- A prescription for a controlled substance which is written or printed from an electronic prescription application must be signed by the prescriber manually prior to the delivery of the prescription to the patient or prior to the facsimile transmission to the pharmacy; and
- An electronically prepared prescription cannot be electronically transmitted if it has been printed prior to transmission and, if the prescription is printed after electronic transmission, it must be clearly labeled as a copy and is not valid for dispensing.

#### *Electronic Transmission Study*

The Board, in consultation with industry, is required to conduct a study on electronic transmission of prior authorization and step therapy protocols. The study report must be completed and submitted to the Legislature by January 15, 2013. The Board also is authorized to conduct pilot projects related to any new technology implementation when necessary and practicable, but no state moneys can be expended for this purpose.

#### *Filling or Refilling of Prescription Orders*

A refill is defined by the bill as one or more dispensings of a prescription drug or device resulting in the patient's receipt of a single fill as per the prescription and as authorized by the prescriber. In order to fill or refill a prescription, the following conditions need to be met:

- When refilling a prescription or renewing or continuing a drug therapy, an authorization may be transmitted orally, in writing, by fax, or by electronic means initiated by or directed by the prescriber;
- The prescriber's signature is not required on a fax or alternate electronic transmission when the first and last name of the prescriber's agent making the transmission is provided;
- Any refill order or renewal order which differs from an original order must be signed by the prescriber, unless transmitted by fax or electronically by the prescriber's agent and the first and last name of such agent is provided;
- Only pharmacists or pharmacist interns are authorized to receive a new order;
- A pharmacist, pharmacist intern, or a registered pharmacy technician (if authorized to do so by the supervising pharmacist) is permitted to receive a refill or renewal order;
- No more than 12 refills within 18 months of the issuance of the prescription may be authorized for a prescription drug or device which is not a controlled substance; and
- Prescriptions for Schedule III, IV, or V controlled substances are limited to five refills within six months of the issuance of the prescription.

### ***Prescription Monitoring Program Act***

The Board is authorized, for the purpose of furthering the PMP Act, to apply for and accept grants and to accept any donation, gift, or bequest. All moneys received by the Board are to be submitted for deposit in the State Treasury to the credit of the Non-federal Gifts and Grants Fund of the Board.

The bill replaces the Kansas Health Policy Authority (KHPA) with the Kansas Department of Health and Environment (KDHE) as the entity authorized to obtain PMP information regarding authorized Medicaid program recipients, as necessitated by the passage of 2011 Executive Reorganization Order No. 38 which reorganized KHPA into the Division of Health Care Finance within KDHE.

The bill also allows access to PMP data for two new categories of persons. Prescribers and dispensers are allowed access to the data when an individual appears to be obtaining prescriptions for the misuse, abuse, or diversion of scheduled substances or drugs of concern. The Board also is able to provide information to medical examiners, coroners, or other persons authorized by law to investigate or determine causes of death.

### ***PMP Advisory Committee Review***

The PMP Advisory Committee reviews and analyzes PMP data to identify patterns and activity of concern. When individuals are suspected of obtaining prescriptions indicating misuse

or abuse of controlled substances, the PMP Advisory Committee can contact the prescribers and dispensers. If the individuals are suspected of criminal activity, the PMP Advisory Committee can notify the appropriate law enforcement agency.

If the PMP information appears to indicate the occurrence of a violation on the part of a prescriber or dispenser in prescribing controlled substances or drugs of concern inconsistent with recognized standards of care for the profession, the PMP Advisory Committee determines if a report to the appropriate professional licensing, certification, or regulatory agencies or law enforcement agency is warranted.

The PMP Advisory Committee consults with appropriate regulatory agencies and professional organizations to establish criteria for standards and utilizes volunteer peer review committees to create such standards and to review individual prescriber or dispenser cases. The volunteer peer review committees have authority to request and receive information in the PMP database from the PMP Director. If referral to a regulatory or law enforcement agency is not warranted, the PMP Advisory Committee can refer prescribers or dispensers to educational or professional advising, as appropriate.

#### *Penalty for Unauthorized Access to PMP Information*

An unauthorized person who knowingly obtains or attempts to obtain prescription monitoring information is guilty of a severity level 10, nonperson felony.

#### ***Controlled Substance Additions and Distribution of Free Samples under the Uniform Controlled Substances Act***

The bill amends the Uniform Controlled Substances Act to add carisoprodol to the Schedule IV controlled substances list and ezogabine N-[2-amino-4(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester to the Schedule V list. The bill also allows for the distribution of free samples of Schedule V nonnarcotic depressants by manufacturers or distributors to practitioners, mid-level practitioners, pharmacists, or other persons.

#### ***Dispensing Under the Uniform Controlled Substances Act***

Controlled substances are to be dispensed with the following changes:

- Except when dispensed by a practitioner, other than a pharmacy, to the ultimate user, Schedule II controlled substances are not allowed to be dispensed unless a practitioner or mid-level practitioner provides a written or electronic prescription. In emergency situations, Schedule II substances can be dispensed upon an oral order if reduced promptly to writing or transmitted electronically and filled by the pharmacy; and
- Except when dispensed by a practitioner, other than a pharmacy, to the ultimate user, Schedule V drugs, which also are prescription drugs, are added to Schedule III and IV drugs which can be dispensed only when a paper prescription is manually signed by the prescriber, a facsimile of a manually signed paper prescription is

transmitted by the prescriber or the agent, an electronic prescription is digitally signed by a prescriber with a digital certificate, or an oral prescription is made by an individual prescriber and promptly reduced to writing.

A controlled substance cannot be distributed or dispensed except by a valid prescription order as defined in this act.

### ***Retention of Prescription Record under the Uniform Controlled Substances Act***

The bill provides for electronic prescriptions to be retained electronically for five years and requires the record to be readily retrievable into a format a person can read. Paper, oral, and fax prescriptions are to be maintained as a hard copy for five years at the registered location.

### **Pharmacy Act—Three Month Prescription Fill Exception; SB 211**

**SB 211** amends the Pharmacy Act of the State of Kansas to add a second exception to the requirement that pharmacists fill all prescriptions in strict conformity with the directions of the prescriber. The new exception allows a pharmacist to provide up to a three-month supply of a prescription drug 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 the prescription includes enough refills to fill a three-month supply.

The only statutory exception prior to this bill allows a pharmacist who receives a prescription order for a brand name drug to substitute a different brand in order to achieve a lesser cost to the purchaser, unless the prescriber has instructed that the prescription be dispensed as written or as communicated, or the federal Food and Drug Administration has determined that the generic prescription medication is not bioequivalent to the prescribed brand name prescription medication. As stated, this bill adds a second exception.

### **Addictions Counselor Licensure Act—Amended Licensure Requirements; SB 290**

**SB 290** amends the Addictions Counselor Licensure Act to clarify the licensure requirements for licensed addiction counselors (LACs) and licensed clinical addiction counselors (LCACs) and to address reciprocal licensure for addiction counselors and clinical addiction counselors.

The bill requires that both an LAC and a LCAC be at least age 21, pass an examination approved by the Behavioral Sciences Regulatory Board, satisfy the Board that the individual merits the public trust, and pay the established application fee. In addition, educational requirements are established for each.

An addiction counselor is required to meet one of the the following educational requirements:

- Complete a baccalaureate degree in addiction counseling;

- Complete a baccalaureate degree in a related field with a minimum number of semester hours on substance use disorders;
- Complete a baccalaureate degree in a related field and additional coursework in addiction counseling including a minimum number of semester hours on substance use disorders;
- Be currently licensed as a social worker and have completed a minimum number of semester hours on substance use disorders; or
- Be currently licensed as a master social worker, professional counselor, marriage and family therapist, or master's level psychologist.

A licensed clinical addiction counselor (LCAC) needs to meet the following educational requirements:

- Complete a master's degree in addiction counseling, and
  - Have two or more years of postgraduate supervised professional experience of not less than 4,000 hours; or
  - Have a doctoral degree in addiction counseling or related field and two years or more of postgraduate supervised professional experience of not less than 2,000 hours; or
- Complete a master's degree in a related field including a minimum number of semester hours on diagnosis and treatment of substance use disorder, and
  - Have two years or more of postgraduate supervised professional experience of not less than 4,000 hours; or
  - Have a doctoral degree in addiction counseling or related field and at least two years of postgraduate supervised professional experience of not less than 2,000 hours; or
- Complete a master's degree in a related field with additional coursework in addiction counseling with a minimum number of semester hours on diagnosis and treatment of substance use disorders; and
  - Have at least two years of postgraduate supervised professional experience of not less than 4,000 hours; and
  - Have a doctoral degree in addiction counseling or related field and at least two years of postgraduate supervised professional experience of not less than 2,000 hours; or
- Complete a master's degree in a related field and be licensed as an addiction counselor, and
  - Have at least two years of postgraduate supervised professional experience of not less than 4,000 hours; or
  - Have completed two years of postgraduate supervised professional experience of not less than 2,000 hours and have a doctoral degree; or

- Be currently licensed in Kansas as a psychologist, special clinical social worker, clinical professional counselor, clinical psychotherapist, or clinical marriage and family therapist, and provide attestation from a professional.

Addiction counselors and clinical addiction counselors currently registered, certified, or licensed in another jurisdiction are allowed to be licensed in Kansas if the standards to practice in that jurisdiction are substantially equivalent to Kansas'; or they demonstrate compliance, have five years of continuous practice, no disciplinary actions, pay the established fee, and meet the requisite educational requirements. The educational requirements for an addiction counselor are the completion of a baccalaureate or master's degree in addiction counseling or related field. The educational requirements for a clinical addiction counselor are:

- Complete a master's degree in clinical addiction counseling or a master's degree in a related field including a minimum number of semester hours on diagnosis and treatment of substance use disorders, or a master's degree in a related field with additional coursework in addiction counseling with a minimum number of semester hours on diagnosis and treatment of substance use disorders; and
- Have at least two of the following:
  - Coursework or passing a national exam;
  - Three years of clinical practice; or
  - Attestation from a professional.

### **Disposition of Unclaimed Cremated Remains; Provisions for Veterans' Cremated Remains; SB 303**

**SB 303** amends law governing the disposition of unclaimed cremated remains to clarify when notice is required to be given prior to disposal of cremated remains and to create specific requirements related to the disposition of the unclaimed cremated remains of veterans.

**Clarifying When Notice is Required.** A funeral establishment, branch establishment, or crematory had been allowed to dispose of unclaimed cremated remains after a period of 90 days from the time of cremation, with required notice of the intent to dispose of cremated remains to be given at least 30 days prior to the end of the 90-day period. Instead, the bill requires the funeral establishment, branch establishment, or crematory give notice at least 30 days prior to disposal of the remains, but does not require the notice be 30 days prior to the end of the 90-day period.

**Establishing Specific Requirements for the Disposition of the Cremated Remains of Veterans.** If the cremated remains have been unclaimed for more than 90 days from the date of cremation, notice requirements have been met, and the remains still have not been claimed, a funeral establishment, branch establishment, or crematory is allowed to share information with the U.S. Department of Veterans' Affairs or the Kansas Commission on Veterans' Affairs for the purpose of determining if the unclaimed cremated remains are those of a veteran. A funeral establishment, branch establishment, crematory, funeral director, assistant funeral director, or crematory operator is discharged from any legal obligations or liability for such disclosures to the U.S. Department of Veterans' Affairs or the Kansas Commission on Veterans' Affairs. If it is determined the unclaimed cremated remains are those of a veteran, possession of the remains could be relinquished to the Kansas Commission on Veterans' Affairs or a national cemetery. The bill requires disposition of the unclaimed cremated remains of veterans be by placement of

the cremated remains in a tomb, mausoleum, crypt, or niche in a columbarium, or by burial in a cemetery; scattering of the cremated remains is prohibited.

A funeral establishment, branch establishment, or crematory is not required to determine whether the unclaimed cremated remains are those of a veteran if informed by a person in control of the disposition of the unclaimed remains that the individual was not a veteran or did not desire any funeral or burial-related services or ceremonies recognizing service as a veteran.

When disposition of unclaimed cremated remains occurs in accordance with the language of the bill, a funeral establishment, branch establishment, crematory, funeral director, assistant funeral director, or crematory operator is held harmless for any costs or damages, except for gross negligence or willful misconduct, and is discharged from any legal obligation or liability concerning the cremated remains.

### **Creation of a Chronic Obstructive Pulmonary Disease Prevention and Education State Plan; SR 1826**

**SR 1826** encourages the Kansas Department of Health and Environment (KDHE) to create a Kansas plan for comprehensive treatment of chronic obstructive pulmonary disease (COPD). The plan is to coordinate the implementation of multiple strategies which include the creation of public awareness and increased patient education and knowledge of the causes of COPD, the importance of early diagnosis, effective prevention, and disease management, including nonpharmacologic therapies, the strategies also are to include recommendations for improvement in outcomes through increases in COPD funding and resources, and effective advocacy. KDHE is to perform an annual COPD needs assessment and hold an annual COPD summit in partnership with the state COPD coalition.

### **Kansas Health Information and Technology and Exchange Act—Amendments; Senate Sub. for Senate Sub. for HB 2249**

**Senate Sub. for Senate Sub. for HB 2249** amends one of the provisions of the Kansas Health Information Technology and Exchange Act (Act). Under continuing law, the Act supersedes any state law which is contrary to, inconsistent with, or more restrictive than the provisions of the Health Insurance Portability and Accountability Act. Two of the existing exceptions to this provision are peer reviews and risk management statutes. The bill deletes the third exception: any statutory health care provider-patient privilege. The bill also includes a provision stating the Act will not limit or restrict the state agency's authority to require the disclosure of health information pursuant to law.

### **Division of Health Care Finance of Department of Health and Environment; Updates Regarding Transfer of Powers and Duties of Kansas Health Policy Authority; Change Regarding Calculation of Annual Hospital Provider Assessment; HB 2416**

**HB 2416** updates a number of statutes to replace references to the Kansas Health Policy Authority (KHPA) with references to the Secretary of Health and Environment, Kansas Department of Health and Environment (KDHE), or the Division of Health Care Finance, KDHE. The bill also repeals the statutes that created KHPA. The replacement of references to KHPA is for the purpose of conforming to 2011 Executive Reorganization Order No. 38, which reorganized KHPA into the Division of Health Care Finance within KDHE.

Finally, the bill amends the statute which addresses the annual assessment on inpatient services imposed on each hospital provider based on an amount equal to 1.83 percent of each hospital's net inpatient operating revenue for FY 2001 to instead use a hospital's net inpatient operating revenue for FY 2010. If a hospital does not have a complete 12-month FY 2010, the assessment will be \$200,000 until the hospital has completed its first 12-month fiscal year, at which time the assessment will be 1.83 percent of the net operating revenue of such hospital's first completed 12-month fiscal year.

#### **University of Kansas Medical Center as a Health Care Provider Group; HB 2428**

**HB 2428** adds the University of Kansas Medical Center to the list of Health Care Provider Groups, as defined by KSA 2011 Supp. 65-4915, for the purpose of peer review.

#### **Board of Adult Care Home Administrators—Administrator Member Qualifications and Terms; Licensure of Adult Care Homes; HB 2471**

**HB 2471** establishes requirements for the appointment of the three state-licensed administrator members of the Board of Adult Care Home Administrators (Board), and makes changes to the terms of Board members. The bill also amends certain statutes regulating the licensure of adult care homes.

#### ***Board of Adult Care Home Administrators***

The following specific changes are made with regard to the Board of Adult Care Home Administrators:

##### ***Administrator Member Nomination Procedure***

The bill requires, at least 30 days prior to the expiration of each administrator member's term, at least one but not more than three names of persons of recognized ability and qualification be submitted to the Governor for consideration in making appointments to the Board. The names are to be submitted for the not-for-profit representative by LeadingAge Kansas, for the for-profit representative by the Kansas Health Care Association, and for the professional association representative by the Kansas Adult Care Executives, or the successors of such entities.

##### ***Administrator Member Qualifications***

The administrator members of the Board are required to have been actively engaged in the administration of adult care homes within the state for the three years immediately preceding appointment and are required to remain actively engaged in the administration of adult care homes in Kansas while serving on the Board. Additionally, Board members must not have had any published disciplinary action taken against them by the Board, or have any such action taken while serving on the Board.

### *Administrator Member Terms*

The bill changes Board member terms on the effective date of this act, by allowing each current board member's term to be extended by one year from the term expiration date. Board members appointed on or after the effective date of this act serve a term of three years or until otherwise disqualified from serving, and they cannot serve more than two consecutive terms.

### *Licensure of Adult Care Homes*

The bill amends the definition of an intermediate care facility for the mentally retarded (ICF/MR) to apply to facilities which provide care for four or more individuals. The current definition applies to facilities caring for six or more individuals. The definition change clarifies the authority of the Kansas Department for Aging and Disability Services to license facilities which were licensed previously as ICF/MRs but did not meet the definition of an ICF/MR, as a result of having fewer than the required six or more individuals for which care was provided. The bill prohibits the operation of an ICF/MR of five beds or less unless, on or before January 1, 2012, the facility was issued a license by the licensing agency or participated in the Medicaid program as an ICF/MR of five beds or less. This portion of the bill applies retroactively to the smaller ICF/MR facilities licensed on or before January 1, 2012.

### *Medicaid Program Definition*

Under the bill, the Medicaid Program is defined as "the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended, or any successor federal or state, or both, health insurance program or waiver granted thereunder."

### *Waiting Period for Application*

The bill provides when the licensing agency finds the adult care facility has substantially failed to comply with requirements, standards, or rules and regulations in the Adult Care Home Licensure Act, or a receiver has been appointed, the licensing agency is required to make an order denying, suspending, or revoking the license. The applicant or licensee whose license has been denied, suspended, or revoked is not eligible to apply for a new license for a period of two years from the date the license was denied, suspended, or revoked.

Two exceptions are created by the bill for the waiver of the two-year waiting period to apply for a new license or license reinstatement for a licensee or applicant whose license has been denied, revoked, or suspended. The waiting period is waived and the following individuals are allowed to apply at any time for a new license or license reinstatement by submitting a written waiver of rights under the Kansas Administrative Procedure Act and the Kansas Judicial Review Act to the licensing agency in a settlement agreement, or other manner approved by the licensing agency:

- A licensee or applicant who is issued an emergency order by the licensing agency denying, revoking, or suspending a license; or
- A licensee who is issued a notice of intent to take disciplinary action by the licensing agency.

### *Denial, Revocation, or Suspension of License*

The bill adds the following reasons for which the licensing agency may deny, suspend, or revoke a license to operate an adult care home:

- The licensing authority of another state, territory, District of Columbia, or other country has:
  - denied, suspended, revoked, or limited a license;
  - censured or taken other disciplinary action; or
  - denied an application for licensure.

A certified copy of the record of such action is conclusive evidence of these actions;

- The individual has failed or refused to comply with Medicaid requirements or regulations, as evidenced by a certified copy of the record of such action; or
- The individual has failed or refused to comply with Medicare requirements or regulations, as evidenced by a certified copy of the record of such action.

### **Doctor of Nursing Practice Degree at Washburn University; HB 2490**

**HB 2490** allows Washburn University to offer a doctor of nursing practice degree as one of its academic programs. Washburn is limited in the degree programs it may offer by statute while receiving state funds. This bill adds to that list.

### **Amendments to the Optometry Law; HB 2525**

**HB 2525** updates the Kansas optometry law to reflect the current, State Board-required, single licensure level of optometrists in Kansas by eliminating language referring to three different levels of licensure, as well as clarifying the minor surgical procedures that Kansas optometrists are allowed to do.

The bill also clarifies the authority of the Kansas State Board of Examiners in Optometry (the Board) with regard to license revocation.

The bill also creates the Optometry Litigation Fund. This Fund will be used to pay all costs and fees associated with litigation expenses for the Board. The Fund will be capped at \$400,000.

The bill requires all applicants for licensure to submit fingerprints to the Board. The bill also creates the Criminal History and Fingerprinting Fund. This Fund will be used to pay all costs associated with fingerprinting and criminal background checks.

**Dental Practices Act Amendments; Creation of Extended Care Permit III Dental Hygienists; Expansion of Capacity for Kansas Residents in Dental School; Retired Dentist Volunteer License; Expansion of Exemption from Liability under the Kansas Tort Claims Act; Extension of Time for Closure of Dental Practice of Deceased or Substantially Disabled Dentists; HB 2631**

**HB 2631** makes several changes and additions to the Dental Practices Act (Act) for the purpose of expanding dental service in the state, including targeting children who are dentally underserved, by creating an additional extended care permit (ECP) level of service of dental hygienists via creation of a new permit level (ECP III); encouraging additional capacity for Kansas residents in dental schools; establishing a volunteer license for retired dentists who choose to donate their services in certain settings; expanding the locations where such special volunteer license dentists and dental hygienists may provide free services and be exempt from liability under the Kansas Tort Claims Act; extending the length of time dentists may be employed to provide services to patients after the death or substantial disability of a dentist until the practice can be sold or closed; and directing the ECP III dental hygienist to notify the patient or the patient's legal guardian when the need for treatment by a dentist is indicated.

***Extended Care Permit III for Dental Hygienists***

The bill adds a third level of extended practice of dental hygiene to be offered by dental hygienists who meet the increased qualifications for the ECP III. The Kansas Dental Board is authorized to issue an ECP III permit. An ECP III dental hygienist does not have prescribing authority.

The ECP III qualifications include that the hygienist has performed 2,000 hours of dental hygiene care or has been an instructor at an accredited dental hygiene program for three of the past four academic years, completed at least three hours of continuing dental education related to the expanded scope of practice, and completed a course of study of 18 seat hours approved by the Kansas Dental Board, with some of the content specified in the bill.

***Responsibilities of an ECP III***

The ECP III dental hygienist is required to:

- Show proof of professional liability insurance;
- Be sponsored by a dentist licensed in Kansas, as confirmed by a signed agreement stating the dentist will monitor the activities of the ECP III dental hygienist. A dentist is not allowed to monitor more than five ECP III dental hygienists;
- Advise the patient and legal guardian that the services provided are palliative or preventive and are not comprehensive dental diagnosis and care;

- Provide a copy of the findings and report of treatment to the sponsoring dentist and any other medical supervisor at a participating organization where the ECP III dental hygienist may provide services;
- Notify the patient or the patient's parent or legal guardian of the need for the patient to be treated by a dentist, when a need for evaluation by a dentist is apparent; and
- Receive payment only from the sponsoring dentist or the participating organization where the ECP III dental hygienist provides services.

### ***ECP III Scope of Practice***

The tasks and procedures an ECP III is able to perform are limited to those activities that can be performed by a hygienist under the ECP I or ECP II, plus additional tasks that include the following:

- Identification and removal of decay using hand instrumentation and placing a temporary filling;
- Services related to dentures, including adjustment and checking for sore spots;
- Smoothing of a sharp tooth with a slow speed dental handpiece;
- Use of a local anesthetic within certain limitations;
- Extraction of deciduous teeth within certain limitations; and
- Other duties delegated by the sponsoring dentist which are consistent with the Act.

### ***Population Served by an ECP III***

The population to whom ECP III services are limited includes the following children with consent of the parent or legal guardian:

- Those participating in residential and nonresidential centers for therapeutic services;
- All those in families who receive Family Preservation services;
- Those in the custody of the Secretary of Social and Rehabilitation Services or the Commissioner Juvenile Justice and in an out-of-home placement residing in foster care homes;
- Those being served by runaway youth programs and homeless shelters; and

- Those birth to age five, those in public and private schools kindergarten through Grade 12, regardless of the time of year, and those participating in youth organizations, so long as the children who are dentally underserved are targeted. The term "dentally underserved" is defined as a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the Secretary of Health and Environment pursuant to KSA 75-6120.

The population to be served by an ECP III dental hygienist also includes:

- Those persons, inmates, clients, or patients at any state correctional institution, local health department or indigent health care clinic, and at any federally qualified health center or health center look-alike or a community health center that receives funding from the Health Centers Consolidation Act of 1996, Pub. L. No. 104-299, 110 Stat. 3626 (codified as amended in scattered sections of 42 U.S.C.) (commonly referred to as Section 330);
- Those facility residents, clients, or patients who are persons with developmental disabilities and those who are age 65 and older who live in a residential center, an adult care home, subsidized housing, hospital long-term care unit, or state institution or who are served in a community senior service center, by an elderly nutrition program, or at the home of a homebound person who qualifies for the federal home and community based services waiver.

### ***ECP II Educational Requirement Changes***

The bill also revises some requirements for the ECP II, to comport with the addition of the ECP III. The number of hours of dental hygiene care required to be performed by an ECP II is reduced from 1,800 hours to 1,600 hours, and the number of hours of continuing dental education in special needs care required changes from at least six hours to at least three hours.

### ***Possible Additional Dentistry Students***

The bill requires the State Board of Regents to endeavor to add seats for Kansas residents at the University of Missouri-Kansas City School of Dentistry or other locations, with the requirement that these students provide services in underserved areas of Kansas for at least four years after graduation.

### ***Special Volunteer Dental License***

The bill establishes a special volunteer dental license for dentists who are retired from active practice and wish to donate their expertise for the dental care and treatment of indigent and underserved persons in Kansas. The bill sets forth stipulations related to this license, including that no payment of an application fee, license fee, or renewal fee is required and no continuing education is required for issuance or renewal. A license could be issued for part of or the entire fiscal year and renewable annually upon Kansas Dental Board approval.

Licensure requirements include completion of a special volunteer dental license application with documentation of dental school graduation and practice history, documentation that the dentist previously has been issued a full and unrestricted license to practice dentistry in a state of the United States, and that the dentist has never been the subject of any disciplinary action in any jurisdiction, acknowledgment and documentation that the dentist's practice will involve providing dental care only to underserved and indigent persons in the state, and acknowledgment and documentation that such services will be provided without any payment or compensation.

### ***Liability Exemption Under the Kansas Tort Claims Act***

The bill amends the definition of a "charitable health care provider" under the Kansas Tort Claims Act by expanding the locations where gratuitous services targeting, but not limited to, medically indigent persons may be provided by dentists and dental hygienists as follows:

- At the office of a dentist or dental hygienist and such care is delivered as part of a program organized by a not-for-profit organization and approved by the Secretary of Health and Environment; or
- As part of a charitable program organized by the dentist that has been approved by the Secretary of Health and Environment, upon showing that the dentist seeks to treat medically indigent patients gratuitously.

As a result of the definition change, dentists, including retired dentists, with a special volunteer dental license or a dental hygienist are exempt from liability under the Kansas Tort Claims Act when providing free services in a dental office or as part of a charitable program organized by a dentist.

### ***Extension of Time for Sale or Closure of Dental Practice***

The bill allows the estate or agent for a deceased or substantially disabled dentist 18 months (changed from not more than one year) to employ dentists to provide service to patients until the practice can be sold or closed. The Kansas Dental Board may extend the time in six-month increments for a period of not more than one additional year upon application showing good cause including, but not limited to, evidence of a good faith effort to sell or close the dental practice.

### ***Speech Pathologist and Audiologist Licensure; Sub. for HB 2659***

**Sub. for HB 2659** moves the licensing and regulation of speech-language pathologists and audiologists from the Kansas Department of Health and Environment (KDHE) to the Kansas Department on Aging and extends the number of successive terms a Speech-Language Pathology and Audiology Board member will be allowed to serve. The existing Speech-Language Pathology and Audiology Board (Board) will serve in an advisory role to the Secretary of Aging.

The Department on Aging will have the authority to promulgate rules and regulations to carry out its licensing and regulation responsibilities. Rules, regulations, orders, and directives of the Secretary of Health and Environment concerning speech-language pathologists and audiologists existing on the effective date of this act will be those of the Secretary of Aging until revised, amended, revoked, or nullified.

All KDHE records concerning speech-language pathologists and audiologists in existence on the effective date of this act will be transferred to the Secretary of Aging.

The bill also allows Board members to serve three successive two-year terms, instead of the two successive two-year terms allowed under prior law.

### **Licensure of Maternity Centers and Child Care Facilities; HB 2660**

**HB 2660** amends laws concerning maternity center and child care facility licensure, including the 2010 amendments referred to as "Lexie's Law," by allowing for modification or limitation of licensure, requiring an expiration sticker on a day care facility license, and requiring persons maintaining a day care facility to be high school graduates or the equivalent with provisions allowing the Secretary of Health and Environment (Secretary) to exercise discretion to exempt certain individuals from the requirement. The bill also repeals a statute (KSA 65-502) containing the definition of a "maternity center" and relocates the definition in another statute regulating child care facilities.

Specifically, the bill requires the Kansas Department of Health and Environment (KDHE) to issue renewable licenses to day care facilities and requires these facilities to display the sticker indicating that the facility's license is up-to-date. In conjunction with this requirement, the bill defines the term "day care facility" as a child care facility that includes a day care home, preschool, child care center, school-age program, or other facility of a type determined by the Secretary to require regulation under the statutory provisions addressing maternity centers and child care facilities. The existing definition of "maternity center" is moved to a statute which includes definitions related to child care facilities.

The bill also allows KDHE to limit or modify the terms of a license rather than suspending or revoking the license outright and requires a child care facility or maternity center to notify parents or guardians of the enrollees in writing of such limitations or modifications. Notices of limitation or modification of a license to conduct a maternity center or a child care facility would be served to the same entities statutorily required to be served notices of issuance, suspension, or revocation of such licenses.

References to "maternity patient" or "residents" are changed to "woman," "child," or both, as applicable. References to "comfort" related to services provided to women or children are eliminated and changes for uniformity in the use of the phrase "health, safety, or welfare" are made throughout the bill.

Further, the bill requires persons maintaining a day care facility to be high school graduates or the equivalent, but adds exceptions. The bill authorizes the Secretary to exercise discretion to exempt persons from the high school graduation or equivalency requirement where extraordinary circumstances exist. A grandfather clause would exempt persons maintaining a day care facility prior to July 1, 2010, or with an application for initial licensure or renewal of an existing license pending on July 1, 2010, from the high school graduation or equivalency requirement.

The grounds for allowing the suspension of a license or a temporary permit also allow for the limitation or modification of such licenses, and the grounds related to the conduct in the operation or maintenance, or both, are expanded to apply to maternity centers. The provision allowing the Secretary to suspend any license or temporary permit prior to an administrative hearing when, in the opinion of the Secretary, such action is necessary to protect any child in a child care facility, is expanded to allow such license or temporary permit to be limited or modified.

## INSURANCE

### **Firefighters—Continuation of COBRA Coverage; SB 250**

**SB 250** enacts new law to require municipalities to pay premiums for continuation of coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) for the surviving spouse and dependent children of a firefighter who dies in the line of duty. The payment of premiums for COBRA continuation coverage will be paid for 18 months and will be required only if the deceased firefighter was enrolled in a health benefit plan for which the municipality was paying premiums.

A municipality will not be required to pay the premiums for a surviving spouse:

- On or after the end of the 18th calendar month after the date of the deceased firefighter's death;
- Upon the remarriage of the deceased firefighter's surviving spouse; or
- Upon the deceased firefighter's surviving spouse reaching the age of 65.

Dependent children of a deceased firefighter will no longer be considered dependent upon reaching the age of 18, for the purposes of coverage under the bill, unless the child is a full-time student in an accredited high school or is a full-time student in a postsecondary educational institution, until the end of the year in which the individual reaches the age of 24.

The bill also defines the terms "firefighter," "health benefit plan," "municipality," and "postsecondary educational institution."

### **Insurance Code Investment Provisions—Designation of Trust Companies; SB 264**

**SB 264** amends an investment provision in the Insurance Code of the State of Kansas to authorize life insurance companies to designate a trust company to:

- Obtain a nominee name for an insurance company in which the company's securities may be registered;
- Make any authorized investments in the name of the trustee or the trustee's nominee; and
- Arrange for securities to be held in a clearing corporation, subject to a written agreement approved by the Insurance Commissioner.

### **Risk-Based Capital Requirements; SB 266**

**SB 266** amends the effective date specified for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners for property and casualty insurance companies. The bill updates the effective date of the RBC instructions from December 31, 2010, to December 31, 2011.

### **Certain Examination Costs for Domestic Insurance Companies; SB 273**

**SB 273** amends provisions in the Insurance Code pertaining to the costs for examination of an insurance company or society and its subsidiaries. The bill specifies the total amount paid for outside consulting and data processing fees necessary to perform a financial examination, including the *pro rata* amount to fund the purchase of examination equipment and computer software, cannot exceed:

- \$50,000 for any insurance company or society which has less than \$200 million in gross premiums, both direct and assumed, in the preceding calendar year; or
- \$100,000 for any insurance company or society which has \$200 million or more in gross premiums, both direct and assumed, in the preceding calendar year.

The bill creates a separate provision for the payment of outside consulting and data processing fees necessary to perform any market conduct examination. The bill limits the amount to include the examination cost and the *pro rata* amount to fund the purchase of examination equipment and computer software to no more than \$25,000.

The maximum amount specified for payment of outside consulting fees for any examination by a domestic insurance company had been \$25,000.

### **Examination Requirement—Health Maintenance Organizations; HB 2486**

**HB 2486** amends an examination provision in the Insurance Code to require the examination of health maintenance organizations and Medicare provider organizations (and providers with whom the provider organization has contracts, agreements, or other arrangements) every five years. Under prior law, these organizations were examined every three years.

The bill maintains the existing statutory requirement (at least once every three years) for a separate on-site quality of care assessment by an independent quality review organization.

### **Portable Electronics Insurance Act—Amendments; HB 2618**

**HB 2618** amends the Portable Electronics Insurance Act. Under prior law, a vendor selling or offering coverage under a portable electronics policy was required to provide the Insurance Commissioner a list of locations where it offered coverage. Under the bill, changes to the registry of vendor locations will be provided to the Insurance Commissioner upon the Commissioner's request and with ten days' notice to the supervising entity.

The bill also allows for notifications to be sent on behalf of an insurer or vendor by the supervising entity appointed by the insurer. In addition, the bill allows for vendors to make returns or refunds of unearned premium to consumers who purchased the portable electronics insurance coverage by crediting the billing mechanism used to pay the premium.

The bill deletes a provision that required a program of in-person training to supplement the electronic training supplemental education program. The deletion is a technical correction (a printing error in the enrolled version of the Portable Electronics Insurance Act).

Under the Act, “supervising entity” means a “business entity that is a licensed insurance producer or insurer.”

### **Collateral Assignment of Life Insurance Policy Proceeds for Medicaid Eligibility; HB 2697**

**HB 2697** enacts new law requiring the Kansas Department of Health and Environment (KDHE), in conjunction with the Department of Social and Rehabilitation Services, to review and update rules and regulations which establish eligibility requirements for Medicaid. The bill requires KDHE, as part of the review and update process, to establish a procedure allowing for irrevocable collateral assignment of the proceeds of life insurance policies to the Kansas Medicaid program and to seek any necessary waivers from the federal government to accomplish the purpose of the bill. The collateral assignment is irrevocable as established by a written agreement preventing the holder of the life insurance policy from affecting or using the cash surrender value after the irrevocable assignment.

Under the bill, KDHE is required to establish a procedure allowing the holder of a life insurance policy with cash surrender value to give the Kansas Medicaid program collateral assignment of the proceeds of such life insurance policy. The collateral assignment is in lieu of requiring the owner to sell the insurance policy to meet the property ownership limits for Medicaid eligibility. The collateral assignment is for an amount not to exceed the proceeds of the policy to reimburse the Kansas Medicaid program for any amount paid for medical benefits provided to the insured.

KDHE is directed to seek any necessary waivers from federal government program requirements to accomplish the collateral assignment provisions and to maximize federal matching and other funds with respect to the provisions. If KDHE determines one or more waivers are necessary to carry out the provisions of the bill, the provisions are to be implemented only if the needed waivers are obtained from the federal government. The review and update are to be completed and the adoption of revisions of rules and regulations is to be accomplished, according to the Rules and Regulations Filing Act, no later than 12 calendar months following the date of receipt of any required waivers.

If KDHE determines no waivers are required to implement the provisions of the bill, the review and update are to be completed and the adoption of revisions of rules and regulations is to be accomplished, according to the Rules and Regulations Filing Act, no later than 12 calendar months following the effective date of the act.

## JUDICIARY

### Driving Under the Influence; House Sub. for SB 60

**House Sub. for SB 60** amends various administrative and criminal statutes related to driving under the influence (DUI) and allows the issuance of a class C license for the operation of a motorized bicycle to certain persons with suspended or revoked drivers' licenses. The bill serves as a follow-up to 2011 House Sub. for SB 6 (SB 6), which made extensive revisions to Kansas DUI law.

First, the bill clarifies that \$250 from each fine imposed by a municipal court for a violation of a DUI or commercial DUI ordinance shall be directed to the Community Corrections Supervision Fund.

Next, the bill creates the crime of refusing to submit to a test to determine the presence of alcohol or drugs. Under this section, it is a crime to refuse to submit to or complete such a test if a person has a prior test refusal or a prior conviction for DUI or commercial DUI, any of which occurred (1) on or after July 1, 2001, and (2) when such person was at least 18 years of age. Thus, a first-time test refusal does not constitute criminal conduct unless a person has a previous DUI or commercial DUI conviction as specified in the section. The penalties for a first conviction of test refusal are the same as the penalties for a second DUI, the penalties for a second test refusal conviction are the same as the penalties for a third DUI, and the penalties for a third or subsequent test refusal conviction are the same as the penalties for a fourth or subsequent DUI conviction. The evaluation and procedural requirements for this crime are the same as those for DUI, as amended by this bill. The implied consent statute is amended to include information regarding the test refusal crime in the oral and written notice given to persons subject to testing.

In determining whether a test refusal conviction is a first, second, third, or subsequent conviction for sentencing under the new section, the following counts as a conviction, in addition to any convictions under the new section itself: convictions for DUI on or after July 1, 2001, and any lifetime convictions of commercial DUI, boating DUI, involuntary manslaughter while DUI, aggravated vehicular homicide, or vehicular battery while DUI. "Convictions" include conviction of violation of a city ordinance, county resolution, or law of another state; a diversion agreement; or punishment under the Uniform Code of Military Justice or Kansas Code of Military Justice. Convictions before the offender reached the age of 18 will not be included in this calculation. The bill clarifies that a previous DUI or commercial DUI conviction used to trigger the test refusal criminal provision shall not also be used for sentencing purposes.

The bill amends the DUI and commercial DUI statutes to incorporate comparable provisions requiring the consideration of convictions of related crimes, including the new crime of test refusal, in determining the number of the current conviction. However, the provisions in the DUI and commercial DUI statutes do not exclude convictions before the age of 18.

The bill allows a person to obtain a class C license for the operation of a motorized bicycle if such person's driving privileges have been suspended for a first-time DUI conviction. Further, a person whose license has been revoked for being a habitual violator may obtain a class C license valid only for operating a motorized bicycle, so long as in the last five years the

person has not had a test refusal; test failure; "alcohol or drug related conviction," as defined in Kansas law; or conviction for fleeing or eluding a police officer.

KSA 8-241, regarding drivers' license examination in certain circumstances, is amended to clarify imposition of reinstatement fees upon the fourth or subsequent DUI offense and to remove a reinstatement provision that is obsolete due to the changes enacted by SB 6.

KSA 8-1008, regarding alcohol and drug evaluations, is amended to establish a minimum fee of \$150 for the required alcohol and drug evaluation. Evaluation providers are required to agree to evaluate indigent defendants at no up-front cost and have the evaluation fee be assessed to the defendant as part of the judgment. The implementation of a provision requiring the use of a standardized substance use evaluation approved by the Secretary of Social and Rehabilitation Services is delayed until July 1, 2013. A grandfather clause is added to allow persons who, on or before July 1, 2012, were taking action to become a provider in accordance with the requirements of this section to continue to perform services described in the section until July 1, 2014. This section, as well as the test refusal, DUI, and commercial DUI sections, are amended so that evaluations pursuant to this section would not be required for third and subsequent refusal or commercial DUI convictions or for third or fourth and subsequent DUI convictions.

KSA 8-1014, governing the administrative penalties for test refusal or failure or an alcohol or drug-related conviction, is amended to add an additional year of interlock restriction for a test refusal. The administrative penalty for the first test failure or DUI-related conviction by a person less than 21 years of age is made the same as for any other offender. Language referencing alcohol and drug safety actions programs is updated to reflect the provider system established by SB 6. A new provision requires the Division of Vehicles, Kansas Department of Revenue, to credit any suspension or revocation time greater than a year, which was served prior to the retroactive application of the changes in SB 6, to be credited toward the ignition interlock restriction period imposed under the provisions of SB 6, so long as the person did not drive during the applicable period and completes a form indicating this.

KSA 8-1015, regarding authorized restrictions of driving privileges for DUI-related reasons, is amended to allow a person whose driving privileges have been suspended for first-time test refusal to apply for a restricted interlock license after 90 days, for the purposes of driving in those circumstances specified in KSA 8-292(a)(1) through (4). For subsequent test refusal suspensions, a person will be permitted to apply for a restricted interlock license after 90 days for the purposes of getting to and from work, school, or an alcohol treatment program, and the ignition interlock provider for maintenance and data download.

Persons subject to first-time suspensions for high blood alcohol content conviction or test failure are permitted to apply for a restricted interlock license after 45 days for the purposes of driving in those circumstances specified in KSA 8-292(a)(1) through (4).

A \$100 application fee for restricted ignition interlock licenses is created, and the first \$100,000 generated from this fee each fiscal year will be directed to the Division of Vehicles, Kansas Department of Revenue, with the remainder directed to the Community Corrections Supervision Fund.

Persons subject to first-time suspensions for test refusal, high blood alcohol content conviction, or test failure are permitted to operate an employer's vehicle without an ignition interlock device installed during normal business activities.

The DUI criminal statute, KSA 2011 Supp. 8-1567, is amended to strike provisions regarding habitual users, impoundment, and revocation of license plates or temporary certifications. House arrest and work release provisions for third or subsequent convictions are amended to increase the required minimum hours of confinement from 240 hours to 2,160 hours (90 days) to be consistent with the 90 days' imprisonment required elsewhere in this subsection.

The commercial DUI criminal statute, KSA 2011 Supp. 8-2,144, is amended to include the same confinement hours increase for house arrest and work release for third or subsequent convictions as in the DUI statute. Additionally, the commercial DUI statute is amended to include supervision, risk assessment, and multidisciplinary services requirements for third and subsequent commercial DUI convictions that would be identical to the requirements for third and subsequent DUI or test refusal convictions.

The bill clarifies that the Kansas Bureau of Investigation is authorized, rather than required, to adopt rules and regulations related to the approval of saliva testing devices.

### **Medical Care Facilities; Abortion; Sterilization; House Sub. for SB 62**

**House Sub. for SB 62** provides that no person shall be required to make a referral for medical procedures or the prescription or administration of any device or drug that results in the termination of a pregnancy or an effect of which the person reasonably believes may result in the termination of a pregnancy. Additionally, no person is required to perform or participate in the prescription or administration of any device or drug that results in the termination of a pregnancy or an effect of which the person reasonably believes may result in the termination of a pregnancy. The refusal to perform or participate in medical procedures that result in the termination of a pregnancy shall not be the basis for civil liability to any person, and no medical care facility, medical care facility administrator, or governing body of a medical care facility shall terminate the person's employment, prevent or impair the person's practice or occupation, or impose any other sanction on the person because of the person's exercise of these rights.

Similarly, the bill adds language stating no medical care facility, medical care facility administrator, or governing board of any medical care facility shall be required to permit the performance of, referral for, or participation in medical procedures, or in the prescription or administration of any device or drug, that would result in the termination of a human pregnancy or an effect of which the person reasonably believes may result in the termination of a human pregnancy. The refusal to do so does not constitute grounds for civil liability to any person.

The bill also states no person is required to make referrals for medical procedures that result in sterilization and no medical care facility, medical care facility administrator, or governing board of any medical care facility is required to permit the performance of, referral for, or participation in medical procedures that result in sterilization. Refusal to do so is not a basis for civil liability to any person.

### **Civil Actions by Patients in the Custody of the Secretary of Social and Rehabilitation Services; House Sub. for SB 74**

**House Sub. for SB 74** creates a new section in state law requiring sexually violent predators civilly committed to the custody of the Secretary of Social and Rehabilitation Services (SRS) to exhaust all administrative remedies prior to filing any civil action that names as the

defendant the State of Kansas, any political subdivision of the state, any public official, the Secretary of SRS, or any SRS employee, and to include proof of exhaustion with the petition. Courts are required to dismiss the case if it is determined that an allegation of poverty is untrue or the action or appeal is frivolous or malicious, the petition fails to state a claim on which relief can be granted, or the petition seeks monetary relief against a defendant who is immune from such relief.

Further, the bill provides that a patient so committed cannot bring a civil action or appeal if on three or more prior occasions the patient, while in the custody of SRS, brought an action or appeal that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted. An exception is made if the patient is under imminent danger of serious physical injury.

The bill specifies that the provisions of this new section do not apply to a writ of *habeas corpus*. However, it amends law that generally defines the right to petition for *habeas corpus* to require a sexually violent predator civilly committed to the custody of SRS to file a petition for a writ of *habeas corpus* within 30 days of the date the action was final. Such time is extended during the pendency of timely attempts to exhaust administrative remedies.

#### **Foreign Law; Contracts; Constitutional Rights and Privileges; House Sub. for SB 79**

**House Sub. for SB 79** notes the Kansas Legislature's recognition of the right to contract freely under Kansas law, which can be reasonably and rationally circumscribed pursuant to the state's interest in protecting and promoting rights and privileges granted by the U.S. and Kansas constitutions. It also makes void and unenforceable:

- Any court, arbitration, tribunal, or administrative ruling or decision based on a foreign law, legal code, or system that does not grant the parties affected the fundamental liberties, rights, and privileges granted by the U.S. and Kansas constitutions;
- A contract or contractual provision, if severable, that provides for the choice of a foreign law, legal code, or system to govern disputes between the parties that does not grant the parties affected the fundamental liberties, rights, and privileges granted by the U.S. and Kansas constitutions; and
- A contract or contractual provision, if severable, that grants *in personam* jurisdiction for adjudication of disputes, if the jurisdiction chosen includes any foreign law, legal code, or system that does not grant the parties affected the fundamental liberties, rights, and privileges granted by the U.S. and Kansas constitutions.

Where relevant, the above provisions include the following non-exclusive list of the liberties, rights, and privileges granted by the U.S. and Kansas constitutions: equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage.

The bill defines "foreign law, legal code, or system" to mean any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals.

Further, the bill provides for denial of a claim of *forum non conveniens* or a related claim if a resident, subject to personal jurisdiction in Kansas, seeks to maintain litigation, arbitration, agency, or similarly binding proceedings, and granting the claim violates or likely would violate the fundamental liberties, rights, and privileges granted by the U.S. and Kansas constitutions.

Nothing in the bill shall be construed to disapprove of or abrogate any previously rendered Kansas Supreme Court decision. Additionally, it shall not be construed to allow a court to:

- Adjudicate or prohibit any religious organization from deciding upon ecclesiastical matters of a religious organization, including, among other issues, the selection, appointment, calling, discipline, dismissal, removal, or excommunication of a member, member of the clergy, or other person who performs ministerial functions; or
- Determine or interpret the doctrine of a religious organization, including, but not limited to, where adjudication by a court would violate the prohibitions of the religion clauses of the First Amendment to the *U.S. Constitution* or the *Kansas Constitution*.

Finally, the bill will not apply to a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity that contracts to subject itself to foreign law or courts in a jurisdiction other than Kansas or the United States.

### **Kansas Product Liability Act—Resale of Used Products; SB 83**

**SB 83** amends the Kansas Product Liability Act to provide that a retail seller of used products is not subject to liability in a claim arising from an alleged defect in a used product sold by the seller if the seller establishes one of three conditions: (1) the seller is tax-exempt under section 501(c)(3) of the Internal Revenue Code; (2) the product liability claim is for strict liability in tort; or (3) the seller resold the product after it was previously used, it was sold in substantially the same condition as it was in when acquired for resale, the manufacturer of the defective product is subject to service of process under Kansas law or the law of the domicile of the claimant, and any judgment against the manufacturer would be reasonably certain of being satisfied.

### **Conditions of Probation, Parole, and Postrelease Supervision; Transfer of Kansas Parole Board Duties to Prisoner Review Board; Sex Offenders; House Sub. for Sub. for SB 159**

**House Sub. for Sub. for SB 159** requires as a condition of probation that the defendant be subject to searches of the defendant's person, effects, vehicle, residence, and property by a court services officer, community correctional services officer, and any other law enforcement officer, if there is reasonable suspicion the defendant violated conditions of probation or engaged in criminal activity. Any law enforcement officer conducting a search pursuant to this provision is required to submit a written report containing specified information regarding the search to the appropriate court services officer or community correctional services officer by the close of the next business day after the search. The defendant also is subject to random but reasonable drug and alcohol testing.

The bill adds a provision stating parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer or Department of Corrections enforcement, apprehension, and investigation officer at any time, with or without a search warrant and with or without cause. The provision emphasizes it is not to be construed to authorize arbitrary or capricious searches or searches for the sole purpose of harassment.

Additionally, a parolee or person on postrelease supervision is subject to search or seizure by any law enforcement officer based on reasonable suspicion of a violation of the conditions of parole or postrelease supervision or of criminal activity. The parolee or person on supervision is required to agree to this provision in writing. Any law enforcement officer conducting such a search is required to submit a written report by the close of the next business day after the search.

The bill updates statutory references to the Kansas Parole Board to reflect the transfer of its duties to the Prisoner Review Board and would require the Prisoner Review Board, in granting parole or establishing conditions for postrelease supervision, to order the parolee or person on postrelease supervision to agree in writing to the new search provisions.

Finally, the bill requires any sex offender granted parole or placed on postrelease supervision to agree in writing to not possess pornographic materials. The bill defines "pornographic materials" and makes this provision retroactive to every sex offender on parole or postrelease supervision on July 1, 2012.

#### **Income Withholding Act—Service by Court Trustees; Debt Setoff Law—Court Trustees; House Sub. for SB 160**

**House Sub. for SB 160** amends the Income Withholding Act to allow a court trustee enforcing a support order to serve an income withholding order on a payor (employer) by personal service; registered mail, return receipt requested; or any alternate method accepted by the payor.

The bill also amends the state debt setoff law to include in the definition of "debt" any amount of support due and owing an individual who is receiving assistance in collecting that support by a court trustee pursuant to KSA 20-378. The definition of "debtor" is amended to include any person who owes support to an individual who is receiving assistance in collecting that support under KSA 20-378.

#### **Background Checks—Legislative Post Audit; SB 249**

**SB 249** amends KSA 46-1103 to allow the Legislative Post Auditor to require current and prospective Division of Post Audit employees to be fingerprinted and submit to a state and national criminal history record check. The Post Auditor is authorized to submit such fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national criminal history record check. The Post Auditor is allowed to use the information from the fingerprinting and record check to verify the identification of the employee or applicant, in the official determination of the qualifications and fitness of a current employee to be employed by the Division, or in the official determination of the eligibility of an applicant to perform tasks in the Division.

## **Sexually Violent Predators—Evaluation; Expert Witnesses; SB 280**

**SB 280** amends two sections of the Kansas Sexually Violent Predator Act (KSVPA).

First, the bill amends KSA 59-29a05 to require the person conducting a sexually violent predator evaluation to notify the subject: 1) of the nature and purpose of the evaluation; and 2) that the evaluation is not confidential, and the subject's statements and evaluator's conclusions will be disclosed to the court, the subject's attorney, the prosecutor, and the trier of fact at any commitment proceeding. The bill clarifies that such evaluations are to be ordered by the court.

Second, the bill amends KSA 2011 Supp. 59-29a06 to allow parties to call expert witnesses at any "proceeding" conducted under the KSVPA.

## **Civil Forfeiture; Sub. for SB 282**

**Sub. for SB 282** adds felony violations of fleeing or attempting to elude a police officer to the list of conduct and offenses giving rise to civil forfeiture under the Kansas Standard Asset Seizure and Forfeiture Act.

## **Sheriffs' Fees; Sub. for SB 283**

**Sub. for SB 283** amends the statute governing sheriffs' fees to implement a single \$10 fee for the service, execution, and return of any process, as well as for any unsuccessful attempts at the same. On July 1, 2013, this fee will increase to \$15. A single fee covers more than one process for different persons at the same address in the same case, if the processes are in the hands of the sheriff at one time. Where return is not made or timely return is not made pursuant to KSA 60-312 or KSA 61-3005, there will be no charge for subsequent processes that may be required to effect service and the timely return of the failed service, unless return is made showing no service because the person to be served cannot be served at that address or the address does not exist. In this case, the fee will be charged for an alias summons at the same address. The bill defines "process" as any summons, pleading, writ, order, or notice issued by a court clerk or court.

## **Batterer Intervention Program Certification Unit; SB 304**

**SB 304** creates a Batterer Intervention Program Certification Unit (Unit) in the Attorney General's Office for the purpose of certifying and inspecting batterer intervention programs in Kansas. The Unit is given access to records, investigation documents, and written reports related to domestic violence cases received or generated by the Department of Social and Rehabilitation Services, Department on Aging, Department of Health and Environment, or Kansas Bureau of Investigation.

The Attorney General is required to develop tools, methodologies, requirements, and forms for the domestic violence offender assessment (DVOA) in consultation with the certified state domestic violence coalition and with local domestic violence victims' services organizations.

The Attorney General is permitted to appoint an advisory panel to assist in the development of the certification program and rules and regulations, as well as advisory

committees to carry out the purposes of the Batterer Intervention Program Certification Act (Act).

The Act prohibits operation of a batterer intervention program without certification pursuant to the Act. Programs seeking certification are required to complete an application containing the information required by the Act and submit it to the Attorney General with an application fee of \$100 and any additional information required by the Attorney General. The Attorney General is allowed to require an applicant to fulfill remedial requirements if there is a deficiency in the application.

Certification expires after two years and may be renewed by submission of a renewal application by the expiration date, payment of a renewal fee of \$100, and verification of continuing compliance with the Act and applicable rules and regulations. A procedure for reinstatement of a lapsed certification is provided. Certification is not assignable or transferable.

The Attorney General is permitted to issue a temporary permit for a period of 180 days or less to an applicant requesting initial certification if the applicant met all conditions except for agency structure, personnel qualifications, education requirements, or training requirements, if such deficiencies can be remedied within that time period. The application fee for a temporary permit is \$50.

The Attorney General is given rules and regulations authority to raise the fee for any of the application processes to an amount not more than \$250.

A grandfather clause exempts programs certified prior to the effective date of the Act from the initial application for certification.

The Act requires the program director, supervisor, or coordinator of a batterer intervention program to be licensed to practice in Kansas as a licensed psychologist, licensed baccalaureate social worker, licensed master social worker, licensed specialist clinical social worker, licensed marriage and family therapist, licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, licensed master level psychologist, licensed clinical psychotherapist, licensed addiction counselor, or licensed clinical addiction counselor. This requirement is waived for a person who is a program director, supervisor, or coordinator prior to January 1, 2013, as long as the person remains employed or contracted by the same certified batterer intervention program.

An applicant, certified batterer intervention program, or temporary permit holder is required to notify the Attorney General in writing of name and address changes and certain criminal convictions or diversions.

The Attorney General is required to establish the requirements for the certification program, which may include certain elements and considerations listed in the Act, and must include a requirement that the DVOA be completed by an individual licensed to practice in Kansas as a licensed psychologist, licensed baccalaureate social worker, licensed master social worker, licensed specialist clinical social worker, licensed marriage and family therapist, licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, licensed master level psychologist, licensed clinical psychotherapist, licensed addiction counselor, or licensed clinical addiction counselor. This requirement is waived for a person who is completing a DVOA as an employee of or volunteer for a batterer intervention program prior to January 1, 2013, as long as the person remains employed by or a

volunteer for the same certified batterer intervention program. The Attorney General is given authority to adopt, amend, and revoke rules and regulations governing the administration and enforcement of the Act.

The use of a DVOA by anyone other than a certified batterer intervention program or temporary permit holder is prohibited. Certified batterer intervention programs and temporary permit holders are required to maintain records related to their services for a period of two years, to be inspected at least once every certification period by the Attorney General.

The Attorney General is allowed to suspend, limit, condition, deny, revoke, or refuse renewal or reinstatement of a certification or permit if the holder makes a false statement in the application process; fails to comply with program requirements; is found guilty of fraud, negligence, deceit, or wrongful actions in connection with services rendered; allows the use of the DVOA by an unauthorized person; commits unprofessional conduct; fails to allow inspection of records as provided in the Act; or is convicted of any offense as specified in the Act. Further, any applicant, any person who operates a batterer intervention program, or any temporary permit holder who violates the Act or rules and regulations adopted under it is subject to a civil penalty imposed by the Attorney General of an amount between \$100 and \$5,000 for each violation, subject to appeal under the Kansas Judicial Review Act. The Attorney General is authorized to bring a restraining action for violations of the Act or applicable rules and regulations.

The Act establishes, in the State Treasury, the Kansas Attorney General Batterer Intervention Program Certification Fund for the deposit of amounts received under the Act, which may be expended only for the administration of the Act.

The Act defines certain words and phrases used therein.

Statutes related to municipal courts and domestic violence offenses are amended to require municipal judges, on and after July 1, 2013, to determine whether defendants have committed a domestic violence offense and to sentence such defendants accordingly, including requiring the completion of a DVOA by a certified batterer intervention program. The statute governing domestic battery is amended to clarify that an offender must undergo a DVOA conducted by a certified batterer intervention program and follow all recommendations made by the program.

The statute governing domestic battery is amended to clarify that an offender must undergo a DVOA conducted by a certified batterer intervention program and follow all recommendations made by the program, unless otherwise ordered by the court or the Kansas Department of Corrections.

The bill adds requirements regarding appointed case managers for child custody or parenting time issues under the revised Kansas Family Law Code. As of September 1, 2012, any case manager appointed prior to, on, or after July 1, 2012, will be required to currently hold one of several licenses specified in the statute, be licensed to practice law with five years' experience in domestic relations or family law, or be a court services officer and have training in domestic relations cases as prescribed by the district court in which the case is filed. The case manager also will be required to have experience as a mediator; have attended one or more workshops on case management, as approved and ordered by the district court; and have completed a minimum number of continuing education hours regarding case management

issues or abuse and control dynamics issues, as established and approved by the Supreme Court.

Finally, the bill fixes non-substantive errors and omissions in 2011 SB 24, which recodified several domestic relations statutes.

### **Newly Hired Employees; Child Support Enforcement; SB 306**

**SB 306** revises the information reported by employers for child support enforcement purposes. Within 20 business days of the hiring, an employer must report to the Kansas Secretary of Labor information pertaining to when a newly hired employee started working. The bill also allows any other information to be reported which may be required in subsequent amendments to section 453A of the Social Security Act. The bill defines a “newly hired employee” to mean an employee who either has not previously been employed by the employer or was previously employed by the employer but has been separated from employment for a minimum of 60 days.

### **Lesser Included Crimes of Felony Murder; Speedy Trial; Intimidation of a Witness; Statute of Limitations for Sexually Violent Crimes; Sub. for SB 307**

**Sub. for SB 307** amends statutes related to lesser included crimes, speedy trial, intimidation of a witness, and the statute of limitations for sexually violent crimes.

#### ***Lesser Included Crimes and Felony Murder***

The bill amends the statute governing convictions for lesser included crimes to establish there are no lesser degrees of first-degree murder under KSA 2011 Supp. 21-5402(a)(2) (felony murder).

#### ***Speedy Trial***

The bill makes several amendments to the speedy trial statute in the Kansas Code of Criminal Procedure.

If a trial date is set and the defendant fails to appear for trial or a pretrial hearing, and a bench warrant is issued, the trial deadline of 90 days is computed from the defendant's appearance in court after apprehension or surrender.

If a defendant is the subject of a competency proceeding, is found competent to stand trial, and was subject to the 180-day deadline pursuant to an appearance bond and more than 90 days of the original time limitation remain, then the original time limitation remains in effect. A delay while a decision is pending on competency is counted against the state in the speedy trial computation.

The bill clarifies that, in addition to the existing 90-day deadline for trial after a defendant is found competent, trial is to be scheduled as soon as practicable.

If a motion for a new trial is granted, the speedy trial computation begins on the date a new trial is ordered.

A delay requested by the defendant or by the defendant's attorney after consulting with the defendant is charged against the defendant regardless of the reason for the request, unless there is prosecutorial misconduct related to the delay.

A delay initially charged to the defendant but subsequently charged to the state is not considered against the state in the speedy trial computation, unless this would violate the defendant's constitutional right to a speedy trial or there is prosecutorial misconduct related to such delay. Also, such delay may not be used as a ground for dismissing a case or reversing a conviction.

A delay due to the filing and resolution of a motion, or due to a concern raised by the court, is not included in the speedy trial computation. If resolution occurs less than 30 days before the speedy trial deadline, the deadline is extended 30 days from the date of the court order.

A continuance granted to the state for any reason under the statute is not counted against the state if an appellate court later determines that the district court erred in granting the continuance, unless this would violate the defendant's constitutional right to a speedy trial or there is prosecutorial misconduct related to such delay.

### ***Intimidation of a Witness***

The bill amends the crimes of intimidation of a witness and aggravated intimidation of a witness to include preventing or dissuading, or attempting to prevent or dissuade, any witness, victim, or person acting on behalf of a victim from making any report of victimization to the Secretary of the Department for Children and Families (formerly the Department of Social and Rehabilitation Services), any agent or representative of the Secretary, or any mandatory reporter.

### ***Statute of Limitations—Sexually Violent Crimes***

The bill amends the statute governing the time within which prosecution for a crime must be commenced to state that when the offense charged is a sexually violent crime, as defined by state law, and the victim was under 18 at the time of the offense, the time would start to run the day after the victim's 18th birthday. Additionally, it clarifies that the prohibition of prosecution after a victim turns 28 would apply only to the subsection in which it appears, rather than to the entire statute.

### ***Court Fees; SB 322***

**SB 322** extends, for one fiscal year, the judicial surcharge the Legislature authorized in 2010 Senate Sub. for HB 2476 to fund non-judicial personnel.

Additionally, the bill amends the statutes governing hospital lien fees and wildlife and parks reinstatement fees to allow a \$22 judicial surcharge under those statutes. These

provisions also clarify that only fees authorized by the Legislature may be imposed under those statutes. Finally, the fee the clerks of the district courts may charge for entering and filing hospital lien statements is increased from \$5 to \$14.

### **Professional Malpractice Liability Screening Panels; SB 330**

**SB 330** amends statutes related to professional malpractice liability screening panels to allow any judge of a district court to convene such a panel.

### **Non-Earnings Garnishment; SB 366**

**SB 366** amends the statutes governing non-earnings garnishment under KSA Chapter 60 and Chapter 61. The garnishee is responsible for sending the garnishee's completed answer to the judgment creditor and judgment debtor. The court is required to direct the garnishee to pay the judgment creditor a specified amount directly, and the judgment creditor is required to promptly refund to the judgment debtor any overpayment. The garnishee is not liable to any judgment creditor or judgment debtor and is not subject to any penalty for any good-faith action taken under these provisions.

The administrative fee a financial institution garnishee may withhold and retain to defray costs in complying with an order of garnishment is raised from \$10 to \$15.

### **Unitrusts; SB 403**

**SB 403** amends the unitrust provision of the Uniform Principal and Income Act (1997). It allows the trustee to modify the percentage utilized in determining the unitrust distribution, provided the trustee gives proper notice to the qualified beneficiaries of the trust, no qualified beneficiary objects to the modification, and the modification is approved by the district court.

Additionally, the bill allows a trustee to reconvert from a unitrust without judicial procedure if the trustee determines the intent of the settlor or testator, and the purposes of the trust, are no longer served by the conversion to a unitrust. The trustee is required to give each qualified beneficiary notice of the intent to reconvert. If a qualified beneficiary objects to the reconversion, the trustee must petition the district court for reconversion.

### **Judges *Pro Tem*; SB 422**

**SB 422** allows the chief judge of any judicial district to appoint a judge *pro tem* without applying to the departmental justice of that district. Such power to appoint is subject to the budget limitations of the district court.

### **Kansas Law Enforcement Training Act; Commission on Peace Officers' Standards and Training; SB 424**

**SB 424** makes several changes to the Kansas Law Enforcement Training Act:

- The organizational structure of the Kansas Law Enforcement Training Center is modified so that responsibility for the Center lies with the University of Kansas

chancellor or the chancellor's designee, rather than with the University's continuing education division;

- Course admission requirements are changed so that an applicant's appointing authority or agency head is required to furnish a certifying statement. The list of disqualifying convictions is amended to include a misdemeanor offense the Commission on Peace Officers' Standards and Training (CPOST) determines reflects on the honesty, trustworthiness, integrity, or competence of the applicant as defined by CPOST rules and regulations. The high school diploma requirement is changed to include an accreditation standard and require rules and regulations by CPOST to establish equivalency. The good moral character and psychological testing requirements are made more specific. CPOST is allowed to deny provisional or other certification if it finds the applicant engaged in prohibited conduct specified elsewhere in the Act. If it appears grounds for denial exist, an appointing authority or agency is allowed to request a determination from CPOST as to whether a provisional certification will be issued to an applicant;
- CPOST, and its designated committee or member, is given explicit authority to conduct investigations and proceedings necessary to carry out the provisions of the Act;
- Fingerprinting requirements are revised so that on and after July 1, 2012, CPOST will be required to fingerprint each applicant, as well as each person previously certified if such person is investigated by CPOST. CPOST is required to appoint an employee to administer the fingerprinting, request background investigation information from criminal justice agencies, and maintain the confidentiality of such information. Unauthorized disclosure is grounds for removal or termination, in addition to other penalties provided by law;
- Continuing education requirements are clarified and failure to complete such requirements is grounds for suspension of a certificate issued under the Act, unless the employing law enforcement agency can show hardship;
- Grandfathering provisions for officers prior to July 1, 1969, or July 1, 1983, are removed;
- Disciplinary provisions are revised to allow CPOST to impose disciplinary conditions, clarify ongoing compliance responsibilities, make conduct constituting a disqualifying crime grounds for discipline even if not charged, make prohibited racial or other biased-based policing grounds for discipline, and make unprofessional conduct as defined by CPOST rules and regulations grounds for discipline. CPOST is permitted to commence emergency suspension proceedings for an officer whose continued performance of duties constitutes an immediate danger to the public; and
- Procedures for certificate reinstatement are established, and reinstatement is permitted upon a finding that an otherwise qualified petitioner is sufficiently rehabilitated to warrant the public trust. Seven suggested factors for CPOST's consideration in making this determination are provided in the bill.

## **Court of Appeals—Number of Judges; House Sub. for SB 425**

**House Sub. for SB 425** amends the statutory provision setting the number of judges of the Court of Appeals at 14 on and after January 1, 2013, to make this provision subject to appropriations. It also removes the provision setting the number of judges of the Court of Appeals at 13 for the period between January 1, 2008, through December 31, 2012.

## **Reports Provided by County and District Attorneys; Sub. for HB 2055**

**Sub. for HB 2055** removes the requirement that when a defendant is sentenced to confinement, the court must forward a copy of all county and district attorney reports to the law enforcement officer who has the offender in custody for delivery to a correctional institution. Further, it clarifies that when a person has been convicted of a felony and sentenced to imprisonment, the information the county or district attorney provides to the Secretary of Corrections is limited to any special facts and circumstances surrounding the commission of the offense or the offender that cannot be obtained from records already provided to the Secretary by the court.

## **Series Limited Liability Companies; Sub. for HB 2207**

**Sub. for HB 2207** allows for the formation of a business entity known as a series limited liability company (series LLC). Pursuant to the bill, an operating agreement can establish or provide for the establishment of one or more designated "series" of members, managers, or LLC interests. The series can have separate rights, powers, or duties with respect to specified property or obligations of the LLC or with respect to profits or losses associated with specified property or obligations. Additionally, the series can have separate business purposes and investment objectives to the extent provided in the operating agreement. The bill also allows for limitation of liability for each series and includes other provisions concerning their formation, operation, and dissolution.

## **Transparency in Lawsuits Protection Act; Senate Sub. for HB 2313**

**Senate Sub. for HB 2313** creates the Transparency in Lawsuits Protection Act (Act), stating the Legislature's intent that, unless expressly provided, no statute, rule, regulation, ordinance, or other enactment of the state creates a private right of action. Similarly, it requires any legislation creating a private right of action to contain express language providing for the right and, absent that language, prohibits courts from construing a statute to imply a private right of action. Further, it provides that the Act is not meant to be construed to prevent the breach of any duty imposed by law from being used as the basis for a cause of action under any theory of recovery otherwise recognized by law, including, but not limited to, theories of recovery under the law of torts or contracts.

## **Criminal Code and Drug Crimes; Senate Sub. for Sub. for HB 2318**

**Senate Sub. for Sub. for HB 2318** amends several statutes concerning the criminal code and drug crimes.

### ***Criminal Code Amendments***

The bill amends various sections of the Kansas Criminal Code to:

- Create the crime of "endangerment," defined as recklessly exposing another person to a danger of great bodily harm or death. Endangerment is a class A person misdemeanor;
- Amend the statute governing multiple prosecutions for the same act and lesser-included crimes to add language establishing that a defendant may not be convicted of identical offenses based upon the same conduct, the prosecution may choose which such offense to charge, and, upon conviction, the defendant shall be sentenced according to the charged offense;
- Amend the conspiracy statute to allow the unilateral theory of conspiracy, which does not require the other person(s) with whom the defendant conspired to have the actual intent to commit the underlying crime, provided the defendant believed the other person(s) to have such intent;
- Add abandonment of a child and aggravated abandonment of a child to the list of inherently dangerous felonies in the statute governing first degree murder;
- Amend the statute governing human trafficking, so subsection (b)(2) is no longer a stand-alone means of committing aggravated human trafficking. Instead, the act will have to first meet the definition of human trafficking;
- Increase the severity level for the crime of incest from a severity level 5, person felony to a severity level 3, person felony if the victim is the offender's biological, step, or adoptive child;
- Expand the crime of unlawful use of recordings to include possession of recordings by a person knowing or having reasonable grounds to know the article was produced in violation of law, which becomes a class B nonperson misdemeanor;
- Replace "sexual battery" with "sexually motivated crime" in the burglary statute;
- Expand the crime of interference with law enforcement to include falsely reporting to a law enforcement officer or state investigative agency any known false information with intent to influence, impede, or obstruct an officer or agency's duty, or concealing, destroying, or materially altering evidence with intent to prevent or hinder the apprehension or prosecution of any person;
- Clarify the culpability standard for the crime of simulating legal process;
- Amend the crime of escape from custody to include escaping while held under arrest without a written charge;

- Amend the bribery statute to add a *quid pro quo* requirement, include the omission of performance of a public duty, and clarify that a public official may accept some gifts consistent with state ethics laws;
- Amend the statute prohibiting smoking in enclosed areas or at public meetings to make it a "strict liability" infraction rather than applying the general recodification culpability standard of recklessness ;
- Amend other smoking provisions to clarify the culpability requirements for smoking where prohibited (strict liability), allowing smoking where prohibited (recklessness), and taking adverse action for reporting or attempting to prosecute a violation of the smoking prohibition (intent to retaliate);
- Amend the criminal disposal of explosives statute to clarify that the action must be taken without lawful authority and that ignorance of the age of the recipient is irrelevant. The severity level of carrying concealed explosives is increased from a class C to a class A person misdemeanor;
- Amend the cruelty to animals statute to eliminate a requirement that a county or district attorney file charges when a valid complaint is filed;
- Remove the use of living rabbits or chickens, ducklings, or goslings as an advertising device or promotion display from the definition of unlawful disposition of animals; and
- Amend the statute governing sentencing in multiple conviction cases to allow a judge to consider the need to impose an overall sentence that is proportionate to the harm and culpability in determining whether sentences should be served concurrently or consecutively. It also would give a judge discretion to impose an entire consecutive sentence or a part of such sentence.

### ***Drug Crimes***

The bill also adopts a new drug sentencing grid with five levels, adding a new level 2 with penalties falling between the current first and second levels of the drug grid. The grid also expands the presumptive imprisonment boxes to include levels 4-C and 4-D (formerly levels 3-C and 3-D), making the presumed sentence for certain offenders convicted of level 4 crimes imprisonment, and expands the border boxes to include levels 5-C and 5-D (formerly levels 4-C and 4-D), allowing courts to impose an optional non-prison sentence for certain offenders convicted of level 5 offenses.

The bill specifies that offenders assigned a high-risk status, as determined by a drug abuse assessment, and a moderate or high-risk status, as determined by the criminal risk-need assessment, will be committed to a drug-abuse treatment program. Offenders so committed will be supervised by community correctional services. Otherwise, based on the result of the criminal risk assessment, they would be supervised either by community correctional services or court services.

Further, it allows the court to order an offender who does not meet the drug risk assessment level requirements to undergo an additional drug risk assessment while the

offender is on probation and to undergo drug abuse treatment if the offender is determined to meet the risk assessment level requirement. The offender will pay the costs of that assessment.

The bill also makes several changes to the statutes governing drug crimes. Specifically, the bill deletes the packaging or repackaging of a substance or labeling or relabeling its container from the definition of "manufacture," and clarifies that it does not include the addition of dilutants or adulterants. It also amends the definition of "drug paraphernalia" to clarify that it does not include certain drug precursors.

Next, it amends as follows the severity levels for a violation of KSA 21-5703, manufacture or attempted manufacture of a controlled substance or controlled substance analog:

- Change a violation from a drug severity level 1 felony to a drug severity level 2 felony for a first conviction; a second or subsequent conviction for manufacture will be a drug severity level 1 felony; and
- Specify that manufacture of methamphetamine will remain a drug severity level 1 felony.

In KSA 21-5705, the bill imposes new felony classifications on the drug grid, based on quantity, for the crimes of distribution or possession with the intent to distribute the drugs listed in subsection (a), including lisdexamfetamine, a schedule II substance, as follows:

- Less than 3.5 grams, severity level 4;
- At least 3.5 grams, but less than 100 grams, severity level 3;
- At least 100 grams, but less than 1 kilogram, severity level 2; and
- One kilogram or more, severity level 1.

The bill creates exceptions to these penalties, as follows:

- Violations involving marijuana have the following felony classifications on the drug grid based on quantity:
  - Less than 25 grams, severity level 4;
  - At least 25 grams, but less than 450 grams, severity level 3;
  - At least 450 grams, but less than 30 kilograms, severity level 2; and
  - 30 kilograms or more, severity level 1 felony.
- Violations involving heroin or methamphetamine have the following felony classifications on the drug grid based on quantity:
  - Less than one gram, severity level 4;
  - At least one gram, but less than 3.5 grams, severity level 3;
  - At least 3.5 grams, but less than 100 grams, severity level 2; or
  - 100 grams or more, severity level 1.

- Violations involving substances outlined in KSA 65-4105, 65-4107, 65-4109, or 65-4111 (schedules I–IV) have the following felony classifications on the drug grid based on quantity:
  - Fewer than ten dosage units, severity level 4;
  - At least ten dosage units, but less than 100 dosage units, severity level 3;
  - At least 100 dosage units, but less than 1,000 dosage units, severity level 2; and
  - 1,000 dosage units or more, severity level 1.
- Violations occurring within 1,000 feet of any school property increase the severity level by 1 level.

The crime of distribution or possession with the intent to distribute a controlled substance listed in schedule V becomes a class A person misdemeanor, except that if distributed to or possessed with the intent to distribute to a minor, it is a nondrug severity level 7, person felony.

Cultivation of a controlled substance listed in subsection (a) has the following felony classifications on the drug grid based on the number of plants cultivated:

- More than four, but fewer than 50, severity level 3;
- At least 50, but fewer than 100, severity level 2; or
- 100 or more, severity level 1.

A rebuttable presumption of intent to distribute is created for possession of the following amounts of controlled substances:

- 450 grams or more of marijuana;
- 3.5 grams or more of heroin or methamphetamine;
- 100 dosage units or more containing a controlled substance listed by statute in the Uniform Controlled Substances Act (Act); or
- 100 grams or more of any other controlled substance listed under the Act.

The bill also amends KSA 21-5705 to bar the use of certain defenses and define some key terms.

The bill criminalizes sale of lisdexamfetamine, a schedule II substance (KSA 21-5706).

In KSA 21-5710, the subsections with enhanced penalties for distribution or causing paraphernalia to be distributed to a minor on or within 1,000 feet of any school property are amended to strike the requirement that the offender be 18 or older.

The bill clarifies that a person prosecuted for the distribution or possession with the intent to distribute a noncontrolled substance as a controlled substance also could be prosecuted for, convicted of, and punished for theft (KSA 21-5714).

In KSA 21-5716, concerning crimes involving proceeds derived from the commission of any drug crime, the severity level of crimes involving proceeds of \$100,000–\$500,000 is lowered for proceeds of \$100,000–\$250,000, from a level 2 to a level 3, due to the adoption of the five-level grid. For proceeds of \$250,000–\$500,000, the severity level remains a level 2.

### **Electronic Cigarettes; HB 2324**

**HB 2324** creates new crimes concerning minors and electronic cigarettes, which the bill defines. Specifically, it is unlawful to sell, furnish, or distribute electronic cigarettes to any person under 18 years of age and, with some exceptions, to sell electronic cigarettes by means of a vending machine in any establishment open to minors or a self-service display in any establishment. It also requires a retail dealer to add "electronic cigarettes" to the sign explaining cigarettes and tobacco products cannot be sold to minors. Further, it is unlawful for any person under 18 to purchase, attempt to purchase, possess, or attempt to possess electronic cigarettes. Finally, the bill adds the term "electronic cigarettes" to the Tobacco Products Act where necessary to allow the Division of Alcoholic Beverage Control to enforce the provisions governing electronic cigarettes.

### **Amendments to the Kansas Act Against Discrimination; HB 2335**

**HB 2335** amends the Kansas Act Against Discrimination (KAAD). Specifically, it amends a provision in the definition of "disability" that relates to being regarded as having a physical or mental impairment by striking "by the person or entity alleged to have committed the unlawful discriminatory practice complained of." It also expands the definition of "regarded as having such an impairment" and clarifies that reasonable accommodation or a reasonable modification of policies, practices, or procedures need not be provided to a person regarded as having a physical or mental impairment. Further, the bill defines "major life activities" and states that the KAAD definition of "disability" should be construed in favor of broad coverage of individuals to the extent permitted by the KAAD.

Additionally, the bill provides that an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability, and that an impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active. Finally, it provides that the determination of whether an impairment substantially limits a major life activity be made without regard to the ameliorative effects of mitigating measures such as medication, equipment, or technology. Ordinary eyeglasses and contact lenses, however, will be considered.

### **Disclosure of Tax Information for Defendants Claiming Indigency; HB 2413**

**HB 2413** requires courts, in a felony case with appointed counsel where the defendant's social security number is accessible from the district court's records, to provide electronically to the Kansas Secretary of Revenue (Secretary) the defendant's name, social security number, district court case number, and county for the purpose of determining whether the defendant is financially able to employ legal counsel. Further, upon receiving such information from the court, it allows the Secretary to forward and provide a defendant's name, social security number,

Kansas adjusted gross income, number of exemptions claimed, and the relevant tax year of such records electronically to the State Board of Indigents' Defense Services. The bill provides that the social security number would remain confidential.

The italicized text in paragraph (c)(14) regarding unclaimed property was enacted by the passage of 2011 SB 91 and does not indicate further amendment.

### **Defense Inspection of Certain Materials; Interference with the Judicial Process; HB 2464**

**HB 2464** amends the law concerning the obligation of a prosecutor to permit the defendant to inspect, copy, and photograph certain materials. It requires any property or material that constitutes a visual depiction, as defined in the crime of sexual exploitation of a child, to remain in the care, custody, and control of the prosecution, law enforcement, or the court. Further, if the state makes the visual depiction reasonably available to the defendant, the court will deny the defendant's request to copy, photograph, duplicate, or otherwise reproduce it. The visual depiction is "reasonably available to the defendant" if the prosecution provides ample and liberal opportunity for inspection, viewing, and examination of the visual depiction at a government facility, whether in state or out of state, by the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to furnish expert testimony at trial.

Additionally, the bill amends the crime of interference with the judicial process to include knowingly or intentionally, in any criminal proceeding or investigation:

- Inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document, or thing;
- Withholding or unreasonably delaying in producing any testimony, information, document, or thing after a court orders its production;
- Altering, damaging, removing, or destroying any record, document, or thing, with the intent to prevent it from being produced or used as evidence; or
- Making, presenting, or using a false record, document, or thing with the intent that the record, document, or thing, material to a criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master, or law enforcement officer.

Such an act is a severity level 8, nonperson felony, if the matter or case involves a felony, or a class A, nonperson misdemeanor, if the matter or case involves a misdemeanor.

### **Lifetime Electronic Monitoring for Certain Offenders; HB 2465**

**HB 2465** requires the court to order lifetime electronic monitoring upon release from imprisonment and reimbursement of all or part of the costs of such monitoring, as determined by the Prisoner Review Board, when a defendant is sentenced to prison for certain sexual crimes involving minors. Similarly, it clarifies that when electronic monitoring is ordered, the Board, rather than the court, will order partial or complete reimbursement and, in making that determination, must consider the financial resources of the person and the nature of the burden the payment of such sum would impose.

### **Disclosure of Discovery; HB 2468**

**HB 2468** concerns discovery in a criminal prosecution and requires a defendant who seeks discovery and inspection to provide to the prosecutor within 30 days of trial a summary or written report of what any expert witness intends to testify, including the witness' qualifications, options, and the bases and reasons for such opinions. Further, the bill requires all disclosures to be made at the times and in the sequence directed by the court and, absent other directions from the court or stipulation by the parties, made as provided in the statute amended by the bill.

### **Application Fees for Indigent Defense Services; HB 2469**

**HB 2469** requires a defendant pay an application fee of \$100 to the clerk of the district court to request indigent defense services in a proceeding for a violation of a condition of release. The fee is required regardless of whether the defendant has paid application fees in another proceeding.

### **Regulation of the Sale of Scrap Metal; Sub. for HB 2470**

**Sub. for HB 2470** removes wires or cables owned by a telephone, cable, electric, water, or other utility provider that has had the sheathing removed, making ownership identification impossible, from the list of items that scrap metal dealers are prohibited from purchasing without first obtaining proof that the seller is an employee, agent, or person who is authorized to sell the item on behalf of the owner. Further, the bill clarifies that the fee for renewal of a scrap metal dealer registration would not be in addition to the initial fee required to accompany "each registration for a scrap metal dealer to purchase regulated scrap metal."

### **Amendments to the Kansas Code of Civil Procedure; HB 2473**

**HB 2473** amends the Kansas Code of Civil Procedure to conform to recent changes in federal law. First, it removes "discharge in bankruptcy" from the list of affirmative defenses a party must state in responding to a pleading. Next, it provides that the draft required disclosures concerning expert witnesses and drafts of a disclosure by an expert witness provided in lieu of the required disclosures are protected from discovery, regardless of the form in which the draft is recorded. Similarly, it provides that communications between a party's attorney and expert witnesses are protected from disclosure regardless of the form of the communications, except to the extent the communications:

- Relate to the compensation for the expert's study or testimony;
- Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Further, the bill requires disclosure of the subject matter on which the expert is expected to testify and the substance of the facts and opinions to which the expert is expected to testify, regardless of whether the expert is retained or specially employed to provide expert testimony.

### **Court Reporters; HB 2484**

**HB 2484** requires depositions in Kansas to be taken before a person who is certified by the Kansas Supreme Court as a certified court reporter, in addition to the continuing requirement that depositions be taken before an officer or person authorized by state law to administer oaths.

### **Self-Service Storage Act; HB 2494**

**HB 2494** amends provisions of the Self-Service Storage Act concerning sale of stored property when an occupant is in default. Specifically, prior to sale, the bill requires the operator to notify the occupant of the default by email, if the occupant has provided an email address to the operator, in addition to sending notice by first-class mail at the occupant's last-known address, which is already required. The second notice of default also is required by email, if the occupant has provided an email address, in addition to notice by first-class mail. The bill also removes the requirement that the advertisement for the sale list the items released for sale.

### **Law Enforcement Authority for Certain Juvenile Justice Authority Employees; HB 2496**

**HB 2496** amends the definition of "police officer" and "law enforcement officer" within the Kansas Law Enforcement Training Act to include special investigators of the Juvenile Justice Authority (JJA) and any JJA employee employed solely to perform correctional, administrative, or operational duties related to juvenile correctional facilities. Further, it gives the Commissioner of JJA authority to appoint and designate special investigators and to adopt rules and regulations to govern training required for special investigators. The special investigators will have the power and authority of peace and police officers and the authority to make arrests; conduct searches and seizures; maintain custody, security, and control of any person in the Commissioner's custody; and generally enforce State criminal law. Each special investigator will be vested with law enforcement authority, be in the classified service under the Kansas Civil Service Act, and be subject to the requirements of the Kansas Law Enforcement Training Act. To carry a firearm, special investigators will have to complete the required law enforcement officer training courses.

### **Reporting Death or Disappearance of a Child; HB 2534**

**HB 2534** creates two new crimes: failure to report the disappearance of a child and failure to report the death of a child. Failure to report the disappearance of a child is defined as the knowing failure of a parent, legal guardian, or caretaker to report the disappearance of a child under the age of 13, as soon as practically possible, to a law enforcement officer, law enforcement agency, or state investigative agency when such person:

- Knows or reasonably should know the child is missing and with the intent to conceal the commission of a crime; or
- Knows the child is missing and has reason to believe the child is in imminent danger of death or great bodily harm.

Failure to report the disappearance of a child is a severity level 8, nonperson felony.

Failure to report the death of a child is defined as the knowing failure to report the death of a child promptly to a law enforcement officer, law enforcement agency, or state investigative agency, with the intent to conceal the commission of a crime. When committed by a parent, legal guardian, or caretaker, the crime is a severity level 8, nonperson felony. When committed by a person required by law to make a report of suspected child abuse, unless that person is a parent, legal guardian, or caretaker, the crime is a class B misdemeanor. The bill states, however, these provisions do not apply when the child's death has been reported by another person or is otherwise known by a law enforcement agency or state investigative agency.

"Caretaker" is defined in the bill as a person 16 or older who had willfully assumed responsibility for the care of a child at the time of the child's disappearance or death.

The bill also amends the definition of the crime of interference with law enforcement. First, it adds a false report of any information concerning a crime or suspected crime to a law enforcement officer, law enforcement agency, or state investigative agency. Further, it amends the definition to include a false report to a law enforcement officer, law enforcement agency, or state investigative agency of any information concerning the death, disappearance, or potential death or disappearance of a child under the age of 13, knowing that information is false and intending the officer or agency will act in reliance upon that information. Such a report is a severity level 8, nonperson felony.

### **Prisoner Review Board Technical Changes and Annual Reports; HB 2535**

**HB 2535** makes numerous technical amendments to reflect the changes made by 2011 Executive Reorganization Order No. 34, which established the Prisoner Review Board within the Kansas Department of Corrections and abolished the Kansas Parole Board. The bill also allows the Prisoner Review Board's required annual report to the Governor and the Legislature to be included in the Department of Corrections' general report; however, the information must be in a separate section of such report. Further, it clarifies that compilation and analysis of dispositions of criminal cases by district courts throughout the state or by executive authority will remain the responsibility of the Department of Corrections.

### **Emergency Care or Assistance; HB 2562**

**HB 2562** provides that any person who is not a health care provider and in good faith, without compensation, renders emergency care or assistance to a person, including a minor without first obtaining the consent of the parent or guardian of such minor, at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by the person in rendering such emergency care.

Additionally, the bill exempts the Kansas State Board of Healing Arts (Board) from competitive bidding when contracting with persons licensed to practice the healing arts who are not members of the Board to provide advice and assistance to the Board.

## **Kansas Offender Registration Act; HB 2568**

**HB 2568** makes several amendments to the Kansas Offender Registration Act. The bill adds "adjudications" alongside "convictions" throughout the bill and amends some key terms, including the removal of hospitals from the definition of "treatment facility."

The bill also provides that courts are required to register offenders at conviction or adjudication, rather than at sentencing or disposition, and clarifies the other responsibilities of the court with respect to offender registration at that time, including additional requirements if the offender is released. The bill requires the court to ensure the age of the victim is documented in the journal entry at the time of sentencing, however, rather than at conviction, as there is no journal entry at the time of conviction. Similarly, the bill revises the responsibilities with respect to offender registration of any correctional facility or the registering law enforcement agency's designee; the staff of any treatment facility; the registering law enforcement agency, upon the reporting of any offender; and the Kansas Bureau of Investigation (KBI).

Additionally, the bill revises offender registration requirements to remove the requirement if an offender is in the care or custody of any treatment facility and amends requirements with respect to travel outside the United States and information that must be provided on the registration form.

Further, the bill amends the 15-year registration requirement for some crimes by removing the requirement under sexual battery that one of the parties be less than 18 years of age and adding convictions of any person required by court order to register for an offense not otherwise required by the Kansas Offender Registration Act. It also amends the lifetime registration requirement for the crime of aggravated human trafficking by removing the requirement the victim be less than 18 years of age.

The bill provides no internet website sponsored or created by a registering law enforcement agency or the KBI can contain the address of any place where the offender is an employee or any other information about where the offender works. Such a website, however, must contain a statement that employment information is publicly available and may be obtained by contacting the appropriate registering law enforcement agency or by signing up for community notification through the KBI website.

Finally, the bill provides that when a court orders expungement of a conviction or adjudication that requires registration, the offender must continue registering, although the registration is not open to inspection by the public or posted on the internet. If the offender has an additional conviction or adjudication that requires registration that is not expunged, registration for that conviction or adjudication remains open to the public and may be posted on the internet, unless the registration is ordered restricted.

## **Sharing of Treatment Information with Law Enforcement; HB 2600**

**HB 2600** allows mental health treatment facilities to disclose information about whether a person is or has been a patient within the past six months when a person has been detained by law enforcement:

- Upon reasonable suspicion that the person is committing, has committed, or is about to commit a misdemeanor or felony, and is suffering from mental illness; and

- When the law enforcement officer has a reasonable belief that such person may benefit from treatment, rather than placement in a correctional institution, jail, juvenile correctional facility, or juvenile detention facility.

### **Extended Protective Order; Unlawful Sexual Relations; HB 2613**

**HB 2613** requires courts to extend protection from abuse and protection from stalking orders for at least two years and allow extension up to the lifetime of a defendant if, after the defendant has been personally served with a copy of the motion to extend the order and has had an opportunity to present evidence at a hearing on the motion and cross-examine witnesses, it is determined by a preponderance of the evidence that the defendant has either previously violated a valid protection order or been convicted of a person felony or conspiracy, criminal solicitation, or attempt of a person felony, committed against the plaintiff or any member of the plaintiff's household. Violation of an extended protection order is a severity level 6, person felony. The bill provides that no service fee is required for a motion for an extended protection order.

Additionally, the bill amends the definition of the crime of unlawful sexual relations, which occurs when the defendant engages in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender in certain situations. Currently, one such provision prohibits the targeted behavior by an employee of the Kansas Department of Social and Rehabilitation Services (SRS) (will become the Department of Children and Family Services on July 1, 2012) or by the employee of a contractor providing services to an SRS institution, when such behavior is directed toward a person 16 years of age or older who is a patient in such institution. The bill expands this subsection by adding language applying the prohibition to the employee of any SRS contractor, when the behavior is directed toward a person 16 years of age or older who is a patient in an SRS institution or is in the custody of SRS.

Further, the bill adds a subsection prohibiting such behavior by a worker, volunteer, or other person in a position of authority in a family foster home licensed by the Kansas Department of Health and Environment, when such behavior is directed toward a person 16 years of age or older who is a foster child in the care of such family foster home.

The bill also clarifies that the term "teacher," as used in the statute, includes coaches. Finally, the bill reorganizes some sections of the statute to improve its overall clarity.

### **Amendments to the Uniform Commercial Code; HB 2621**

**HB 2621** amends the Uniform Commercial Code concerning secured transactions as recommended by the Uniform Law Commissioners. Specifically, it amends key terms and adds new definitions; provides additional guidance on the control of electronic chattel paper and the location of registered organizations; sets out rules for collateral after the debtor changes its location to another jurisdiction and when a new debtor is located in another jurisdiction; amends provisions concerning the disposition of collateral after default; clarifies the requirements for sufficiency of a debtor's name; and explains requirements for financing statements filed prior to and after July 1, 2013, when the bill will take effect.

## **Kansas Uniform Trust Code; HB 2655**

**HB 2655** makes amendments to the Kansas Uniform Trust Code. Specifically, it amends the spendthrift provision in the statute governing modification or termination of a noncharitable irrevocable trust to state that such a provision is not presumed to constitute a material purpose of the trust. Further, it removes a trust's taxpayer identification number from the list of information required in an acknowledged certification of trust.

## **Justice Reinvestment Working Group; HB 2684**

**HB 2684** requires the Secretary of Corrections to establish a Justice Reinvestment Working Group (Working Group) composed of 17 members appointed by various officials in each branch of Kansas government and by law enforcement associations. The Working Group is charged to study data-driven, fiscally-responsible policies and practices that can increase public safety and reduce recidivism and spending on corrections in Kansas. The Working Group is required to submit a report of its activities and recommendations to the Secretary of the Senate and the Chief Clerk of the House of Representatives on or before January 1, 2013.

## **Ombudsman of Corrections; Topeka Correctional Facility; HB 2704**

**HB 2704** amends the statutory provision allowing the Secretary of Corrections (Secretary) to order an offender discharged from the prison portion of a sentence if a minimal amount of time remains to be served at the time the Secretary receives notice of the transfer of the prisoner to the custody of the Secretary. Specifically, the permissible time remaining on the sentence is increased from 10 to 20 days.

Additionally, it repeals statutory provisions concerning the Ombudsman of Corrections (Ombudsman). The statutes relate to:

- Open records (KSA 45-221);
- Provision of necessary personnel and accounting services by the Secretary of Corrections to the Office of the Ombudsman (KSA 74-7402);
- Appointment, compensation, office space, and support employees for the Ombudsman, and the duties and functions of the Ombudsman (KSA 74-7403);
- Authority of the Ombudsman to have access to correctional institutions and other inmate housing (KSA 74-7404);
- Conditions under which the records in the possession of the Ombudsman, or any employee of the Ombudsman, may be made available to the Kansas Department of Corrections (KSA 74-7406); and
- Authority of the Ombudsman to administer oaths (KSA 74-7407).

The bill also repeals statutes concerning the role of the Topeka Correctional Facility (Facility) as the reception and diagnostic facility. The statutes relate to the:

- Primary function and purpose of the Facility with regard to the delivery of offenders and the examination and study of all felony offenders sentenced by the courts to the custody of the Secretary of Corrections (KSA 75-5262);
- Appointment of psychiatrists, psychologists, social workers, chaplains, and other officers and employees by the warden of the Facility, as approved by the Secretary of Corrections (KSA 75-5263);
- Authority of the Secretary of Corrections to make requisitions to any warden of a state correctional institution for the transfer of an inmate to the Facility for examination, study, and subsequent confinement assignment (KSA 75-5264), or for the purpose of performing work at the Facility (KSA 75-5265);
- Sheriff's conveyance of offenders to the Facility (KSA 75-5220); and
- Scientific examination and study of women sentenced to the custody of the Secretary of Corrections in a manner substantially similar to that provided for in KSA 75-5262 (KSA 75-5229).

#### **Consecutive Terms for Juvenile Offenders; HB 2737**

**HB 2737** provides that any juvenile offender committed to a juvenile correctional facility who is adjudicated for an offense committed while in a juvenile correctional facility can be adjudicated to serve a consecutive term of commitment in a juvenile correctional facility.

#### **Crisis Intervention Team Programs; HCR 5032**

**HCR 5032** recognizes the outstanding leadership of the Crisis Intervention Team (CIT) programs and CIT as a model of best practices for law enforcement intervention with persons who have mental illness. Further, it encourages law enforcement agencies to lead the effort in partnership with community mental health centers and local advocacy organizations representing individuals living with mental illnesses and their family members to establish local and regional CIT programs.

## **LOCAL GOVERNMENT**

### **Credit Card Payments to Counties; Recreation System; Partial Payment of Property Tax; Tax Affidavit; Abandoned Commercial Buildings; SB 207**

**SB 207** amends law relating to various types of municipalities in these ways:

- Allows counties to accept a credit or debit card for any payment, including those for taxes and utility fees;
- Authorizes the conversion of an existing school district recreation system to a city recreation system under specified stipulations and procedures;
- Allows county treasurers to accept partial payments on delinquent personal property taxes and repeals an outdated statute regarding affidavits related to personal property taxes; and
- Grants city governing bodies the authority to cause the repair or removal of unsafe or dangerous commercial real estate.

#### ***Credit or Debit Card Payments to Counties***

Along with authorizing counties to accept a credit or debit card for any payment, including those for taxes and utility fees, the bill authorizes a county to add a fee to each transaction equal to the charge to the county for a payment made using the card. The bill also requires a county to provide notice of any such fee. The bill exempts any such transaction from a provision in the Kansas Uniform Consumer Credit Code that prohibits a seller or lessor from adding a surcharge on a payment made by credit or debit card.

#### ***Conversion of an Existing Recreation System***

The bill creates a new section of law allowing the governing body of a school district which previously established a recreation system to take joint action with the governing body of the city in which the school district is located, to initiate the conversion of the existing recreation system to a city recreation system under the following stipulations and procedures:

- The school district must be located completely inside the boundaries of the city;
- A joint ordinance and resolution is required, proposing to change the existing school district system to a city recreation system, and the joint ordinance and resolution must authorize publication of a notice of intent. The notice must be published once a week for two consecutive weeks in the official city newspaper; and

- A protest petition could be filed which, if it met the criteria established in the bill, will subject the measure to an election.

If a new city recreation system is established pursuant to the new law, the following stipulations will apply:

- The mill levy rate of the new system will not be subject to the one-mill levy limitation for a new recreation system;
- The conversion to the new system must provide for the transfer of assets of the existing school district system to the city system, as well as the assumption of liabilities from one to the other; and
- The members of the school district recreation system will be required to serve the balance of their respective terms in office as members of the new city system, at which time the members of the city recreation commission must be appointed by the city governing body.

### ***Partial Payments on Delinquent Personal Property Taxes***

The bill allows county treasurers to accept partial payments as a part of a payment plan for delinquent personal property taxes. The bill clarifies that nothing in the statute is to be construed to modify the consequences of untimely payment of delinquent real or personal property tax.

The bill also repeals KSA 79-2102, which allowed the filing of an affidavit of poverty related to the nonpayment of personal property taxes and thereby stopping the issuance of a warrant.

### ***Commercial Abandoned Property***

The bill adds commercial real estate property to the set of statutes dealing with unsafe or dangerous structures and abandoned property, thereby granting city governing bodies the power to cause the repair or removal of commercial properties which have become unsafe or dangerous. This is accomplished by expanding the definition of abandoned structures to include commercial real estate property for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties.

Commercial real estate is defined as any real estate for which the present use is other than one to four residential units or for agricultural purposes.

The bill defines "blighting influence" as conditions in the structure which are dangerous or injurious to the health, safety, or morals of the building occupants or other residents of the municipality, or which have an adverse impact on properties in the area. The bill lists a number of such conditions in the definition, such as defects increasing the hazards of fire.

### **Cities—Publication of Notices; Sub. for HB 2166**

**Sub. for HB 2166** allows cities to publish summaries of ordinances on the city website provided that the publication is identified as a summary, notice is provided of where the complete text is available, the city attorney has certified that the summary is accurate and sufficient, and the ordinance is available for a minimum of one week after publication in the newspaper. If the ordinance is subject to a protest petition, the summary must contain notice of such.

The bill also corrects non-uniform language in the city ordinance statutes.

### **Uniform Common Interest Owners Bill of Rights Act; Application to Specific Group; Senate Sub. for HB 2267**

**Senate Sub. for HB 2267** makes three changes to the Kansas Uniform Common Interest Owners Bill of Rights Act that apply only to an association for a common interest community for a recreational lake development that contains less than 500 units, where less than half of those units contain a residence.

- It exempts this type of common interest community association from the existent prohibition on suspending a unit owner's right to vote except involving issues of assessments and fees. This means that the association for any such common interest community (*i.e.*, for certain recreational lake developments where less than half of the units contain a residence) could suspend a unit owner's right to vote except when association members vote on issues of assessments and fees.
- It exempts this type of association from statutory requirements on what topics an association's bylaws should address.
- It allows this type of association to deliver any required notice for a meeting, other than the annual meeting, by posting the notice on the association's website or by posting a notice on a bulletin board in the association's office, by sending a notice by electronic mail if the unit owner requests one, or by posting a sign containing the meeting notice at the main entrance to the community.

As a point of clarification, the bill is effective upon publication in the statute book. (The original Act contains language that made it effective January 1, 2011.)

### **Dissolution of Certain Cities; HB 2412**

**HB 2412** dissolves any city in Kansas that received money from the United States Environmental Protection Agency for the purpose of buyout or relocation during the calendar years of 2010 and 2011. (According to testimony, the bill applies only to the City of Treece.)

### **Bonded Indebtedness Limit for Junction City; HB 2420**

**HB 2420** extends for three years the authorized and outstanding bonded indebtedness of the City of Junction City as follows:

- The ending date for the city's existent rate limitation of 37 percent of assessed valuation is extended from June 30, 2013, to June 30, 2016; and
- The beginning date for a rate limitation of 34 percent is moved from July 1, 2013, to July 1, 2016, and the ending date for that rate is extended from June 30, 2015, to June 30, 2020. At that time, the city's rate will revert to the normal rate of 30 percent.

### **Transfer of Horton Armory to City of Horton; HB 2546**

**HB 2546** transfers the Horton Armory property from the Kansas Military Board to the City of Horton. This transfer will be at no cost to the City of Horton.

### **Verification of Technical Experience Requirements; HB 2666**

**HB 2666** requires cities or counties—if they require the licensing of plumbers, electricians, or mechanical heating, ventilation and air conditioning (HVAC) contractors—to verify the applicant's respective documented proof of minimum necessary experience, prior to issuing a journeyman or master certificate.

### **Revision of Local Officials' Duties; HB 2675**

**HB 2675** revises the duties of county clerks and county appraisers regarding the listing and valuation of real estate. The bill amends KSA 79-408 as follows:

- Requires a county clerk to maintain all real estate assessment rolls required for the county assessment districts;
- Eliminates the requirement that, in preparing the assessment rolls, the county clerk use reports from the United States Land Office and also eliminates the clerk's option to require the owner or occupant of the real estate to furnish a proper description;
- Deletes language regarding the deduction of acreage of lands used for railway rights-of-way or interurban railway rights-of-way in making the assessment rolls;
- Deletes the requirement that the county clerk deliver the completed assessment rolls to the county appraiser no later than December 15; and
- Allows for the assessment rolls and descriptions to be maintained electronically, as the county deems necessary and proper.

### **Appointment of County Appraisers Based on Population; HB 2677**

**HB 2677** eliminates the distinction that a county with a population greater than 25,000 must appoint a full-time county appraiser, while a county with a population of 25,000 or less may appoint either a full-time or part-time appraiser.

## OPEN RECORDS ACT

### Home Address Exception to the Open Records Act; Sub. for HB 2427

**Sub. for HB 2427** creates exceptions to the Kansas Open Records Act for records of a public agency on a public website that identify the home address or home ownership of:

- Law enforcement officers;
- Parole officers;
- Court services officers;
- Community correctional services officers;
- Federal judges;
- Justices of the Kansas Supreme Court;
- Kansas Court of Appeals judges;
- District judges and district magistrate judges;
- The U.S. attorney and assistant U.S. attorneys for the District of Kansas;
- The Kansas Attorney General and assistant attorneys general; and
- A district attorney or county attorney, or an assistant district attorney or assistant county attorney.

Further, any such person or person's employer may file a request with the record custodian to have the information removed from the website. Within seven days of receiving such a request, the public agency is required to remove the information.

### Kansas Open Records Act Exceptions; HB 2569

**HB 2569** extends for five years exceptions to the Kansas Open Records Act that are set to expire July 1, 2012:

- Documents and records related to contract negotiations or civil proceedings of the Fort Scott/Bourbon County Riverfront Authority (KSA 12-5711);
- Certain DNA records maintained by the Kansas Bureau of Investigation (KSA 21-2511);
- Fingerprints and photographs of juveniles taken into custody (KSA 38-2313);
- Kansas-issued criminal history records related to persons at child care facilities (KSA 65-516);
- Certain information furnished to the Kansas Lottery or the Kansas Racing and Gaming Commission relative to finances, earnings, or revenue; a vendor's criminal record, family and background (KSA 74-8745); and information related to actions

enforcing the Kansas Expanded Lottery Act or related rules and regulations or audits of gaming facilities (KSA 74-8752, 74-8772); and

- Information received by the Inspector General of the Kansas Health Policy Authority (now the Division of Health Care Finance at the Department of Health and Environment) related to any investigation or audit (KSA 75-7427).

## REAL ESTATE

### **Purchase of Property; Distribution of Funds from Sale of Surplus State Real Estate; House Sub. for SB 434**

**House Sub. for SB 434** grants the Department of Corrections the authority to purchase the Saint Francis Boys' Home in Ellsworth, Kansas. The bill requires an independent appraisal of the value of the property.

The bill also allows the Department of Corrections to sell a parcel of land near the Hutchinson Correctional Facility to Reno County, Kansas, for the purpose of building a county jail. The bill adjusts the distribution of the proceeds from this and future sales of surplus state property and directs funds that had heretofore been deposited in the State General Fund to the Kansas Public Employee Retirement (KPERS) Fund. Twenty percent of the proceeds of the sale are to be deposited in a fee fund within the Department of Corrections and the remaining funds are to be deposited in the KPERS Fund.

## RETIREMENT

### **Kansas Public Employees Retirement System Omnibus Bill (Including New Tier 3 Plan); Senate Sub. for Sub. for HB 2333**

**Senate Sub. for Sub. for HB 2333** is the designated Kansas Public Employees Retirement System (KPERs) Omnibus bill for 2012, containing numerous new provisions and modified provisions of the retirement as well as death and long-term disability statutes administered by the KPERs Board of Trustees (KPERs Board).

This year's KPERs omnibus legislation makes changes in retirement benefits, requires both employee and employer increased KPERs contributions, and makes numerous other adjustments to the plans. The KPERs legislation will enhance funding of the retirement plans; establish a new plan design and new tier for most future KPERs eligible employees; close Tier 2 to most new employees and limit KPERs Tier 2 to only certain specified future state correctional members; and give the Legislature additional power to modify the KPERs plan design features for the new tier.

Senate Sub. for Sub. for HB 2333 amends the current KPERs plan design (Tiers 1 and 2), including provisions for the correctional subclass of the state group. The bill also adds a new plan design (Tier 3—Cash Balance plan) for most future members of the state, school, and local public employee groups. Both employer and employee KPERs contributions for Tier 1 and Tier 2 will be increased to help address the unfunded actuarial liability. The bill generally does not address the Kansas Police and Firemen's Retirement System or the Retirement System for Judges, separate plans also administered by KPERs.

### ***Making Major Changes in KPERs***

The omnibus bill implements the following major changes:

- Adds a Cash Balance plan to be established as a new Tier 3 within the existing KPERs defined benefit plans, effective January 1, 2015;
- Provides for death and long-term disability insurance that would continue coverage as long as the active Tier 3 member is working for a participating employer;
- Includes revenue enhancing (increased employer and employee contributions) provisions to be implemented beginning July 1, 2014, to address the Tier 1 and Tier 2 unfunded actuarial liability;
- Requires use of a single, actuarially-determined employer contribution rate covering all three KPERs tiers and calculated for each KPERs group, subject to new, higher statutory annual caps on increased participating employer contributions;
- Extends for three years to July 1, 2015, a salary cap exemption for school professionals who go back to work after retiring from KPERs and are employed full

time by the same KPERS participating employer who will continue to pay a special KPERS contribution rate for retired members;

- Changes the basis of calculation for legislator KPERS retirement benefits and contributions based on reducing the annual period from 372 days to 365 days; and
- Provides for a fourth quarter moratorium (April 1 to June 30) in FY 2012 for KPERS participating employers' contributions to the death and long-term disability program.

### ***Establishing a Cash Balance Plan Design***

The bill establishes a Cash Balance plan as Tier 3 within the existing KPERS structure for most future KPERS members. The Cash Balance plan is a type of Defined Benefit plan design under federal law. The components of the KPERS legislation include:

- Establishing Tier 3 in KPERS as a Cash Balance plan with the following design characteristics:
  - Tier 3 start date - January 1, 2015;
  - Normal retirement age - age 65 and five years of service, or age 60 and 30 years of service;
  - Minimum interest crediting rate during active years - 5.25 percent;
  - Discretionary Tier 3 dividends - 4.0 percent maximum; modified formula based on KPERS funded ratio for awarding discretionary credits, meaning when all plans reach an 80.0 percent funded ratio, then the KPERS Board must pay Tier 3 dividends;
  - Employee contribution - 6.0 percent;
  - Employer service credit - 3.0 percent for less than five years of service; 4.0 percent for at least five, but less than 12 years of service; 5.0 percent year for at least 12, but less than 24 years of service; and 6.0 percent for 24 or more years of service;
  - Vesting - five years;
  - Termination before vesting - interest would be paid for the first two years if employee contributions are not withdrawn;
  - Termination after vesting - option to leave contributions and draw retirement benefits when eligible, or withdraw employee contributions and interest, but forfeit all employer credits and service;
  - Death prior to retirement - five-year service requirement and, if spouse had been named primary beneficiary, provide retirement benefit for spouse when eligible;
  - Tier 3 early retirement - age 55 and ten years of service;
  - Default form of retirement distribution - single life with ten-year certain;
  - Annuity conversion factor - 6.0 percent;
  - Benefits option - partial lump sum paid in any percentage or dollar amount up to 30.0 percent maximum;
  - Post retirement benefit - cost-of-living adjustment (COLA) may be self-funded;
  - Electronic and written statements - KPERS Board shall provide information specified. Certain quarterly reporting will be required;

- Powers reserved to adjust plan design - The Legislature may prospectively change interest credits, employer credits, and annuity interest rates. The KPERS Board may prospectively change mortality rates;
- Actuarial cost of any legislation - fiscal impact assessment by KPERS Actuary required before and after any legislative enactments;
- Divorce after retirement - allow a retirant, if divorced after retirement, and if the retirant had named the retirant's ex-spouse as a joint annuitant, to cancel the joint annuitant's benefit option in accordance with a court order;
- If a member becomes disabled while actively working, such member shall be given participating service credit for the entire period of the member's disability. Such member's account shall be credited with both the employee contribution and the employer credit until the earliest of (i) death; (ii) attainment of normal retirement age; or (iii) the date the member is no longer entitled to receive disability benefits;
- A benefit of \$4,000 is payable upon a retired member's death; and
- Require employer credits and the guaranteed interest crediting to be reported quarterly.

### ***Modifying the Current KPERS Plans To Increase Revenue***

Other components of the KPERS legislation include:

- Modifying Tier 1 and Tier 2 provisions in the current plan design for each, as follows:
  - Allow Tier 1 election (if the Internal Revenue [IRS] approves) in choosing changes in plan design - either continue employee contribution of 4.0 percent and have the multiplier reduced from 1.75 percent to 1.4 percent for future service, or increase the employee contribution from 4.0 percent to 6.0 percent and have the multiplier increased to 1.85 percent for future service (default option if IRS fails to approve election);
  - Eliminate Tier 2 COLA and provide an increase in the multiplier from 1.75 percent to 1.85 percent retroactive to July 1, 2009, (if eligible) as well as future service years;
  - Permit future new members to join Tier 2 after December 31, 2014, if they are eligible KPERS members in the correctional officer subclass, and
  - Increase caps on all participating KPERS employer contributions for the state, school, and local groups, with the cap increasing to 0.9 percent in FY 2014, 1.0 percent in FY 2015, 1.1 percent in FY 2016, and 1.2 percent in FY 2017.

### ***Other Revenue Enhancing Measures and Expenditures***

Additional components of the KPERS legislation include:

- Crediting 50.0 percent annually to the KPERS Trust Fund, commencing quarterly transfers in FY 2014, from the Expanded Lottery Act Reserve Fund, after other obligations totaling \$10.5 million have been met;
- Transferring 80.0 percent from the sale of certain specified state property to the KPERS Trust Fund beginning July 1, 2012;

- Allowing investment returns after certain thresholds are met and which are not awarded as dividends in Tier 3 for be used in paying down the unfunded actuarial liability;
- Using a single, actuarially-determined employer contribution rate covering all three KPERS tiers and calculated for each KPERS group, subject to new, higher statutory annual caps on increased participating employer contributions; and
- Adding \$2.75 million from the KPERS Fund and 11.0 FTE positions to begin implementing the new provisions in FY 2013.

#### **Conforming KPERS with Federal Internal Revenue Code Compliance Requirements and Technical Changes; HB 2460**

**HB 2460** makes six technical amendments to the Kansas Public Employees Retirement System (KPERS) statutes, the first two bullet points were requested by KPERS staff and the last four bullet points required to maintain compliance with the Internal Revenue Service code requirements for public pension plans. The six changes are:

- Permit an additional option for public employers to affiliate for future service only;
- Delete a requirement that sets out a fixed 7.0 percent contribution rate for first-year employers since all actuarial rates will be higher than this rate for all KPERS plans;
- Add a reference to "good faith interpretation" in accordance with new federal regulations for required minimum distributions in KSA 74-49,123;
- Update KSA 74-49,123 with a reference to the Heroes Earnings Assistance Recovery Act of 2008;
- Clarify a definition in KSA 74-49,123 regarding the "eligible rollover distribution" definition; and
- Update KSA 74-49,123 to include a reference to "Final 415 Regulations" as required for compliance with the Internal Revenue Code.

#### **KPERS Alternative Investments Policy Changes; HB 2461**

**HB 2461** allows a net annual commitment of up to 5.0 percent of the total market value of the Kansas Public Employees Retirement System (KPERS) portfolio investments to be made in assets identified as "alternative investments," which are non-traditional in nature. The 5.0 percent annual limit on net investment commitments is measured from the end of the preceding calendar year.

In addition, the bill allows 15.0 percent of the total KPERS investment portfolio to be invested in alternative investments and a new definition for such alternative investments will replace the current definition. The new definition redefines the term as including "a broad group

of investments that are not one of the traditional asset types of public equities, fixed income, cash, or real estate. Alternative investments are generally made through limited partnerships or similar structures, are not regularly traded on nationally recognized exchanges, and, thus, are relatively illiquid, and exhibit lower correlations with more liquid asset types, such as stocks and bonds. Alternative investments generally include, but are not limited to, private equity, private credit, hedge funds, infrastructure, commodities, and other investments which have the above characteristics."

The bill also requires a review of the alternative investment policy change prior to January 1, 2016, and for the KPERS Board of Trustees to submit a report to the Joint Committee on Pensions, Investments, and Benefits with information about the impact of the alternative investments policy changes.

## STATE FINANCES

### State Budget; House Sub. for SB 294

**House Sub. for SB 294** includes funding for claims against the state; FY 2012 supplemental expenditures (and FY 2013 supplemental expenditures for biennially budgeted agencies); FY 2013 appropriations for most state agencies; and FY 2012 and FY 2013 capital improvements for selected state agencies. Some highlights of the budget are included below.

### ***FY 2012***

For FY 2012, the Legislature approved a revised budget totaling \$14.751 billion, including \$6.126 billion from the State General Fund. The approved budget is an all funds increase of \$838.3 million, or 6.0 percent, above the amount approved by the 2011 Legislature. The revised budget is a State General Fund increase of \$70.9 million, or 1.2 percent, above the amount approved by the 2011 Legislature for FY 2012. The revised budget increases the Governor's recommended expenditures by \$5.2 million from all funding sources and by \$1.9 million from the State General Fund. The revised budget also includes an increase of 0.5 FTE positions over the number recommended by the Governor. In addition, the Legislature also included increased State General Fund receipts of \$31.0 million in FY 2012. The approved budget for FY 2012 includes the following:

- The addition of \$24.6 million, all from the State General Fund, in FY 2012 in the budget of the **Department of Education**, to maintain Base State Aid Per Pupil at \$3,780;
- The addition of \$1.5 million, all from the State Institutions Building Fund, in FY 2012 for necessary renovations at **Rainbow Mental Health Facility** to allow 14 closed beds to be opened;
- The addition of \$2.1 million, all from the State General Fund, at **Larned State Hospital**, to provide 30 new forensic beds, in lieu of the 30 new Sexual Predator Treatment Program beds recommended by the Governor;
- The addition of \$1.2 million, all from special revenue funds, in the budget of the **Kansas Commission on Veterans' Affairs** in FY 2012 to allow the agency to expend available federal Medicare and Medicaid funding for resident services at the Veterans' Home and the Soldiers' Home;
- The addition of \$500,000, all from the State General Fund, in FY 2012 in the budget of the **Judicial Branch** to partially offset declining revenues from docket fees;
- The deletion of \$400,000, all from the State General Fund, in FY 2012 in the budget of the **Department of Wildlife, Parks, and Tourism**. The Governor had recommended supplemental expenditures of \$1.2 million, all from the State General Fund, for state park operating expenditures;

- The addition of language to prevent the transfer of \$22.6 million from the State General Fund to the **Bioscience Authority** in FY 2012;
- The addition of \$906,667, including \$385,878 from the State General Fund, in FY 2012 in the budgets of the **Department of Social and Rehabilitation Services** and the **Department on Aging** to increase the Financial Management System reimbursement rate for service costs to payroll agents from \$115 to \$125;
- The addition of \$407,000, all from the State General Fund, in the budget of the **Department of Health and Environment** for the Early Detection Works program in FY 2012; and
- The 2012 Legislature also fully funded the spring 2012 **human services consensus caseload estimates** in the budgets of the Department of Social and Rehabilitation Services, Department on Aging, Department of Health and Environment, and the Juvenile Justice Authority. For FY 2012, all funds expenditures are increased by \$552,642, while State General Fund expenditures are decreased by \$4.9 million.

### **FY 2013**

The 2012 Legislature approved FY 2013 expenditures of \$14.303 billion, including \$6.171 billion from the State General Fund. The approved budget represents an all funds decrease of \$448.2 million, or 3.0 percent, below the FY 2012 revised amount, and a State General Fund increase of \$44.9 million, or 0.7 percent, above revised current year amount. A total of 38,842.7 FTE positions were approved for FY 2013, a decrease of 306.6 FTE positions from the revised current year approved number and 33.0 FTE positions above the Governor's amended recommendations. In addition, the approved budget includes increased State General Fund receipts of \$24.2 million for FY 2013. The FY 2013 approved budget includes the following:

- The addition of \$43.7 million, including \$40.0 million from the State General Fund, for FY 2013 in the budget of the **Department of Education**. The additions include \$40.0 million, all from the State General Fund, to increase Base State Aid Per Pupil by \$58, from \$3,780 to \$3,838; and \$3.7 million, all from the Children's Initiatives Fund, for the Parents as Teachers program (\$2.2 million), and the Kansas Preschool program (\$1.5 million).
- The Legislature approved changes to the Governor's recommendation for technical education funding, including the deletion of \$20.5 million, all from the State General Fund, for FY 2013 in the budget of the **State Board of Regents** for technical education tuition waivers (\$17.5 million) and technical education incentives (\$3.0 million). Instead, the Legislature recommended the addition of up to \$8.75 million for technical education tuition waivers and \$1.5 million for technical education incentives, both from new special revenue funds to be funded by transfers from severance tax revenues above the April 2012 consensus revenue estimates.
- The net addition of \$927,928, all from the State General Fund, for FY 2013 above the amount recommended by the Governor in the budget of the **Legislature**. The addition includes \$905,000 and 9.0 FTE positions for the legislative computer system enhancement and the addition of \$309,000 for legal and actuarial expenditures for the Kansas Public Employees Retirement System (KPERS) Study Commission. The

increases are partially offset by a proportional deletion in the Legislature's budget to help fund the legislative computer enhancement. The four other legislative branch agencies also were reduced by a total of \$166,428, all from the State General Fund, to help fund the legislative computer enhancement.

- The addition of \$650,000, including \$200,000 from the State General Fund, for FY 2013, in the budget of the **Office of the Governor**, to provide additional funding for domestic violence prevention grants (\$500,000) and child advocacy centers (\$150,000). The approved budget deletes \$200,000 all from the State General Fund, in the budget of the **Attorney General**, and consolidates all domestic violence and child advocacy center grant funding in the budget of the Office of the Governor. Under the approved budget, a total of \$4.3 million, including \$3.8 million from the State General Fund, is included for domestic violence prevention grants, and a total of \$983,731, including \$833,731 from the State General Fund, is included for child advocacy grants.
- The addition of \$800,000, all from the State Water Plan Fund, for FY 2013 to fund the Local Environmental Protection Program (LEPP) in the budget of the **Department of Health and Environment**.
- The addition of \$16.5 million, all from the Children's Initiatives Fund, for FY 2013. The addition includes \$7.6 million in the budget of the **Department of Children and Families** (formerly the Department of Social and Rehabilitation Services), including funding for a combined line item for the Early Childhood Block Grant and Smart Start (\$5.7 million); \$5.9 million in the budget of the **Department for Aging and Disability Services** (formerly the Department on Aging), including funding for the Family Centered System of Care (\$4.7 million); and \$3.7 million in the budget of the **Department of Education**, including \$2.2 million for the Parents as Teachers Program.
- The deletion of \$14.9 million, all from the special revenue funds, in the budget of the **Department of Revenue** for FY 2013, including \$6.8 million from the Division of Vehicles Modernization Fund, \$6.1 million from the Photo Fee Fund, and \$2.1 million from the VIPS/CAMA Fee Fund. The savings were recommended to be transferred to the State General Fund.
- The net addition of \$21.8 million, including \$9.6 million from the State General Fund, for FY 2013 in the budget of the **Department for Aging and Disability Services**, including these items: \$4.1 million, including \$1.8 million from the State General Fund, to fund approximately 97 persons on the Home and Community Based Services (HCBS) waiver for the developmentally disabled; \$4.1 million, including \$1.8 million from the State General Fund, to fund approximately 201 persons on the HCBS physically disabled waiver; \$5.0 million, all from the State General Fund, for mental health grants; \$1.8 million, all from the State General Fund, for reimbursement of non-Medicaid psychiatric inpatient screening; and \$5.9 million, from the Children's Initiatives Fund, discussed above.
- The addition of \$2.6 million, including \$2.3 million from the State General Fund, for FY 2013 in the budget of the **Department of Children and Families** to restore foster care rates to FY 2012 contracted rates.

- The addition of \$8.5 million, all from the State General Fund, for FY 2013, for **undermarket pay adjustments** to fund the fourth year of a five-year plan to bring certain job classifications substantially below market pay closer to market pay.
- The deletion of \$6.0 million, including \$4.6 million from the State General Fund, for two items regarding **longevity pay** for eligible state employees. The first adjustment reduces longevity from \$50 per year for each year of service to the statutory \$40 rate (a deletion of \$2.3 million, including \$1.0 million from the State General Fund). The second adjustment requires agencies, with the exception of the State Hospitals, to self-fund the State General Fund and appropriated funds (Children's Initiatives Fund, Economic Development Initiatives Fund and State Water Plan Fund) portions of the statutory \$40 longevity payment (a deletion of \$3.6 million, all from the State General Fund).
- The deletion of \$12.2 million, including \$10.0 million from the State General Fund, to suspend employer contributions to the KPERS Group Insurance Reserve Fund, or **Death and Disability Fund**, for a three-month period during FY 2013.
- The approved FY 2013 budget fully funds the spring 2012 **human services consensus caseload estimates** in the budgets of the Department of Children and Families, Department for Aging and Disability Services, Department of Health and Environment, and the Juvenile Justice Authority. For FY 2013, all funds expenditures are increased by \$100.0 million, while State General Fund expenditures are increased by \$43.8 million.

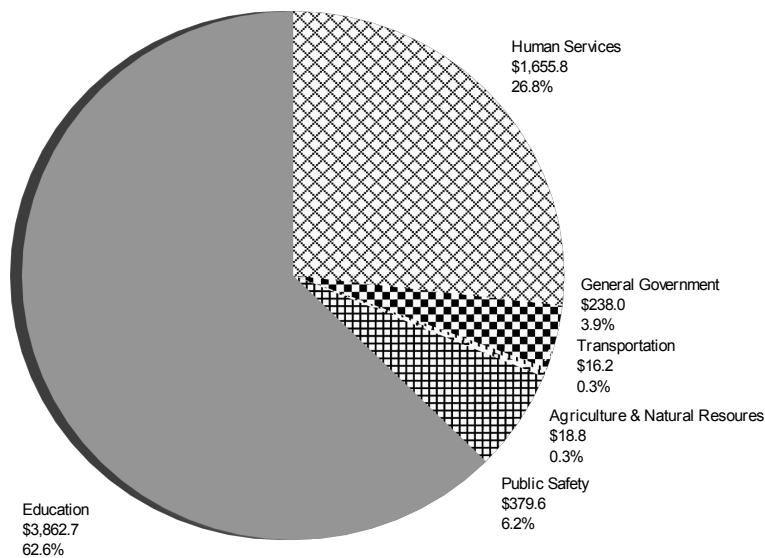
The status of the State General Fund, based on the approved budget, is reflected below:

| <b>State General Fund Profile – Approved Budget</b> |                   |                      |                      |
|-----------------------------------------------------|-------------------|----------------------|----------------------|
| <b>Dollars In Millions</b>                          |                   |                      |                      |
|                                                     | Actual<br>FY 2011 | Leg. App.<br>FY 2012 | Leg. App.<br>FY 2013 |
| Beginning Balance                                   | \$ (27.1)         | \$ 188.3             | \$ 466.2             |
| Receipts (April 2012 Consensus)                     | 5,882.1           | 6,374.5              | 6,414.2              |
| Adjustments in Governor's Rec.                      | 0.0               | (2.0)                | (39.4)               |
| Less Senate Sub. for HB 2117 Tax Package            | 0.0               | 0.0                  | (231.2)              |
| Legislative Adjustments                             | 0.0               | 31.0                 | 24.2                 |
| Adjusted Receipts                                   | \$ 5,882.1        | \$ 6,403.5           | \$ 6,167.8           |
| Total Available                                     | \$ 5,855.0        | \$ 6,591.8           | \$ 6,634.1           |
| Expenditures                                        | 5,666.6           | 6,125.7              | 6,170.6              |
| Ending Balance                                      | \$ 188.3          | \$ 466.2             | \$ 463.5             |
| Ending Balance as a % of Expenditures               | 3.3%              | 7.6%                 | 7.5%                 |
| Adjusted Receipts in Excess of Expend.              | \$ 215.5          | \$ 277.8             | \$ (2.8)             |
| Percent Change from Prior Year                      |                   |                      |                      |
| Adjusted Receipts                                   | 13.3%             | 8.9%                 | (3.7%)               |
| Expenditures                                        | 7.6%              | 8.1%                 | 0.7%                 |

The following pie chart reflects approved FY 2013 State General Fund expenditures by function of government. It does not reflect a net reduction of \$465,028 comprising the deletion of \$10.0 million in KPERS Death and Disability Payment reductions, the addition of \$1.0 million appropriated to the State Finance Council to be released to the Department of Health and Environment upon approval of the global managed care waiver requested of the Centers for Medicare and Medicaid as part of KanCare implementation, and the addition of \$8.5 million in undermarket pay adjustments.

**FY 2013 Approved State General Fund Budget by Function of Government  
As Approved by the 2013 Legislature  
In Millions**

Total: \$6,170.6



## STATE GOVERNMENT

### **Housing Loan Deposit Program; Not-For-Profit Adult Care Homes; House Sub. for SB 40**

**House Sub. for SB 40** adds not-for-profit adult care homes to the list of eligible dwellings that qualify to participate in the Housing Loan Deposit Program (Program). These homes are eligible for loans amortized over a 20-year period. In addition, the bill provides that loans for adult care homes shall not exceed 40.0 percent of the aggregate available for loans under the Program with the exception of assisted living, residential health care, or home plus facilities, which could not exceed 90.0 percent of the aggregate available for loans. It does not amend law regarding loans only to build new houses or rehabilitate existing houses, which provides for a maximum amortization of five years.

### **Legislative Pages—Remuneration; House Sub. for SB 118**

**House Sub. for SB 118** amends a section of law dealing with legislative page compensation and allows the Director of Legislative Administrative Services to pay legislative pages a remuneration having a value of not less than \$5 per day. Any remuneration having a value of more than \$5 will require Legislative Coordinating Council approval.

### **Kansas State Board of Technical Professions—Board Terms; SB 301**

**SB 301** staggers the terms of membership for specific positions on the Kansas State Board of Technical Professions to allow more orderly replacements when terms expire. The new initial terms beginning July 1, 2012, change as follows:

- One member licensed as both an engineer and as a land surveyor will serve a term of one year;
- One member from the general public will serve a term of one year;
- One member licensed as a geologist will serve a term of three years; and
- One member licensed as a land surveyor will serve a term of two years.

The terms of these members expire on June 30 in the last year of the member's reduced term of office. Upon reappointment, or appointment of new members, persons in those positions will serve a term of not more than four years. Members are prohibited from serving more than four consecutive terms.

### **Amusement Rides; SB 356**

**SB 356** exempts home-owned amusement rides from the provisions of the Kansas Amusement Ride Act, except the requirement that the owner of the home-owned amusement

rides must acquire and maintain a general insurance policy, and annually submit and make available proof of insurance to the Kansas Secretary of Labor (Secretary).

The Secretary is required to adopt rules and regulations for insurance purposes.

### **State Fire Marshal Qualifications; SB 387**

**SB 387** changes the State Fire Marshal's qualifications. The qualifications no longer require the State Fire Marshal to have knowledge of building construction, but require the individual to have no less than five-years' experience in fire prevention and inspection, safety inspection, or investigation, or any combination of experience.

### **Trailer Legislation Following 2011 Executive Reorganization Order No. 37; SB 417**

**SB 417** replaces various references in law to the former state agency Kansas, Inc., and its president with the Department of Commerce and the Secretary of Commerce, respectively. The bill also deletes outdated references to the Kansas Technology Enterprise Corporation.

### **State Bidding Procedures; Senate Sub. for HB 2157**

**Senate Sub. for HB 2157** implements changes concerning bidding procedures for passenger vehicles by state agencies and also public works construction projects bid on by governmental entities. The bill establishes the Competitive Bid Protection Act. When contracting for public works construction, governmental entities are prevented from requiring bidders, contractors, subcontractors, or material suppliers to enter into any kind of project labor agreement with a labor organization. Governmental entities are prohibited from discriminating based upon the presence or absence of a project labor agreement. Any agent responsible for procuring a contract directly between the governmental entity and contractor also is prohibited. The bill does not prohibit formation of voluntary project labor agreements. Contractors, design-builders, or construction managers can require subcontractors or material suppliers to enter into a collective bargaining agreement.

In addition, the bill requires any state agency purchasing a passenger motor vehicle to give any vehicle manufactured in Kansas that meets the exact specifications of the purchasing agency a three percent bid preference against any vehicle not manufactured in Kansas.

### **Geographic Information Systems Coordination: Kansas One Map Act; HB 2175**

**HB 2175** requires the implementation of an overall Kansas land and geographic resources program using a geographic information system. It creates the Kansas Geographic Information Systems Policy Board (Board) within the Office of Information Technology Services to coordinate and promote efficiency in geographic information systems used throughout Kansas. The Board will be a standing advisory committee to the Information Technology Executive Council. The Board will consist of 23 members, with 11 to be appointed by the Governor and the other 12 members statutorily defined officials or their designees. Board members will receive no compensation, subsistence allowance, mileage, or associated expenses from the state for their Board participation. The bill creates the Office of the State Geographic Information Systems (GIS) Officer to perform duties as specified in the legislation.

All state agencies are directed to cooperate with both the new board and state office. The bill gives the executive chief information technology officer the authority to adopt rules and regulations to implement the bill's provisions.

#### **Legislative Division of Post Audit—Fees for Statewide Audit; HB 2414**

**HB 2414** allows the Legislative Division of Post Audit to charge state agencies for their proportional share of costs associated with the Statewide Single Audit, the audit of the state's financial statements.

#### **Commission on Disability Concerns; Bidding Preferences for Certain Businesses Employing Individuals with Disabilities; HB 2453**

**HB 2453** updates statutory language for the Commission on Disability Concerns (Commission) to conform with 2011 Executive Reorganization Order No. 35 that moved the Commission from the Kansas Department of Commerce to the Governor's Office.

In addition, the bill establishes bidding preferences for certified businesses (defined by the bill to include any business which employs at least 20.0 percent of its employees with disabilities and meets other criteria), modifies state contract and purchasing laws, and enacts new law to require certain persons who are eligible for reinstatement to the Medicaid program to receive certain services without being placed on a waiting list for services.

Under the contract requirements established in the bill, the Kansas Director of Purchases and other state agencies will award bids to certified businesses as long as the bidder's total bid cost is not more than 10.0 percent higher than the lowest competitive bid. Further, the contract will be required to contain a promise by the certified business that the percentage of employees who are individuals with disabilities will be maintained throughout the contract term and also specify the certified business could not subcontract for goods or services in an aggregate amount of more than 25.0 percent of the total cost. The bill creates an exception to the Kansas Director of Purchases' authority to decide as to the lowest responsible bidder, including allowing bidders to deduct the cost of purchases from their bids for the purpose of determining the lowest possible bid, with the deduction not to exceed 10.0 percent of the original bid.

The bill requires the Secretary of Administration and the Secretary for Aging and Disability Services (Aging) to jointly adopt rules and regulations, as necessary, to effectuate the purpose of the contract provisions, including bids by certified businesses.

The bill establishes reporting requirements associated with the new contract provisions. On and after January 13, 2014, at the beginning of each regular session of the Legislature, the Secretary of Administration and the Secretary for Aging and Disability Services will be required to submit the following information to the House Social Services Budget Committee and the appropriate subcommittee of the Senate Ways and Means Committee:

- The number of "certified businesses" certified by the Department of Administration during the previous fiscal year;

- The number of certified businesses awarded contracts pursuant to the new contract provision established by the bill;
- The number of contracts awarded to certified businesses pursuant to the new contract provision established by the bill;
- The number of individuals with disabilities removed from, or reinstated to, home and community based services or other Medicaid program services during the previous calendar year as a result of employment with a certified business;
- The number of individuals employed by certified businesses during the previous fiscal year; and
- The number of individuals with disabilities employed by certified businesses during the previous fiscal year.

The bill also establishes definitions associated with the bidding requirements in the bill. Among the definitions, "certified business" means any business certified annually by the Department of Administration that is a sole proprietorship, partnership, association, or corporation domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that:

- Does business primarily in Kansas or substantially all of its production in Kansas;
- Employs at least 20.0 percent employees in Kansas who are individuals with disabilities;
- Offers to contribute at least 75.0 percent of the premium cost for individual health insurance coverage for each employee; and
- Does not employ individuals under a certificate issued by the United States Secretary of Labor under subsection (c) of 29 U.S.C. § 214.

The bill defines "individual with disabilities" or "individual with a disability" to mean any individual certified by the Kansas Department for Aging and Disability Services as having a physical or mental impairment which constitutes a substantial barrier to employment and who is:

- Receiving services, has received services, or is eligible to receive services under a home and community based services (HCBS) program;
- Working the minimum number of hours to receive health insurance;
- Employed by a charitable organization domiciled in the state of Kansas and exempt from federal income taxation pursuant to section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended; or

- An individual with a severe and persistent mental illness, as determined by a clinical or functional assessment approved by the Secretary for Aging and Disability Services.

### ***Reinstatement of HCBS or Medicaid Program Services to Certain Individuals***

The bill creates new law to clearly state there is a rebuttable presumption that an individual with a disability is eligible for reinstatement to the level of home and community based services or other Medicaid program services the individual was entitled to on the day preceding the day the individual stopped receiving HCBS or other Medicaid services if:

- Such individual had received home and community based services or other Medicaid program services pursuant to an application filed with the Kansas Department for Aging and Disability Services, and entitlement to receive or receipt of home and community based services or other Medicaid program services terminated due to full-time employment for a certified business, not medical recovery or any other reason; and
- The individual with a disability is currently eligible under a physical or mental impairment which was the basis for the finding of disability that gave rise to the entitlement for the services.

Upon reinstatement to the Medicaid program, the bill requires the individual receive services and not be required to wait to receive services. The Secretary for Aging and Disability Services is permitted to adopt rules and regulations, as necessary, to effectuate the purpose of the new provision in law.

Some portions of this bill take effect and will be in force on and after January 1, 2013, and other portions will be effect from and after its publication in the statute book.

### **State Building Advisory Commission Reporting Requirements; HB 2687**

**HB 2687** amends two statutes related to reporting requirements of the State Building Advisory Commission (Commission).

KSA 2011 Supp 75-3717b is amended to no longer require the Commission to report and make recommendations to the Division of the Budget, the Joint Committee on State Building Construction, and the Legislative Research Department on each capital improvement budget estimate submitted by state agencies that include project costs, the scheduling of funding for such costs, and other matters deemed appropriate by the Commission.

KSA 46-1702 is amended to conform with the changes made in the Commission reporting requirements by removing the requirement that the Joint Committee on State Building Construction study the Commission reports.

### **Appraisal of State Property Revisions; HB 2706**

**HB 2706** revises a statute concerning the appraisal of real property prior to the state's purchase or disposition. The bill requires only one disinterested appraiser for real property valued at \$200,000 or less, as determined by the county assessed valuation of such property. The Judicial Administrator will continue to appoint three disinterested appraisers to determine the market-value appraisal for real property valued over \$200,000, as determined by the county assessed valuation of such property.

The bill also adds an exemption to mandatory disclosure in a Kansas Open Records Act request for the appraisals requested during the disposal of state property.

### **Fee Increase for Abstracts of Title to Real Estate; HB 2743**

**HB 2743** authorizes the Abstracter's Board of Examiners to increase the annual fee for each person, firm, partnership, corporation, or association licensed to make, compile, and sell abstracts of title to real estate in Kansas, to an amount not to exceed \$75 for each year.

## TAXATION

### **Tax Reduction and Reform; Senate Sub. for HB 2117**

**Senate Sub. for HB 2117** implements a number of major changes in income taxes effective for tax year 2013; repeals a severance tax exemption; and restricts participation in the Homestead Property Tax Refund program.

#### ***Income Tax Provisions***

##### *Rate Reduction and Restructuring*

One major part of the bill collapses the current three-bracket structure for individual income taxes (3.5, 6.25, and 6.45 percent) into a two-bracket system using rates of 3.0 and 4.9 percent.

##### *Business Income Exemption*

The bill totally exempts certain non-wage business income that had been subject to individual income tax (income reported by LLC's, Subchapter-S Corporations, and sole proprietorships on lines 12, 17, and 18 of federal form 1040). Taxpayers availing themselves of this exemption are excluded from receiving another credit designed to eliminate the liability of certain resident individuals pursuant to KSA 2011 Supp. 79-32,266.

##### *Tax Credits*

Additional sections repeal tax credits previously allowed for individuals (but not to corporations) for food sales tax rebates; abandoned well plugging; adoption expenses; agritourism; alternative fuel equipment expenditures; assistive technology; child and dependent care expenses; child day care expenses; disabled access expenditures; environmental compliance expenditures; individual development account contributions; law enforcement training center contributions; small employer health benefit plan contributions; swine facility improvement expenditures; port authority contributions; small employer health benefit plan contributions; swine facility improvement expenditures; telecommunications property tax payments; venture capital contributions; and certain temporary assistance to family contributors.

##### *Standard Deduction*

Other language increases the standard deduction amount for single head-of-household filers from \$4,500 to \$9,000, and for married taxpayers filing jointly from \$6,000 to \$9,000.

### *Other Income Tax Provisions*

Additional provisions of the bill eliminate a subtraction modification for certain long-term care insurance expenditures and eliminate the ability of individuals to utilize the income tax deduction for expensing enacted in 2011.

### **Severance Tax Provisions**

The two-year new pool severance tax exemption is repealed relative to all oil production from any pool producing in excess of 50 barrels per day, provided the initial production occurs on and after July 1, 2012.

### **Homestead Program**

Beginning in tax year 2013, renters will no longer be eligible to participate in the Homestead Property Tax Refund program.

### **SGF Effects**

The bill is expected to have the following impact on SGF receipts (dollars in millions):

| <b>SGF Receipts</b> |               |                  |              |
|---------------------|---------------|------------------|--------------|
|                     | <u>Income</u> | <u>Severance</u> | <u>Total</u> |
| FY 2013             | \$ (249.2)    | \$ 18.0          | \$ (231.2)   |
| FY 2014             | (847.8)       | 45.0             | (802.8)      |
| FY 2015             | (884.3)       | 60.0             | (824.3)      |
| FY 2016             | (924.2)       | 70.0             | (854.2)      |
| FY 2017             | (967.9)       | 75.0             | (892.9)      |
| FY 2018             | (1,013.7)     | 80.0             | (933.7)      |
| 6-yr Total          | \$ (4,887.1)  | \$ 348.0         | \$ (4,539.1) |

### **Motor Fuel Tax—Long-Term Study; Sub. for HB 2455**

**Sub. for HB 2455** requires the Kansas Department of Transportation (KDOT) to meet with the public and interested stakeholders about the long-term feasibility of relying on the motor fuel tax as the primary method for funding the state's highway maintenance and construction program, and as a major contributor of state aid to local government transportation budgets.

KDOT is required to report its findings and policy recommendations to the Governor and the Legislature by January 1, 2014.

### **Property Tax Exemption—Military Housing; HB 2769**

**HB 2769** clarifies that, retroactive to tax year 2011, any and all housing developments and related improvements located on U.S. military installations and used exclusively or primarily by military personnel and their families are exempt from property taxation, notwithstanding the

fact that the property may have been developed pursuant to the military housing privatization initiative.

### **Boat Taxation—Constitutional Amendment; HCR 5017**

**HCR 5017** would, if adopted by voters at the November 2012 general election, amend the property tax classification section of the *Kansas Constitution* to authorize the Legislature, beginning in tax year 2013, to classify watercraft on a different basis from other property. (Such property currently is assessed as "all other" personal property at 30.0 percent of its fair market value.)

## **TRANSPORTATION AND MOTOR VEHICLES**

### **Weight Limits for Trash Trucks; SB 298**

**SB 298** amends the weight limitation for certain trucks – trucks specifically designed, equipped, and used exclusively for garbage, refuse, or solid waste disposal when loaded with garbage, refuse, or waste, and trucks (that are not truck tractors) mounted with a fertilizer spreader – to 60,000 pounds for trucks with three axles and to 40,000 pounds for trucks with two axles, regardless of spacing between axles. (Under general gross weight limits, a two-axle vehicle has a weight limit of 34,000 pounds to 40,000 pounds and a three-axle vehicle has a weight limit of 34,000 to 60,000 pounds, depending on the axle distances.)

### **Extend Time To Title and Register a Vehicle; New Specialty License Plates; Allow County Treasurers To Accept Payment for License Plate Royalties; SB 300**

**SB 300** extends the time to provide title to and to register a vehicle, authorizes two new specialized license plates, and allows a county treasurer to accept royalties to be paid to sponsoring organizations for use of their logos on certain specialized license plates.

#### ***Extend Time To Register a Purchased Vehicle***

The bill extends the time to provide title and to register a vehicle after it is purchased from 30 days to 60 days. Temporary registration permits issued by vehicle dealers or county treasurers will be valid for 60 days. The bill also extends deadlines from 30 days to 60 days for delivery and assignment of a vehicle's title.

#### ***New Ducks Unlimited and Masonic Lodge Specialized License Plates***

The bill authorizes Ducks Unlimited license plates and Masonic Lodge license plates for passenger vehicles and small trucks, to be issued on and after January 1, 2013. Anyone who wishes to receive a Ducks Unlimited or Masonic Lodge license plate will pay a royalty amount of at least \$25 but not more than \$100 to Ducks Unlimited or to the Grand Lodge of Ancient Free and Accepted Masons (Grand Lodge) for use of the organization's logo before receiving such a plate, in addition to other license plate fees. Ducks Unlimited and the Grand Lodge are required to pay the initial costs of developing the license plates.

#### ***County Treasurer Acceptance of Royalties for Certain Specialized License Plates***

As of January 1, 2013, the bill allows a county treasurer to accept royalties to be paid to sponsoring organizations for use of their logos on certain specialized license plates. The bill will allow this royalty payment option for Ducks Unlimited and Masonic Lodge license plates and amend statutes to make this type of change for these license plates (and benefiting this organization or fund):

- Any distinctive license plate issued after January 1, 2013, for which a royalty fee is to be paid;
- Educational institutions (including Kansas Board of Regents' institutions, any municipal university, certain not-for-profit independent institutions of higher education, any Kansas community college, and Haskell Indian Nations University) (paid to the institution's officially recognized alumni association or foundation);
- Children's Trust Fund (Family and Children Trust Account of the Family and Children Investment Fund);
- Kansas Foundation for Agriculture in the Classroom (Kansas Foundation for Agriculture in the Classroom);
- Shriners (Shrine Temple);
- Helping Schools (State Board of Education Helping Schools License Plate Program Fund);
- Breast Cancer Research and Outreach (University of Kansas Cancer Center);
- Support Kansas Arts (Kansas Arts Commission Special Gifts Fund);
- Boy Scouts of America (Boy Scouts of America); and
- I'm Pet Friendly (Kansas State University Veterinary Medical Center).

For the listed license plates already available and the new Ducks Unlimited and Masonic Lodge license plates, the bill allows the Director of Vehicles to transfer these license plates from a leased vehicle to a purchased vehicle and allows a county treasurer to accept a faxed emblem or logo use authorization statement.

The bill requires an applicant for one of these license plates to allow the Division of Vehicles to release certain motor vehicle record information (applicant's name, address, logo use royalty payment amount, plate number, school district, and vehicle type) to the organization to which the royalty payment is to be made and to the State Treasurer.

The bill creates these funds in the state treasury to receive royalty payments for use of emblems or logos:

- Educational Institutions Emblem Royalty Fund to receive royalties for educational institutions which are not state educational institutions (e.g., Washburn University) (fees for state educational institutions will be deposited in the state treasury to the credit of the appropriate account of the restricted fees fund of such state educational institution);
- Agriculture in the Classroom Royalty Fund;

- Shriner's Royalty Fund;
- Breast Cancer Research Royalty Fund; and
- Boy Scouts of America Royalty Fund.

The State Treasurer will credit royalty payments received for distinctive license plates issued after January 1, 2013, into a segregated royalty fund, with payments to be made to the entity benefiting from the plate's issuance.

The bill also removes or replaces outdated language and makes technical corrections in license plate statutes.

**Drivers' Licenses: Waiving CDL Skills Test If Certain Military Experience,  
Credit for Out-of-State Instruction Permit Experience; SB 334**

**SB 334** allows the Director of Vehicles, Kansas Department of Revenue, to waive the skills test for an applicant for a commercial driver's license (CDL) if that applicant provides evidence of certain military commercial vehicle driving experience. The bill requires the applicant's military driving experience to meet the requirements of 49 CFR 383.77. Those include a requirement that the applicant was operating a vehicle representative of the commercial motor vehicle the applicant expects to operate, for at least the two years immediately preceding discharge from the military, and a requirement that the applicant has not been convicted of any offense (such as driving under the influence of alcohol or a controlled substance) that would disqualify a civilian commercial driver. An applicant still will be required to pass the Kansas knowledge test for driving a commercial motor vehicle.

The bill also allows the Division of Vehicles, Kansas Department of Revenue, to issue a restricted license to someone who obtained an instructional permit from another state or the District of Columbia if the other state's requirements for an instructional permit are the same or greater than Kansas requirements. Kansas requires an applicant for a restricted license to have held an instructional permit for at least one year and complete at least 25 hours of adult-supervised driving.

**Urging Congress to Exempt Kansas from the Freeze on Truck Size; SR 1806**

**SR 1806** urges Congress to exempt Kansas from a federal freeze on vehicle size, to allow Kansas to respond to new technology and new vehicle size requirements. In federal code, 23 USC §127 sets weight limits on federal highways and prohibits a state from allowing longer combination vehicles than were allowed under state law in 1991; 49 USC §31112 prohibits a state from allowing vehicles longer than those allowed under state law as of 1991. Those federal laws contain specific exemptions from those limits for a few states, including an exemption for certain harvesting equipment in Nebraska. No amendments to those laws were included in transportation bills before Congress at the time of action by the Kansas Senate.

### **Frankfort Boys WWII Memorial Highway; HB 2273**

**HB 2273** designates a section of K-99 as the Frankfort Boys World War II Memorial Highway. The portion so designated is from the south city limits of Frankfort north to the junction with US-36. According to a statement included in an excerpt from the *Congressional Record* and attached to testimony, the Frankfort community lost more men in World War II than any other town of similar size; testimony placed the number at 37. The bill requires the Secretary of Transportation to place suitable signs to indicate the designation, after the Secretary has received sufficient moneys from gifts and donations to reimburse the cost of placing the signs and an additional 50 percent of the initial cost to defray future maintenance or replacement of the signs, a total of \$2,850. The bill amends a statute designating "The Road to Oz" to remove this portion of K-99 from that designation.

### **Robinson Memorial Highway Vietnam MIA; HB 2441**

**HB 2441** designates US-75 in Coffey County as the Floyd H. Robinson Memorial Highway Vietnam MIA. According to testimony, Sergeant Floyd H. Robinson of Burlington, then 20, was declared missing in action in Vietnam in 1969. The bill requires the Secretary of Transportation to place suitable signs to indicate the designation, after the Secretary has received sufficient moneys from gifts and donations to reimburse the cost of placing the signs and an additional 50 percent of the initial cost to defray future maintenance or replacement of the signs, a total of \$2,340. The bill modifies the designation of the Purple Heart/Combat Wounded Veterans Highway, which extends from the Nebraska to the Oklahoma state lines, to exclude this portion of highway.

### **Motorcycle License if the Applicant Has Department of Defense Training; HB 2459**

**HB 2459** exempts from state requirements for further written and driving testing an applicant for a Class M (motorcycle) driver's license who has completed motorcycle safety training in accordance with Department of Defense requirements.

### **David Mee Memorial Highway; HB 2509**

**HB 2509** designates a section of K-9 as the David Mee Memorial Highway. The portion so designated will be from the junction of K-9 with US-75 to the junction of K-9 with K-63 (in Nemaha and Jackson counties). This designation replaces the Purple Heart/Combat Wounded Veterans Highway designation on the portion of K-9 between US-75 and K-62. According to testimony, Mr. Mee served as a trooper with the Kansas Highway Patrol for 27 years, as the emergency manager in Nemaha County, and then as sheriff of Nemaha County before his death in 2005. The bill requires the Secretary of Transportation to receive \$2,730 from donations to cover costs of placing and maintaining the signs before the Department of Transportation installs any signs indicating the designations.

### **Commercial Vehicle Fees; HB 2557**

**HB 2557** replaces vehicle taxes on specified commercial vehicles with fees.

The bill requires an annual commercial vehicle fee starting January 1, 2014, on any truck or truck tractor registered at a gross weight of more than 10,000 pounds and operating as a commercial vehicle.

The bill defines "commercial vehicle" as a self-propelled or towed motor vehicle in commerce used to transport property or passengers when the vehicle has a gross weight or gross combination weight of at least 10,001 pounds, is designed or used to transport 15 or more passengers (including the driver), or is used to transport hazardous materials in a quantity requiring placarding. "Commercial vehicle" does not include a vehicle registered as a farm truck or truck tractor or a vehicle taxed as personal property.

### ***Fees***

The annual commercial vehicle fee will range from \$150 for a vehicle up to 12,000 pounds and seven years old or older, to \$400 for a truck registered at a gross weight of 60,000 pounds or more regardless of age. The fee is in addition to registration fees. Trucks registered with this fee will be eligible for apportioned registration.

### ***Fee Collection and Distribution***

For Kansas-based motor carriers, amounts collected by the county treasurers will be remitted or distributed as are current motor vehicle taxes; for non-Kansas-based motor carriers, amounts collected will be remitted to the State Treasurer and credited to the Special City and County Highway Fund.

The bill adds a fee of \$4 for each vehicle so registered. Of that amount, \$2 will be remitted to a Commercial Vehicle Administrative System Fund, created by the bill and to be used solely for Division of Vehicles functions related to commercial motor vehicles. The remaining \$2 will be retained by the registering county for use by the county treasurer, in the same fund used to receive other registration fees retained by the counties.

### ***Taxation***

The bill removes these commercial vehicles from vehicles which must be valued by the county appraiser and placed on the tax roll and from vehicles assessed and taxed as personal property.

The bill adds a sunset date of January 1, 2014, to requirements for the Director of Property Valuation to annually value and assess the over-the-road motor vehicles and rolling equipment of motor carriers. Sworn statements from motor carriers regarding licenses, the vehicles operated in Kansas, and the miles those vehicles were operated in Kansas will be required on or before May 15 in 2012 and 2013. The bill also places a sunset date of January 1, 2014, on requirements the Director of Property Valuation determine values and assessments on over-the-road motor vehicles based on the proportion of miles driven in Kansas and levy them for taxation.

The bill adds a sunset date of January 1, 2014, to requirements for the valuation of over-the-road motor vehicles at 30 percent of value.

The bill removes outdated language regarding taxation of certain vehicles owned by manufacturers and vehicle dealers.

### ***Registration***

The bill amends the definition of "fleet motor vehicle" for registration purposes.

License plates issued for these commercial vehicles will be permanent and not dated. The bill requires those plates to be distinctive and include the word "commercial."

License plates will not be transferable, but unused registration and commercial vehicle fees could be transferred to another commercial motor vehicle registered at the same or greater weight.

### ***Technical Amendments***

The bill makes various technical amendments, including to update a federal reference.

### **Decals for Antique Vehicle Model Year Tags; HB 2599**

**HB 2599** allows the owner of an antique vehicle displaying a model year license plate issued in 1976 or later to display an original decal for the year of the vehicle, as long as such decal is legible, or a replacement decal which displays the year of the vehicle. Such replacement decals will be available from county treasurers starting January 1, 2013.

Kansas law defines an antique vehicle as "any vehicle, including an antique military vehicle, more than 35 years old, propelled by a motor using petroleum fuel, steam or electricity or any combination thereof." Decals to indicate registration year were authorized for use beginning in 1976.

### **Barnes Brothers Memorial Highway; HB 2612**

**HB 2612** designates a portion of K-79 (from the junction of K-79 and K-16 to the junction of K-79 and County Road 254, in Jackson County) as the Barnes Brothers Memorial Highway. According to testimony, Virgil and Jesse Barnes, natives of Circleville, played major league baseball from 1919 to 1929 and from 1915 to 1927, respectively. Both were military veterans. In their subsequent careers, Virgil Barnes became a police officer and Jesse Barnes, a member of the Kansas Sports Hall of Fame, became an artist. The bill requires the Secretary of Transportation to receive \$2,850 from donations to cover costs of placing and maintaining the signs before the Department of Transportation installs any signs indicating the designations.

### **Nichols Fallen Veterans Memorial Interchange; HB 2614**

**HB 2614** designates the junction of I-70 and US-183, in Hays, as the CW2 Bryan J. Nichols Fallen Veterans Memorial Interchange. According to testimony, Chief Warrant Officer 2 Nichols, a helicopter pilot, was a native of Hays who died in Afghanistan in August 2011. He served in the U.S. Army Reserves. The bill requires the Secretary of Transportation to receive

\$13,740 from donations to cover costs of placing and maintaining the signs before the Department of Transportation installs any signs indicating the designations.

**Designating the Martin and Zutterman Bridges in Marshall County; HB 2757**

**HB 2757** names a bridge on US-77 in Marshall County as the SP4 Michael T. Martin Memorial Bridge and a bridge on US-36 in Marshall County as the SGT Joseph A. Zutterman Jr. Memorial Bridge. According to testimony, Specialist Martin and Sergeant Zutterman were killed in military service in Vietnam, and both were from the Marysville area. The bridges that would carry these memorial designations are near Marysville. The bill requires the Secretary of Transportation to receive \$5,760 from donations to cover costs of placing and maintaining the signs before the Department of Transportation installs any signs indicating the designations.

## **WILDLIFE, PARKS AND TOURISM**

### **Parks and Recreation Motor Vehicle Permits; HB 2729**

**HB 2729** allows the owner of a vehicle to purchase a nontransferable park and recreation motor vehicle permit during the vehicle registration process. Such permit costs \$15, plus a \$0.50 service fee, and is valid until the vehicle registration expires in one year.

The bill sets the annual park and recreation motor vehicle permit fee for state park admission at \$22.50 and the daily park and recreation motor vehicle permit fee for state park admission at \$3.50, both subject to change by rules and regulations.

In addition, the bill requires the applicant for the motor vehicle permit to consent to the Division of Motor Vehicles, Kansas Department of Revenue, sharing information including, but not limited to, the applicant's name, address, email address, and phone number with the Secretary of Wildlife, Parks and Tourism.

## **APPROPRIATION BILLS**

**House Sub. for SB 294** This bill contains appropriations for FY 2012 supplemental appropriations, FY 2013 operating expenditures, multi-year capital improvements for state agencies, and claims against the state.

## TECHNICAL BILLS

- SB 316** This bill ensures that existing statutes and fund names conform to the Kansas Department of Wildlife, Parks and Tourism's name changes and that the appropriate statutory authorities for programs are transferred to the agency.
- HB 2507** This bill repeals a statute in the Insurance Code of Kansas that related to a limit, per loan, on the coverage net of reinsurance or payment of indebtedness.
- HB 2605** This bill repeals a statute in the Kansas Pesticide Law that abolished the Pest Control Operators' Fee Fund and transferred all unencumbered moneys to the Pesticide Use Fee Fund.
- HB 2626** This bill repeals two statutes concerning fraudulent practices in selling grain, seed, hay, or coal.
- HB 2668** This bill repeals the statute concerning the recording of farm names.
- HB 2669** This bill repeals four statutes concerning the matron of a county jail.
- HB 2672** This bill repeals a statute that concerned lynching and subsequent vacating and reinstating of a sheriff for failing to perform certain duties.
- HB 2674** This bill amends one statute and repeals five statutes related to the Kansas Highway Patrol.
- HB 2683** This bill amends one statute and repeals several other statutes concerning the Director of Penal Institutions.
- HB 2703** This bill repeals statutes concerning the state central motor pool and branch motor pools, which no longer exist.
- HB 2792** This bill is a technical measure that reconciles conflicting statutes and corrects bill drafting errors that have been discovered in 2012 legislation.

## BILLS VETOED BY THE GOVERNOR

**House Sub. for SB 315** This bill would have amended several provisions in the State Banking Code, including provisions in the Kansas Money Transmitter Act to revise and update certain terms, establish an adjustable fee schedule, regulate unlicensed activity, update the acts subject to disciplinary action by the State Bank Commissioner (Commissioner), and authorize the fingerprinting and completion of a criminal background check for persons related to an application for a money transmitter license; to permit the Commissioner or State Banking Board to require fingerprinting and completion of a criminal background check for certain individuals related to filing of a notice for a proposed acquisition of a bank by a trust company, and application for a new trust company; and to allow the Commissioner to establish an equitable salary schedule for all unclassified positions (positions established by the bill) and allow the Commissioner to appoint certain positions in the unclassified service.

**SB 353** This bill would have amended the law governing the license expiration restoration time frame of an applicant or instructor from three years to two years by the Board of Barbering. The bill also would have codified two fees now in the Board's administrative rules and regulations, and currently charged by the Board for chair lease licenses and restoration of an expired chair lease license. Finally, the bill would have amended various statutes to strengthen the Board's ability to censure, limit, condition, suspend, revoke, or refuse to issue or renew a license.

**HB 2624** The bill would have changed the process for holding money in trust for individual counties in the Oil and Gas Valuation Depletion Trust Fund. (Under existing law, money credited to those trust accounts is held in the State Treasury until a county meets the statutory criteria for a distribution from its trust account.) While HB 2624 was vetoed, the provisions passed in HB 2597.

**House Sub. for SB 294** (Line Items) A portion of Sections 12(a) and 12 (b) would have allowed the Behavioral Sciences Regulatory Board to expend funds for leased office space in an amount not exceeding \$14.00 per square foot. This veto indicated that the Department of Administration should maintain oversight of leased office space and this provision would have provided an exception to central management of this function.

(Line Item) A portion of Section 84(c) would have appropriated \$800,000 to the Local Environmental Protection Program.

(Line Item) A portion of Section 42(a) would have appropriated \$50,000 in operating expenditures to the Department of Education for implementation of the 2011 Uniform Accounting Act related to school districts' reporting of expenditures to the Department of Education in a prescribed format.

(Line Items) Two provisions—Sections 75(h) and 75(i) would have removed a total of \$8,154,254 from two fee funds in the Department of Revenue and placed the funds in the State General Fund.

(Line Item) A portion of Section 88(a) would have appropriated \$484,337 for mentor teacher program grants in the Department of Education.

(Line Item) A portion of Section 114(c) would have appropriated \$40,000 from the State Water Plan Fund for the Water Resource Education Program in the Kansas Water Office.

(Line Item) Section 114(d) would have appropriated \$500,000 from the Expanded Lottery Act Revenues Fund for the Wichita Aquifer Recharge Project in the Kansas Water Office.

(Line Item) Section 113(c) would have appropriated \$25,000 from the Economic Development Initiatives Fund to the State Fair Board for enhanced marketing promotion.

(Line Item) Section 35(b) would have lapsed \$805,504 in the community-based services account from the FY 2012 appropriation. (Deals with the Financial Management System)

(Line Item) A portion of 35(l) would have appropriated \$91,429 for mental health and retardation services aid and assistance. (Deals with the Financial Management System)

(Line Item) A portion of 36(a) would have appropriated \$99,634 for Long Term Care—Medicaid Assistance—Home and Community Based Services Waiver for the Frail Elderly. (Deals with the Financial Management System)

(Line Item) Section 122 would have increased the financial management system for Medicaid and home and community based services reimbursement rate to \$125 per individual, per month (current rate is \$115) retroactive to November 1, 2011.

(Line Item) Section 119 would not have allowed a state agency to replace a state-owned car or truck unless the vehicle being replaced has an unadjusted odometer reading of 180,000 miles or more or required repairs estimated to cost more than an amount equal to 30 percent of the replacement value of a car or truck of the same class.

(Line Item) A portion of Section 156(d)(1) would have prescribed payments from the State Treasury to the Bioscience Authority on certain dates and in equal installments.

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