

# 2011 Summary of Legislation



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## INTRODUCTION

This publication includes summaries of the legislation enacted by the 2011 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 178.

During the 2011 Session, 659 bills were introduced: 248 in the Senate and 411 in the House. Of these 659 bills, 118 (18 percent) became law: 55 Senate bills and 63 House bills. Further, of the 118 bills becoming law, 109 (92.4 percent) were introduced by committees and 9 (7.6 percent) were introduced by individual legislators.

The Governor vetoed no bills but did veto seven line items. All vetoes were sustained.

A total of 541 bills will be carried over to the 2012 Session of the Legislature.

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## ABORTION

### Licensing Abortion Facilities

**House Sub. for SB 36** provides for the licensing and regulating of abortion clinics and other medical facilities by the Kansas Department of Health and Environment (KDHE). The Secretary of KDHE is required to adopt and enforce rules and regulations regarding medical facilities that perform abortions and to collect an initial fee of \$500 and subsequent annual fees of \$500 from each licensee. The Secretary of KDHE must determine the severity of violations and must assess the corresponding fines for those violations. Inspections of licensed facilities by KDHE are required twice per year.

The bill adds new definitions for two terms regarding facilities that must be licensed, including “elective abortion” and “medical emergency.” The bill also redefines certain statutory terms in regards to facilities that must be licensed, including “abortion” and “facility.”

“Elective abortion” means an abortion for any reason other than to prevent the death of the mother. “Medical emergency” means a condition that so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy. “Abortion” means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate a pregnancy. “Facility” means any clinic, hospital or ambulatory surgical center, in which any second or third trimester elective abortion or five or more first trimester elective abortions are performed in a month, excluding any abortions performed due to a medical emergency.

Any facility that performs any second or third trimester abortion, or five or more first trimester abortions within a month, must be licensed. Except in the case of a medical emergency, all abortions, when the gestational age of the unborn child is 22 weeks or more, must be performed in a licensed facility that is either a hospital or an ambulatory surgical center. All other abortions must be performed in a licensed facility, including a hospital, an ambulatory surgical center, or a clinic, except in the case of a medical emergency.

### Omnibus Abortion Amendments

**HB 2035** modifies the law regarding prohibitions on late-term and partial birth abortions; requires parental consent with certain exceptions for abortions involving minors; expands and establishes new abortion reporting requirements; and adds a civil cause of action in certain abortion cases. Other changes alter the terminology associated with abortion law, require new rules and regulations regarding partial birth abortions, and grant access by law enforcement to certain abortion reports if violations of the law are suspected.

The term “fetus” in the law is changed to “unborn child” and revised definitions of “viability,” “abortion” and “partial birth abortion” are included. A new definition of “human being” is added.

The bill enhances the reporting requirements regarding the medical diagnosis in general for all cases and, specifically, for those cases involving late-term abortions near or after viability and for those cases involving partial birth abortions. The criteria for who may obtain a partial birth abortion are redefined by deleting the reference to mental function of a pregnant woman.

A civil cause of action is created regarding late-term abortions, partial birth abortions, and parental consent. The Attorney General, district attorney, and county attorney are authorized to prosecute criminal offenses. Disciplinary action by the Board of Healing Arts continues to be an option regarding such violations.

The law requiring parental notice is deleted and a new requirement for parental consent is added regarding minors. Procedures for court-waiver of consent are established. The required informed consent information is modified by requiring the additional statement that the abortion will terminate the life of a whole, separate, unique living human being.

Reporting of sexual abuse is required; the Kansas Department of Health and Environment (KDHE) is required to include additional information in its reporting; and law enforcement officials are granted access to KDHE reports.

### **New Late-Term Abortion Restrictions**

**HB 2218** enacts new restrictions on certain late-term abortions. The bill adds a new section that lists the Legislature’s findings on the capacity of an unborn child to feel pain.

The bill defines a “pain-capable child” as an unborn child that has reached the gestational age of 22 weeks or more, and sets restrictions and requirements for physicians performing abortions in cases involving a pain-capable unborn child. Except under statutorily defined circumstances permitted for certain abortions, the bill establishes criminal severity levels for violations under the bill’s provisions that do not conform to the new requirements.

The bill also establishes the circumstances and procedures to be followed for exceptions that would allow abortions where a pain-capable child is present, including cases where specific medical conditions would lead the physician to believe the death of a pregnant woman might result, or there might be a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

The Secretary of Health and Environment is required to adopt rules and regulations to collect details about referrals, record keeping, and reporting requirements for physicians

performing such abortions. Medical care facilities are required to keep specific records about procedures associated with such cases involving pain-capable unborn children and to submit such data to the Kansas Department of Health and Environment.

The bill concludes, “Nothing in this act shall be construed to repeal any statute dealing with abortion, but shall be considered supplemental to such other statutes.”

## AGING

### **Adult Care Homes—Home Plus Resident Limit Increase**

**HB 2147** amends the “Home Plus” definition in prior law to increase from eight to twelve the number of individuals who may be cared for in a Home Plus facility. Adult care homes converting a portion of one wing of a facility to a Home Plus facility, which is separate from and contiguous with the adult care home, are allowed to have not less than a five-bed and not more than a twelve-bed home plus facility. Home Plus facilities providing care to more than eight individuals are required to adjust staffing personnel and resources to maintain the current level of nursing standards. In addition, personnel of any home plus facility who provide services for residents with dementia are required to take annual dementia care training.

## AGRICULTURE AND NATURAL RESOURCES

### **Transfer of Travel and Tourism Development Programs; Renaming the Kansas Department of Wildlife, Parks and Tourism; Appointment of Assistant Secretaries**

**Executive Reorganization Order (ERO) No. 36** transfers the powers, duties, and functions of the Division of Travel and Tourism Development within the Department of Commerce to the Kansas Department of Wildlife and Parks (KDWP) and renames the agency as the Kansas Department of Wildlife, Parks and Tourism.

On July 1, 2011, ERO 36:

- Transfers all powers, duties, and functions under KSA 74-5032 and 74-5032a, regarding the establishment, administration and purpose of the Division of Travel and Tourism Development and the appointment, authority and compensation of the Director of Travel and Tourism Development, to the KDWP;
- Renames the KDWP as the Kansas Department of Wildlife, Parks and Tourism, and renames the Secretary of Wildlife and Parks as the Secretary of Wildlife, Parks and Tourism;
- Establishes the Division of Tourism within the Kansas Department of Wildlife, Parks and Tourism, headed by the Director of Tourism, who will be appointed by the Secretary;
- Allows the Secretary to appoint an Assistant Secretary for Wildlife, Fisheries and Boating and an Assistant Secretary for Parks and Tourism and abolish the position of Assistant Secretary for Operations;
- Transfers the balances of all funds and any liabilities associated with the Division within the Department of Commerce to the Kansas Department of Wildlife, Parks and Tourism;
- Establishes that any reference to KDWP or the Secretary of Wildlife and Parks in statute, contracts, or other documents, including rules and regulations, orders, or directives by the Secretary, will mean Kansas Department of Wildlife, Parks and Tourism and Secretary of Wildlife, Parks and Tourism.

## **Transfer of the Agriculture Products Development Programs, the Kansas Animal Health Department, and the State Conservation Commission to the Kansas Department of Agriculture**

**Executive Reorganization Order (ERO) No. 40** transfers the powers, duties, and functions of the Agriculture Products Development Division within the Department of Commerce to the Kansas Department of Agriculture (KDA). In addition, ERO 40 also transfers the powers, duties, and functions of the Kansas Animal Health Department (KAHD), the Office of the Livestock Commissioner, the State Conservation Commission (SCC), and the Executive Director of the SCC to the KDA.

On July 1, 2011, ERO 40:

- Transfers the Agriculture Products Development Division within the Department of Commerce to the KDA and renames the Division as the Agriculture Marketing and Promotions Program;
- Transfers the KAHD and the Office of the Livestock Commissioner to the KDA and establish the Division of Animal Health within the KDA, with the Animal Health Commissioner as the chief administrative officer of the Division;
- Transfers the Kansas Animal Health Board and the Kansas Pet Animal Advisory Board from the KAHD to the KDA, continuing its existence, membership, duties, and powers;
- Transfers the SCC (the agency) and the Executive Director of the SCC to the KDA and establish the Division of Conservation within the KDA, with the Executive Director of Conservation as the chief administrative officer of the Division;
- Transfers the State Conservation Commission from the SCC to the KDA, continuing its existence, membership, duties, and powers;
- Transfers the balances of all funds and liabilities associated with any of the entities being transferred by ERO 40 to the KDA; and
- Establishes that any reference to the previous names of the entities being transferred by ERO 40 to the KDA will apply to the succeeding divisions within the KDA.

## **Granting of Easements on State Property for Construction and Maintenance of Conservation Projects**

**SB 122** authorizes the Director of the Kansas Water Office, after consultation with other agriculture and natural resources agencies, to negotiate and grant easements on state property for construction and maintenance of conservation projects with cooperating landowners for the expected life of the project. Conservation projects are defined as any project or activity that assists in restoring, protecting, rehabilitating, improving, sustaining, or maintaining the banks of the Arkansas, Kansas, or Missouri rivers from the effects of erosion, as determined by the Director of the Kansas Water Office. State property is defined as real property currently owned in full or in part by the state in the Arkansas, Kansas, or Missouri rivers in Kansas, in and along the bed of the river to the ordinary high water mark on the banks.

Notice of the easement will be given to the county or counties in which the easement is proposed and to any municipality or other governmental entity that holds a riparian interest in the river and may have an interest in the project or results of the project. Those persons receiving notice will have 30 days to provide comments on the proposed easement to the Director of the Kansas Water Office. In addition, if the proposed easement on state property is located on property owned or managed by any other state agency, the Director of the Kansas Water Office will provide notice of the proposed easement and project to the state agency. The state agency will then negotiate jointly the proposed easement with the Director of the Kansas Water Office. The Director of the Kansas Water Office will file a copy of all easements entered into with the Office of the Secretary of State and the Office of the Register of Deeds for the county or counties in which the easement is located.

The bill authorizes the Director of the Kansas Water Office to adopt rules and regulations to carry out the provisions of the bill.

## **Kansas Department of Wildlife and Parks—Cabin Fees and Land Purchases**

**SB 123** allows the Secretary of the Kansas Department of Wildlife and Parks (KDWP) to directly set fees for the use of cabins owned or operated by the KDWP. Prior law required the Secretary to set cabin fees through the administrative rules and regulations process. The bill exempts the setting of cabin fees from the Rules and Regulations Filing Act (KSA 77-415 through 77-437). The maximum fees for use of KDWP cabins cannot exceed \$250 per night; \$1,500 per week; and \$5,000 per month.

Additionally, the bill lowers the aggregate threshold amount that requires approval by act of the Legislature from 640 acres to 160 acres of land purchased by KDWP. The bill also removes the exception that allowed for a purchase of land without such legislative approval from a private individual if the purchase price is less than the appraised value of the land. Finally, the bill allows the State Finance Council to give approval of land purchases when the Legislature is not in session.

## **Lower Smoky Hill Water Supply Access Program; Water Rights Conservation Program; Multi-Year Flex Accounts; Arkansas River Gaging Fund**

**SB 124** would combine various provisions regarding water which are detailed below.

### **Lower Smoky Hill Water Supply Access Program**

The bill creates the Lower Smoky Hill Water Supply Access Program within the Kansas Water Office. The agency, with the approval of the Kansas Water Authority, has the authority to negotiate and enter into contracts for water supply access storage to be used for the purposes outlined in the bill. The agency also may designate all or any portion of the water held in Kanopolis Reservoir to water supply access storage to meet the needs of the Lower Smoky Hill Water Supply Access District.

The bill also creates the Lower Smoky Hill Water Supply Access District, the Lower Smoky Hill Water Supply Access Program, the Lower Smoky Hill Special Irrigation District, and the Lower Smoky Hill Water Supply Access Fund.

### ***Definitions***

Among the definitions which are established by the bill are the following:

- “Access water” means water stored in water supply access storage of a reservoir under a water reservation right and provided as supplemental water to eligible water right holders;
- “District” means the Lower Smoky Hill Water Supply Access District;
- “Eligible water right holder” means a person holding a right or permit to appropriate surface water from the program area for municipal, industrial, irrigation (limited to the Lower Smoky Hill River Special Irrigation District), or recreational purposes;
- “Landowner” means a person who is the record owner of any real estate within the boundaries of the Access District or who has an interest as a contract purchaser of 40 or more contiguous acres in the district not within the corporate limits of any municipality, excluding owners of oil leases, gas leases, mineral rights, easements, and mortgages;
- “Program” means the Lower Smoky Hill Water Supply Access Program;

- “Program area” means the area of the Smoky Hill River below the Kanopolis Reservoir Dam to the confluence of the Smoky Hill and Saline rivers;
- “Special Irrigation District” means the Lower Smoky Hill Special Irrigation District; and
- “Water supply access storage” means water held by the Kansas Water Office in Kanopolis Reservoir under contract with the U.S. Army Corps of Engineers and designated by the Kansas Water Office as water supply access storage for the purposes of the Lower Smoky Hill Water Supply Access Program.

### ***Lower Smoky Hill Water Supply Access Fund***

The bill creates the Lower Smoky Hill Water Supply Access Fund within the State Treasury, which will be administered by the Kansas Water Office. All expenditures from the Fund will be required to be used for purposes of the Lower Smoky Hill Water Supply Access Program and made in accordance with appropriations acts.

### ***Lower Smoky Hill Water Supply Access District***

The bill creates the Lower Smoky Hill Water Supply Access District and authorizes the establishment of an incorporating governing body. Prospective members of the Access District may join if they apply to the Kansas Water Office. Prospective members may be able to join if they apply for water supply access storage and currently have, or will apply for, a water right which makes them eligible for membership under this act. The Director of the Kansas Water Office, in consultation with the Chief Engineer, will approve prospective members under certain conditions.

The Access District will have authority to impose charges against members of the Access District to pay the Kansas Water Office the full annual amortized cost incurred for the operation, administration, and enforcement of the program. In addition, the Access District will have authority to impose additional charges for repayment of bonds used for certain projects or to finance the purchase of water storage in Kanopolis Reservoir and to cover district operating costs.

All moneys will be remitted to the Kansas Water Office for deposit in the Lower Smoky Hill Water Supply Access Fund.

The bill authorizes the Director of the Kansas Water Office to request releases of water supply access water by the federal government from the Kanopolis Reservoir and would communicate to the Chief Engineer the date and quantity of requests for releases.

Each member of the Access District will adopt conservation plans and practices, which must be consistent with the guidelines maintained by the Kansas Water Office.

If the Access District is not formed by December 31, 2020, the provisions of the act that pertain to the Access District will expire.

### ***Lower Smoky Hill Special Irrigation District***

The bill authorizes the creation of the Lower Smoky Hill Special Irrigation District for the purpose of participating in the Lower Smoky Hill Water Supply Access District. The Special Irrigation District will be a single member of the Lower Smoky Hill Water Supply Access District.

The Special Irrigation District will be formed upon petition by eligible irrigation water right holders to the Director of the Kansas Water Office. All members of the Special Irrigation District will be able to use water supply access storage under the rules and by-laws of the Lower Smoky Hill Water Supply Access District and the Special Irrigation District.

The bill creates a governing board of the Special Irrigation District. The governing board will have the authority to purchase, allocate, determine, and charge fees and assessments for, and allow the use of, water supply access storage; contract for property; contract with employees and consultants; and buy, sell, lease, rent, and purchase water supply access storage.

In addition, the bill authorizes the governing board of the Special Irrigation District to designate at least one representative to serve as a member of the Lower Smoky Hill Water Supply Access District Board of Directors; provides for a fee structure sufficient to pay for water supply access storage and any additional costs as determined by the Special Irrigation District and set a fee schedule for all members of the Special Irrigation District; and creates an agreement to be entered into with each person who desires to become a member of the Special Irrigation District.

If the Special Irrigation District is not formed by December 31, 2020, the provisions of the act that pertain to the Special Irrigation District will expire.

### ***Rules and Regulations***

The bill authorizes the Director of the Kansas Water Office and the Chief Engineer to adopt any rules and regulations necessary to carry out the purposes and procedures of the act. In addition, the bill directs the Director and the Chief Engineer to consider the advice of the Kansas Water Authority and stakeholders in the program area when preparing any

rules and regulations. The bill also authorizes the Kansas Water Office to adopt rules and regulations to implement the Lower Smoky Hill Water Supply Access Program.

### **Water Rights Conservation Program**

The bill establishes the Water Rights Conservation Program, which will be administered by the Chief Engineer of the Division of Water Resources within the Kansas Department of Agriculture.

The Program allows an eligible water right in good standing to be enrolled in the Program, with the approval of the Chief Engineer, for a period not exceeding ten years. The water right may be re-enrolled within two years of the expiration date of the previous enrollment period, subject to approval by the Chief Engineer.

Each application for enrollment and re-enrollment in the Program requires the payment of a non-refundable fee, which cannot exceed \$300. The fees collected from the application enrollments will be deposited in the Kansas Department of Agriculture's existing Water Appropriation Certification Fund.

In addition, the bill amends the law regarding abandonment of water rights. Enrollment in the Program and being continually in compliance with the Program will be considered as having due and sufficient cause for non-use of a water right and the water right will not be considered abandoned under state law.

The Chief Engineer will have the authority to adopt rules and regulations to effectuate and administer the Program.

### **Multi-Year Flex Accounts**

The bill amends a section of water appropriations law dealing with multi-year flex accounts. Specifically, the bill modifies the years of data to be used to calculate the "base average usage" from 1992 through 2002 to 2000 through 2009. In addition, the bill stipulates that unless the term permit issued by the Division of Water Resources for participation in the multi-year flex account program is issued pursuant to an application filed before November 1 of the year prior to the first year of participation, then the quantity of water used during the year of application for the term permit is deducted from the amount of water deposited in the account authorized by the term permit.

### **Arkansas River Gaging Fund**

The bill establishes the Arkansas River Gaging Fund in the State Treasury. The Fund will be administered by the Secretary of Agriculture and the first expenditures from the Fund will be used for the operation and maintenance of the gages along the Arkansas River to

manage the River under the Arkansas River Compact. After moneys are expended for the operation and maintenance of the gages, the bill then authorizes up to \$20,000 in a fiscal year to be expended for the purposes of livestock market reporting. If there continues to be moneys available in the Fund, then up to \$5,000 in any fiscal year may be expended for the purpose of funding the bluestem pasture report.

The bill requires moneys received from royalties on the state's oil and gas leases in Hamilton, Kearny, Finney, Gray, and Ford counties to be credited to the Fund. Moneys received from royalties on lands under the control of the Secretary of Wildlife and Parks, as provided in KSA 32-854, continues to be credited to either the Wildlife Fee Fund or the Park Fee Fund, as determined by the Secretary, and will not be credited to the Fund.

In addition, when the Fund attains a balance of \$75,000 in any fiscal year, the Fund will no longer receive royalties from the state's oil and gas leases in the five counties mentioned in the bill. Instead, the royalties will be credited to the State General Fund for the remainder of the fiscal year.

### **Concealed Carry While Lawfully Hunting; Suppression Devices**

**SB 152** permits a person with a concealed carry license to carry a concealed handgun while lawfully hunting, fishing, or furharvesting. In addition, the bill permits a person with a legally acquired sound suppression device to use the device while lawfully hunting, fishing, or furharvesting.

### **National Bio and Agro Defense Facility and University of Kansas Engineering School Bonding**

**House Sub. for SB 154** replaces the Kansas Bioscience Authority with the Kansas Department of Administration in KSA 2010 Supp. 74-8963 which provides authority to issue revenue bonds and to make expenditures from the proceeds of the bonds for the purpose of land acquisition, site preparation, fencing, central utility plant facility construction and improvements in anticipation of the construction of the National Bio and Agro Defense Facility (NBAF) at Kansas State University. The bill predicates issuance of the bonds by the Department of Administration on approval by the State Finance Council.

The bill also adds language approving \$65.0 million in bonding authority for the University of Kansas for the School of Engineering Project Phase Two, with debt service to be paid from special revenue funds of the university.

### **Pesticide Licenses**

**SB 186** allows the Secretary of Agriculture discretion in suspending a pesticide business license without a hearing until compliance is reached, if a pesticide business

does not employ one or more commercial applicators that are certified in each type of commercial pesticide application the pesticide business uses. Prior law stated the Secretary of Agriculture must suspend the license if the pesticide business was not in compliance with the law.

### **Solid Waste Permits**

**SB 188** expands the Kansas Department of Health and Environment's authority to approve the disposal of the demolition waste of buildings or structures at, adjacent to, or near the site of the building or structure without requiring a solid waste permit. The bill also adds additional evaluation criteria that the Secretary of Health and Environment must consider when determining whether to approve a request for off-site disposal of demolition waste. The additional criteria to consider would include public safety concerns, proposed plans to redevelop the demolition site, and the disposal capacity of any nearby permitted landfills.

### **Groundwater Management Districts; Stream Obstructions**

**House Sub. for SB 214** changes the existing definition of "person" for the purposes of the Groundwater Management District Act to mean any natural person, public or private corporation, municipality, or any other legal commercial entity. In addition, the term "eligible voter" is modified to reflect the new definition of "person," and the bill clarifies that each eligible voter shall be entitled to cast only one vote per eligible voter. The former definition of "person" or "eligible voter" did not include the term "or any other legal commercial entity."

Further, the bill modifies the section of law which requires prior written consent or permit of the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture. Specifically, the bill provides that the prior written consent or permit does not apply to a water obstruction that meets the following:

- The water obstruction is not a dam as defined by law;
- The water obstruction is not located within an incorporated area;
- Every part of the water obstruction is located more than 300 feet from any property boundary; and
- The watershed area above the water obstruction is 640 acres or less.

In addition, if the water obstruction is not 300 feet or more from any property boundary, the water obstruction may be exempted from the permitting requirements if the Chief

Engineer determines that the water obstruction has minimal impact upon safety and property based on a review of information provided, including:

- An aerial photo or topographic map depicting the location of the proposed project; and
- The principal dimension of the project including the height above the streambed.

Regardless of whether a water obstruction meets the requirements of being exempt from the permitting requirements, the bill provides authority to the Chief Engineer to require a permit for any water obstruction if it is determined it is necessary for the protection of life or property.

### **Abolishing the Liquefied Petroleum Gas Advisory Board**

**SB 215** abolishes the Liquefied Petroleum Gas Advisory Board on July 1, 2011, and repeals KSA 55-1811, which is the statute that establishes the Board and provides for the Board's members and their terms of office.

### **Support for National Bio and Agro-Defense Facility Funding**

**SCR 1605** urges the United States Congress to support the President's budget request of \$150 million to ensure the timely construction and operations of the National Bio and Agro-Defense Facility (NBAF) to be located in Manhattan. The resolution encourages the Department of Homeland Security and the General Services Administration to move quickly to sell Plum Island and then direct the proceeds to be used to help fund the NBAF.

The resolution also urges the construction and operations of the NBAF be accelerated to eliminate the capability gap outlined in a 2004 report by the Department of Homeland Security and that the construction of the facility provide the research, testing, and evaluation necessary to secure the nation's food supply and agricultural economy.

### **Extension of the Agricultural Ethyl Alcohol Producer Incentive Fund**

**HB 2122** makes several changes to the Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund (Incentive Fund). The bill extends the sunset date for the Incentive Fund from July 1, 2011, to July 1, 2018; reduces the maximum incentive rate for all producers from \$0.075 per gallon to \$0.035 per gallon; allows any producer of agricultural ethyl alcohol (ethanol) who begins production on or after July 1, 2001, but prior to July 1, 2012, to receive \$0.035 per gallon of ethanol sold, if the producer has sold at least 5.0 million gallons; allows any producer of cellulosic alcohol who begins production on or

after July 1, 2012, to receive \$0.035 per gallon of ethanol sold, if the producer has sold at least 5.0 million gallons. This last provision does not apply to producers who commence alcohol production from grain. On June 30 of each fiscal year, the bill requires transfer of any unencumbered balance in the Incentive Fund to the Motor Vehicle Fuel Tax Refund Fund.

### **Moneys Recovered from Water Litigation; Funding for Local Health Departments**

**Senate Sub. for HB 2133** makes two statutory changes.

First, the bill amends prior law which directed how water litigation moneys recovered by Kansas from Nebraska and Colorado through disputes under the Arkansas River Compact and the Republican River Compact were deposited in the State Treasury and how the moneys were spent on various projects.

According to prior law, moneys received from Colorado under the Arkansas River Compact were deposited in the State Treasury differently than moneys received from Nebraska and Colorado under the Republican River Compact. The bill amends prior law to treat the depositing of moneys from both states under both compacts in the same way.

The bill adds language that all moneys received from either Nebraska or Colorado under any litigation arising under the Arkansas River Compact or the Republican River Compact is to be distributed as follows:

- An amount equal to the total of five percent of the aggregate moneys received from Nebraska or Colorado as a result of litigation, plus the amount equal to the litigation expenses, certified by the Attorney General, incurred by Kansas defending its rights under each Compact will be deposited in the Interstate Water Litigation Fund; and
- After the initial transfer to the Interstate Water Litigation Fund, one-third of all remaining moneys recovered from Nebraska or Colorado will be transferred to the State Water Plan Fund and the remaining two-thirds will be transferred to the Arkansas River Water Conservation Projects Fund, the Republican River Water Conservation Projects Nebraska Moneys Fund, or the Republican River Water Conservation Projects Colorado Moneys Fund.

All moneys transferred to the State Water Plan Fund will be used for water conservation projects, with priority given to those projects which are designed to enhance directly the ability of the State to remain in compliance with the various compacts.

In addition, the bill renames the Water Conservation Projects Fund as the Arkansas River Water Conservation Projects Fund. The bill clarifies prior law to state for what purposes the moneys transferred to the Arkansas River Water Conservation Projects Fund can be spent.

The bill removes the transfer of moneys under the Republican River Compact from the Interstate Water Litigation Fund to the Interstate Water Litigation Reserve Account of the State General Fund and the bill eliminates the \$20 million cap on the account. In addition, the bill eliminates language that references litigation filed by Kansas in 1985 and a sunset provision that expired in June 30, 2001.

The second change made by the bill addresses the way reductions in tax revenue allotted for local public health departments are handled. Prior law required counties to match dollar for dollar state financial assistance to local health departments. When local tax revenue allotted for local health departments falls below the previous fiscal year amount, prior law required that the amount of state financial assistance for these departments for the current fiscal year be reduced by an amount equal to the dollar amount of the reduction in local tax revenue. The bill amends the law so that the reduction would be a percentage equal to the percentage of the local tax revenue allotment reduction rather than a dollar amount.

### **Noncommercial Aviation Activities Added to Definition of Recreational Purpose**

**HB 2184** amends the definition of “recreational purpose” in a definitional section of law dealing with the liability of landowners who choose to open up their private property to recreational activities. The modification to the law adds “noncommercial aviation activities” to the definition of “recreational purpose.”

### **Weights and Measures—Aggregate Products**

**HB 2205** amends a section in the weights and measures laws to delete the time limit on a provision which allows mechanical vehicle scales used solely to sell aggregate products to have a minimum tolerance of +/- 100 pounds, thus making the exception permanent.

### **Kansas Plant Pest Act**

**Sub. for HB 2271** amends various provisions of the Kansas Plant Pest Act and clarifies authority given to the Secretary of Agriculture or the Secretary’s designee. Specifically, the bill:

- Creates a separate definition of the term “plant products”;

- Clarifies that the Secretary has the authority to enter any property, other than a private dwelling, in order to inspect, monitor, place and inspect monitoring equipment, and obtain samples;
- Changes probable cause to reasonable suspicion as the criteria to allow the Secretary to stop and inspect any conveyance when there is a belief the contents contain or carry any plant pest;
- Allows the Secretary to apply to any court of competent jurisdiction for an order to permit access to any property if access is denied;
- Allows the Secretary to treat or dispose of plant pests if the person in possession of the plant pests fails to comply with an order to do so;
- Permits the assessment of reasonable costs of treatment and disposal of plant pests against live plant dealers when the Secretary incurs these types of costs;
- Allows any diagnostic and identification service fees to be assessed and established by rules and regulations of the Secretary;
- Eliminates vehicles from which live plants are offered for sale from the license requirements;
- Increases the maximum cap on the application fee for a live plant dealer license from \$60 to \$80;
- Exempts live plant dealers who import or export plants into or from the state who have annual gross receipts of \$10,000 or less from license requirements (a change from requiring a license but no payment of fees for these dealers);
- Clarifies that the Secretary may deny an application or refuse to renew, revoke, suspend, or modify the provisions of any license, permit, or certificate issued under the Plant Pest Act (the specific conditions for this type of action are outlined in the proposed changes to the Act);
- Clarifies that live plants being shipped into or within this state have proper documentation;
- Makes each day a criminal violation of the Act occurs or continues a separate violation;

- Eliminates the provision that establishes a maximum amount (\$15,000) that may be collected in the Plant Pest Emergency Response Fund;
- Permits district courts to issue orders and have jurisdiction over violations of the Act;
- Raises the upper civil penalty limitation for violation of the Act or any rules and regulations from \$1,000 to \$2,000;
- Designates the Entomology Fee Fund as the Plant Protection Fee Fund;
- Eliminates a provision that permits each day of a continuing violation of the Plant Pest Act to be deemed a separate civil violation; and
- Clarifies and corrects a number of technical issues.

### **Lodging Establishment Licensure and Inspection**

**HB 2282** changes the law regarding the licensure and inspection of lodging establishments. The bill consolidates the Food Service Inspection Reimbursement Fund and the Food Inspection Fee Fund into the Food Safety Fee Fund, as well as establishes the Lodging Fee Fund, with both funds being administered by the Food Safety and Lodging program in the Kansas Department of Agriculture. Inspection of lodging establishments will occur upon the application for a new license or the filing of a customer complaint with the Kansas Department of Agriculture. The bill raises the rates on license and application fees and establishes new maximum fee levels as follows:

- Duplicate license fees increase from \$3 to \$5;
- Maximum application fees increase from \$100 to \$200; and
- The license fee for an establishment with more than ten sleeping rooms will be \$40 and increase by \$10 for every ten additional sleeping rooms. Prior law established the license fee for establishments with ten or more sleeping rooms at \$35 and an additional \$5 for each additional ten sleeping rooms, with no maximum fee.

### **U.S. Army Corps of Engineers—Conservation Easements**

**Sub. for HR 6009** expresses support for the U.S. Army Corps of Engineers (the Corps) accepting conservation easement language for the “Life of the Project” and not for perpetuity. The resolution states conservation easements are needed to protect

mitigation areas resulting from the construction of watershed district flood retarding dams that require constant maintenance and management for an extended period of time. “Life of the Project” is defined to include the period of time during which the dam continues to function, and for all practical purposes equates to perpetuity as described by the Corps. The resolution further states it is not necessary for easement language to include perpetuity as the required term of the easement.

## CHILDREN'S ISSUES

### **Kansas Code for Care of Children; Kansas Juvenile Justice Code; High School Diplomas; Interested Party Status for Grandparents; Juvenile Jury Trials**

**House Sub. for SB 23** adds language to the Revised Kansas Code for Care of Children and the Revised Kansas Juvenile Justice Code requiring the board of education of a school district to award a high school diploma to any person requesting a diploma if the person is at least 17 years of age, is enrolled or resides in such school district, is or has been a child in the custody of the Department of Social and Rehabilitation Services or Juvenile Justice Authority after turning 14 years of age, and has achieved the minimum high school graduation requirements adopted by the State Board of Education.

The bill further amends the Revised Kansas Code for Care of Children to automatically make a grandparent an interested party in a child in need of care proceeding.

Finally, the bill establishes a statutory right to jury trial for juvenile offenders and provides a jury trial procedure within the Revised Kansas Juvenile Justice Code. The procedural provisions are borrowed from the statutes governing adult jury trials, with some modifications.

The principal differences from the adult jury trial provisions are:

- A juvenile must request a jury trial in every case, within 30 days from the entry of a plea of not guilty. In adult felony cases, trial by jury is automatic unless waived.
- A juvenile does not have the right to personally participate in *voir dire*. Adult defendants have this right.

### **Kansas Code for Care of Children; Kansas Juvenile Justice Code**

**SB 38** makes technical amendments to several statutes to clarify language relating to the priority of orders issued under the Revised Kansas Code for Care of Children and the Revised Kansas Juvenile Justice Code. These amendments remove the words “custody,” “residency,” “parenting time,” and other references to specific orders so that the statutes instead refer to orders generally.

The bill also amends KSA 38-2262 to remove limitations on the topics on which a child may address the court in a proceeding under the Revised Kansas Code for Care of

Children. The bill removes a requirement in the same statute that the child be “of sound intellect.”

### **Homeless Parents**

**HB 2105** prohibits a court from ordering that a child be removed from the parents' custody solely because the parent is homeless.

## COMMERCE AND LABOR

### Unemployment Insurance

**SB 77** revises provisions of the employment security laws, commonly referred to as Unemployment Insurance (UI), pertaining to loan interest payments, the taxable wage base, an extension of tax rate caps on positive balance employers, the number of rate groups for negative balance employers, and benefits.

The bill authorizes the creation of the Employment Security Interest Assessment Fund which pays interest and principal owed to the U.S. Department of Labor for advances received by the Kansas Employment Security Trust Fund. In future years, the Secretary of Labor may adjust the amount of the surcharge necessary to pay the interest. The portion of funds that pays the interest is not included in future reserve ratio calculations for the negative account employers. However, that portion applied to principal payments is used in future reserve ratio calculations. After there are sufficient funds to pay all of the interest to the federal government, any excess money in the Interest Assessment Fund will be transferred to the Employment Security Trust Fund.

In 2010, the Legislature enacted HB 2676 which lowers the contribution rates that are charged to positive balance employers, for 2010 and 2011, who are in rate groups 1 through 32 to the original 2010 tax rate contribution table. Employers in rate groups 33 through 51 are capped at the maximum contribution rate of 5.4 percent. Employers have ninety days past the due date to file their contributions without being charged interest for the first three quarters in each of the two years. The bill extends the tax rate caps for three more years, from 2012 to the end of 2014. However, the bill does not extend the ninety-day extension to file contributions.

The bill increases the number of reserve ratio groups for negative balance employers from ten to twenty. The surcharge rate applied to negative balance employers increases from 2.0 percent to 4.0 percent. For those employers in the top ten negative reserve ratio groups, there is a temporary 0.1 percent surcharge increase for 2012, 2013, and 2014. Starting in calendar year 2012, negative balance employers with a negative reserve ratio of 20.0 percent or greater will have a surcharge rate that ranges from 2.2 percent to 4.0 percent. The additional surcharge revenue is deposited in the Employment Security Interest Assessment Fund.

The bill repeals the provision that allows an unemployed individual to receive compensation for the waiting period of one week. The bill also modifies the so-called “trailing spouse” provision so that it applies only to the spouses of personnel in the U.S. armed forces or military reserves. Under previous law, a person could receive UI benefits

if that person left a job because the person's spouse had to transfer to another location for employment.

The Pooled Money Investment Board (PMIB) may make long term loans to the Department of Labor in order to fund debt obligations owed to the federal government. The interest rate for a PMIB loan may not exceed 2.0 percent. The loan period cannot exceed three years unless the PMIB and the Secretary of Labor agree to the extension.

As a means to continue the federal government's funding for administrative costs, the bill revises the definition of "extended benefit period" to include a three-year average unemployment rate instead of a two-year average. The remaining provisions of the bill insert references of "interest assessments" in provisions relating to the collection of payments, penalties and interest, liens, seizures, and refunds.

The bill grants an unemployed individual who receives UI benefits the discretion to have state income tax withheld from the payments. State law currently allows an unemployed individual to have federal income tax withheld.

## Regulated Sports

**HB 2125** revises the Kansas Professional Regulated Sports Act and the powers of the Athletic Commission.

The bill authorizes the Athletic Commission to impose a civil penalty limited to a maximum of \$10,000 per day per violation. The bill outlines procedures for the imposition of the penalty and an appeals process, including appeal to district court if necessary. Penalty funds are to be deposited into the Athletic Fee Fund.

The bill revises certain definitions and creates new ones. In the definitions for "professional full-contact karate," "professional kickboxing," "mixed martial arts," and "professional wrestling," the bill deletes the requirement that a competition would have to take place in an enclosed ring. The terms dealing with karate and mixed martial arts are revised further by excluding competitions that include weapons, and the contestants may compete for prizes. New definitions are added for "amateur mixed martial arts" and "grappling arts." "Regulated sports" is revised to include amateur mixed martial arts, professional wrestling, and grappling arts. "Sparring" is expanded to include kickboxing, professional and amateur mixed martial arts, grappling arts, and karate.

The general powers of the Athletic Commission are revised. The Commission may appoint chief inspectors and other personnel as deemed to be necessary. The Commission may employ contractual labor, and the Commission has rule and regulation authority regarding the certification and payment of inspectors. Adoption of such rules

and regulations by the Commission is required by July 1, 2012. The bill authorizes the Commission to issue licenses to announcers.

The bill revises the name of the assessment placed on gross receipts, calling it a fee instead of a tax. The Commission may impose a fee on the gross revenues received by a promoter and by a media network that televises a regulated sports contest. The fee rate is limited to a maximum of 2.0 percent of gross revenues.

The Commission is required to promulgate rules and regulations by July 1, 2012, regarding:

- Drug testing and communicable diseases;
- Full disclosure between promoters, broadcasters, media networks, or distributors;
- Setting fee rates; and
- Any other rule necessary for the administration of the televising, broadcasting, or distributing of a regulated sports contest.

The bill clarifies that the Athletic Commission has permissive rule and regulation authority regarding professional wrestling. Under the law, if the Commission chooses to regulate professional wrestling, those rules and regulations are limited to subject areas specified in statute. The bill permits professional wrestling rules and regulations to include liability insurance and additional subject areas if deemed necessary. In addition, professional wrestling rules and regulations could require a promoter to obtain a license from the Commission prior to the performance.

KSA 74-50,189 outlines the circumstances under which the Commission may issue a license to hold a regulated sports contest. Under the bill, the Commission may issue a contest license to a promoter, contingent upon an applicable resolution obtained from either a city or county to hold the event within the local government's jurisdiction (if required by the jurisdiction). The bill also specifies the number and duration of rounds for each regulated sport.

The bill reorganizes the law found in subsection (c) of KSA 74-50,193 regarding the grounds for which the Commission may withdraw or withhold a license. Additional grounds for such an action would be if a license holder provided incorrect, misleading, or incomplete information. The bill clarifies that if the Commission imposes a civil penalty, the Commission is not precluded from proceeding with any disciplinary proceeding.

## **Workers Compensation Reform**

**Sub. for HB 2134** revises portions of the Workers Compensation Act pertaining to definitions contained in the Act, exemptions from compensation benefits, notice of

injury, drug testing, administrative hearings, preexisting conditions, permanent total and temporary total disabilities, wage calculations, the caps on benefits, lump sum retirement benefits, medical treatment, and ancillary provisions.

In addition to injury caused by an accident, as provided by prior law, the bill requires an employer to be liable to pay compensation to an employee who has been injured in the course of employment because of repetitive trauma or occupational disease. An injured employee must show that the work incident was the prevailing factor that caused the injury.

### **Definitions**

The bill defines or revises the following substantive words and terms in the Workers Compensation Act:

- “Accident” excludes repetitive trauma;
- “Arising out of and in the course of employment” is revised to clarify when an employee was on the employer’s premises;
- “Authorized treating physician” is a new term that means a licensed physician or other medical provider authorized by the employer, the employer’s insurance carrier, or by court order to provide medical services that are necessary to diagnose and treat a work-related injury;
- “Burden of proof” is revised to include higher standards if specifically required by the Workers Compensation Act;
- “Functional impairment” is a new term, and it is expressed in terms of the percentage of loss of human function as estimated by medical evidence;
- “Occupational disease” excludes repetitive trauma;
- “Personal injury” or “injury” occurs only by accident, repetitive trauma, or occupational disease as defined in the bill. An injury is compensable only if it arose out of and in the course of employment. An injury is not compensable if it affected a preexisting condition;
- “Prevailing factor” is a new term that would mean the cause when measured against other contributing causes;
- “Repetitive trauma” is a new term that would refer to an injury that occurs due to repetitive use or cumulative trauma. The bill outlines several instances in time where repetitive trauma injury could be identified in an employee;
- “Task loss” is a new term that means the percentage to which an employee had lost the ability to perform work, based on a five-year period preceding the injury and excluding preexisting conditions; and
- “Wage loss” is a new term that means the difference between the average weekly wage that the employee was earning at the time of the injury and the average weekly wage that the employee would be capable of earning after the injury. The capability to earn wages is based upon the injured worker’s age, physical capabilities, education, training, experience, and availability of

jobs. In order to establish post-injury job loss, an employee needs the legal capacity to enter into an employment contract. Fringe benefits are taken into consideration. There is a rebuttable presumption of no wage loss if an injured worker refused accommodated employment at a wage that was 90 percent or greater than the pre-injury wage.

### ***Exemptions from Compensation Benefits***

Prior law disallowed compensation for certain types of employee injuries that were caused by the employee's deliberate actions or that were caused by the employee's willful failure to use protection. The bill disallows compensation if the injury resulted from the employee's reckless violation of the employer's workplace safety rules and regulations. Injury caused by fighting or horseplay with a co-employee for any reason is disallowed as well. The bill provides an exception to the existing statutory exemptions when, in the totality of the circumstances, or when the employer approves, it is not reasonable for safety equipment to be used.

### ***Notice of Injury***

The bill extends the period of time, from ten days to thirty calendar days, in which an employee must give notice that an injury by accident or repetitive trauma has occurred. However, in instances where the employee was no longer employed or where the employee sought medical treatment specifically for the injury, the employee has twenty calendar days to give notice. The employee has the responsibility to inform the employer's appropriate designee.

### ***Drug Testing***

Injuries caused by the influence of alcohol or drugs may not be compensated under prior law. Provisions regarding employee drug testing and the admissibility of that evidence are revised. With regard to proving that an employee was impaired due to alcohol or drugs, the bill deletes references to an employer needing probable cause to require testing and replaces the standard with "sufficient cause."

In order for the chemical analysis to be admissible evidence, the bill requires a split sample to be retained and made available to the employee within forty-eight hours of the positive test. An employee may overcome the positive results of the drug test by providing clear and convincing evidence.

### ***Administrative Hearings***

The bill shortens the period of time, from five years to three years, that a case may remain open without a hearing. After that time, an employer may file an application for dismissal with the Department of Labor's Division of Workers Compensation. If an

employee can not establish good cause for keeping the case open, the bill requires an administrative law judge to dismiss the claim with prejudice. If a claim has not proceeded to a regular hearing within a year from the date of a preliminary award, the employer may file for dismissal.

### ***Preexisting Conditions***

The bill requires compensation awards for permanent partial impairment, work disability, or permanent total disability to be reduced by that amount of functional impairment that is determined to be preexisting. The bill outlines the method of calculating a value for a preexisting condition; however, this kind of reduction will not apply to compensation for temporary total disability or for medical treatment. If compensation benefits have been awarded already, the percentage basis of the prior settlement or award conclusively establishes the amount of preexisting condition.

### ***Permanent Total, Permanent Partial General, and Temporary Total Disabilities***

The bill replaces the prior statutory conditions for permanent total disability and requires expert evidence to prove permanent total disability instead. An injured worker is not eligible to receive more than one award for permanent total disability during the worker's lifetime.

With regard to permanent partial general disability, the compensation calculation is revised so that an employee is eligible to receive benefits if the functional impairment exceeds 7.5 percent to the body or 10.0 percent to the body when a preexisting condition is present. The employee has to suffer a post-injury wage loss of at least 10.0 percent due to the work injury.

With regard to temporary total disability, the bill stipulates that the opinion of an authorized treating physician is presumed to be determinative of an employee's ability to engage in gainful employment. If an employer cannot accommodate the temporary work restrictions imposed by the physician, then the employee is entitled to benefits for the temporary total disability. If an employee were to refuse to accept work that accommodates the temporary total disability, the result is a rebuttable presumption that the employee is ineligible to receive benefits. If an employee were to quit or be terminated, the employer is not liable for temporary total disability benefits. An employee is ineligible to receive temporary total disability benefits if that person also was receiving unemployment benefits.

The bill prohibits compensation for permanent partial disability to run concurrently with compensation for temporary total or temporary partial disabilities. The bill also prohibits compensation for functional impairment and work disability to be awarded together.

The bill revises the method of calculating compensation for bilateral injuries involving upper and lower extremities which are considered as a whole instead of separately.

Prior to the bill's enactment, parties were allowed to enter into agreements for the lump sum payment of benefits for cases involving permanent total or permanent partial disability. The bill allows lump sum settlements, with the approval of an administrative law judge, to be prorated over the life expectancy of the injured employee, notwithstanding the weekly compensation rate calculation. This provision applies retroactively.

### ***Wage Calculations***

The bill replaces the term "average gross wages" as it appeared in several statutory provisions with the term "average wages." The bill revises the calculation for determining an employee's average wages which are used to determine compensation benefits. The cumulative wages earned prior to the injury, up to a maximum period of twenty-six weeks, are divided by the same period of weeks.

### ***Caps on Benefits***

The cap on maximum compensation for various benefits is increased as follows:

- For permanent total disability, from \$125,000 to \$155,000;
- For temporary total disability, from \$100,000 to \$130,000;
- For permanent or temporary partial disability, from \$100,000 to \$130,000;  
and
- For death, from \$250,000 to \$300,000.

When an injury causes an employee's death, the employer has the responsibility, when necessary, to pay up to \$1,000 for a court-appointed conservator.

### ***Lump Sum Retirement Benefits***

Under prior law if an employee who was eligible for compensation benefits also accepted retirement from the same employer, then the compensation benefits were reduced accordingly on a weekly equivalent basis. The bill specifies that in instances where an employee takes a lump sum retirement, the weekly equivalent value of benefits is determined by amortizing the lump sum payment at the rate of 4.0 percent per year over the employee's life expectancy, and the compensation benefits are reduced accordingly.

### ***Medical Treatment***

An employer's obligation to provide medical and health care services to an injured employee is presumed to terminate once the employee reaches maximum medical treatment as prescribed.

Under prior law, an injured employee was required to submit to a medical exam if requested to do so by the employer. At the employer's discretion, the employee also

was required to submit to subsequent examinations. The bill suspends benefits if an employee refuses to submit to an exam, even if the employer is under a preliminary order to provide benefits.

The bill authorizes an administrative law judge to appoint an independent healthcare provider to determine an employee's functional impairment, if the medical opinions for the employer and the employee disagree and the parties can not settle on an independent healthcare provider between themselves to make the determination.

The bill broadens the appeals process regarding future medical treatment so that in addition to employees as previously provided by law, an employer or the insurance carrier also has standing to request a post-award hearing for medical treatment. The bill requires all parties to receive notice when post-award benefits are to be modified or terminated. If an administrative law judge finds the work-related injury to be the prevailing factor, future medical treatment may be awarded. If an employee has not received medical treatment within two years from the date of a compensation award, or within two years from the date the employee last received medical treatment, an employer may seek termination of future medical benefits.

After a benefits award has been established, an employee has the responsibility to prove that future medical treatment is necessary. The employee has the burden to prove, more probably than not, that the medical treatment will be required in the future as a result of the work-related injury.

### ***Ancillary Provisions***

Prior law authorized the Workers Compensation Fund, which is under the administration of the Department of Insurance, to pay for compensation benefits when an employer has no insurance. The bill extends coverage to cover claims arising from employers who have insufficient self-insurance bonds.

A private insurer or self-insured employer is required to issue warning notices to employees who are receiving temporary disability benefits. The notice informs the employees that they could be committing fraud if the person has accepted work with a different employer that requires the performance of activities that the employee previously claimed he or she could not perform due to the injury. The loss of benefits and restitution could result from the fraud.

If an attorney's services are found to be frivolous, the employer and the insurance carrier would not be liable for attorney fees.

The Insurance Commissioner is authorized to establish an affidavit form by which a person or company could establish a rebuttable presumption that the Workers

Compensation Act does not apply. It is made a misdemeanor, punishable with a fine up to \$1,000, to falsify information on the affidavit. The bill grants rules and regulations making authority to the Insurance Commissioner.

The bill permits worker compensation claims to be heard by video or telephone conference.

The bill authorizes the fee for certified shorthand reporters to be taxed to the Division of Workers Compensation if a fee is incurred and no record taken.

The bill also repeals:

- KSA 44-510a which pertains to the reduction in compensation for prior compensable permanent injury;
- KSA 44-520a which outlines the time limitation of 200 days for employers to receive notice of claims; and
- KSA 44-596 which creates the Workforce Advisory Council within the Department of Labor.

## Employee Misclassification

**Sub. for HB 2135** revises the procedures used to determine if employees have been misclassified as independent contractors. The bill revises employment security law regarding the process used to determine the misclassification of employees, the communication of confidential taxpayer information between the Departments of Revenue and Labor, and penalties for repeated violations of employee misclassification.

The Secretary of Labor, or the Secretary's designee, has the responsibility to make all determinations regarding the classification of a worker as being an employee or an independent contractor. If the Department of Revenue has reason to believe that a business misclassified an individual, the Department of Revenue will request the Department of Labor to make a determination of the individual's status. The Department of Revenue is authorized to submit all relevant payroll and withholding tax information to the Department of Labor, which is required to abide by the same levels of confidentiality that is required statutorily of the Department of Revenue. If the Department of Labor needs additional information regarding the business in question, the Department of Revenue is required to provide it.

The Secretary of Labor determines an individual's status based upon the totality of circumstances, exercising strict impartiality in the determination process. A business will be deemed to have made a valid classification if the business has made a reasonable reliance based upon:

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- A judicial decision;
  - A ruling from the Internal Revenue Service (IRS), the Department of Revenue, or the Department of Labor;
  - An audit performed by the IRS, the Department of Revenue, or the Department of Labor; or
  - Work classifications that customarily are used by the industry in which the business operates.

The business needs to demonstrate that it has acted consistently in its employment practices and tax reporting. If the Secretary of Labor cannot ascertain a reasonable basis, then eight factors contained in the following questions are to be considered:

- Must the individual comply with specific instructions from the business regarding when, where, and how to perform the service;
- Are the activities of the individual integrated into the ongoing operations of the business;
- If needed to accomplish the desired end result, does the individual have the responsibility to hire, supervise, and pay assistants;
- Must the individual work exclusively for the business in question;
- Is payment by the business to the individual for services contingent on completion of established benchmarks or tasks;
- Does the individual provide significant tools, materials, or other equipment used in the accomplishment of the desired end result;
- Is the individual responsible for any expenses incurred in the performance of services; and
- Can the individual suffer a loss in the course of performing services?

Once the Secretary of Labor has determined an employee's classification, the Department of Revenue accepts the determination. The Department of Revenue can request the Department of Labor to provide the information that was used to make the determination. If so, the Department of Revenue will maintain the same level of confidentiality that is required statutorily of the Department of Labor. If it has been

determined that an employee was misclassified, then the two departments notify the business that additional Unemployment Insurance (UI) contributions and income withholding taxes are due.

Before a UI penalty or interest can be charged, the Secretary of Labor has the discretion to consider the appropriateness to the business. If a reasonable basis for the classification exists, the Secretary of Labor is prohibited from imposing penalties, interest, or the recovery of back taxes owed to the Employment Security Fund. The Secretary of Labor will educate businesses on the classification of employees. The Secretaries of Revenue and Labor are granted rule and regulation making authority to implement the Act.

The previous statutory UI definition for “employment” is revised by deleting the “two-prong” requirement. In order for an individual to be considered an independent contractor, that person’s work must be: (1) free from the business’s control and (2) performed outside the usual course of the business’s operations. The new text states that an individual is considered an employee if the business retains the right to control the end result and the means by which the end result is accomplished.

Penalty provisions provide for a second and subsequent violations. For a second violation, a person who misclassifies an individual is subject to the civil penalty that previously was specified in statute and becomes subject to a class C nonperson misdemeanor. For subsequent violations, the person is subject to the civil penalty and class A nonperson misdemeanor.

The bill requires the Secretary of Labor to make an annual report to the Senate Committee on Commerce and the House Committee on Commerce and Economic Development. The report is to provide information regarding the number of employee misclassifications, investigations, and money collected in the preceding calendar year.

## EDUCATION

### **Expenditure of Motor Vehicle-Related Revenue; Uniform Accounting System; and Fort Leavenworth Transportation of Students**

**SB 21** allows any school district having authority for ancillary school facilities weighting, cost of living weighting, or declining enrollment weighting to spend the motor vehicle-related revenue derived as a result of these weightings. Prior law allowed a school district to receive this revenue, but not spend the revenue.

The bill establishes a uniform reporting system for receipts and expenditures for school districts to begin on July 1, 2012. The bill requires that the State Board of Education (Board) develop and maintain the system. The system includes all funds held by a school district, regardless of the source of moneys held in the funds; allows districts to record any information required by state or federal law; provides records by fund, accounts, and other pertinent classifications; and includes amounts appropriated, revenue estimates, actual revenues or receipts, amounts available for expenditure, total expenditures, unencumbered cash balances (excluding state aid receivable), and actual balances. In addition, the system must allow for data to be searched and compared on a district-by-district basis.

Each school district is required to annually submit a report to the Board on all construction activity undertaken by the school district financed by the issuance of bonds. This report is required to include all revenue, expenditures of bond proceeds authorized by law, the dates for commencement and completion of construction activity, and the estimated and actual cost of the construction activity. The Board determines the form and manner of this report.

The bill also requires the Department of Education to annually publish on its website a copy of Budget Form 150, the estimated legal maximum general fund budget, or any successor document containing the same or similar information, submitted by each district. School districts also are required to annually publish the same information.

The Department of Education also is required to annually publish the following expenditures for each school district on a per pupil basis: (1) total expenditures; (2) capital outlay expenditures; (3) bond and interest expenditures; and (4) all other expenditures not included in (2) or (3).

Finally, the bill allows Fort Leavenworth Unified School District 207 to transport grades 10 through 12 students who reside at Fort Leavenworth to Leavenworth High School in Unified School District 453. The bill requires related transportation weighting to be calculated using only students counted on September 20.

## Special Education Funding; Fund Flexibility

**House Sub. for Sub. for SB 111** changes the starting date of the portion of the special education school finance formula that determines the minimum and maximum amount of special education state aid a school district may receive. This provision now goes into effect for the 2012-2013 and the 2013-2014 school years and ends on June 30, 2014. (Prior law would have made this section effective with the 2011–2012 school year with an expiration date of June 30, 2013.)

The bill also allows school districts to expend a portion of the unencumbered balances held in particular funds. The following funds would be considered the first priority for use: at-risk education; bilingual education; contingency reserve; driver training; parent education; preschool-aged at-risk; professional development; summer program; virtual school; and vocational education. The textbook and student materials revolving fund is the second priority with the special education fund the last priority for use. Local school boards are not limited to using the funds in the priority list and are not required to expend the total unencumbered balance before utilizing the unencumbered balance in another fund.

The bill limits the amount of money a school district can use from its unencumbered balance through a formula that will be calculated by the State Board of Education.

The formula follows:

- Determine the adjusted enrollment of the district, excluding special education and related services weighting;
- Subtract the amount of Base State Aid Per Pupil (BSAPP) appropriated to the Department of Education for FY 2012 from \$4,012; and
- Multiply the difference between the amount of BSAPP appropriated to the Department of Education and \$4,012 by the adjusted enrollment.

Implementation of the bill establishes the aggregate amount that can be expended from the unencumbered balance for the 2011-2012 school year. The bill also requires that 65.0 percent of the aggregate amount authorized to be spent would be used in the classroom or for instruction as defined in KSA 72-64c01.

## University Engineering Initiative Act

**House Sub. for Sub. for SB 127** creates the University Engineering Initiative Act. The Act is intended to increase the number of engineering graduates to 1,365 graduates per year by 2021. The Act directs the Secretary of Commerce, in consultation with the Board

of Regents, Kansas State University, Wichita State University, the University of Kansas, and private industry to develop a plan to ensure engineering industry partners find the new talent, designs, and techniques needed to fuel economic growth and business success in Kansas. The Act authorizes the acquisition, construction, and equipping of engineering facilities on state-owned property of the Board of Regents or any of the three universities, and requires the universities to submit to the Secretary of Commerce and the Board of Regents a plan to provide for the annual maintenance and operation costs of any newly constructed engineering facility or existing facility when seeking funds for construction or improvement of the facility.

The Act creates three new funds in the State Treasury: Kan-Grow Engineering Fund-WSU, Kan-Grow Engineering Fund-KSU, and Kan-Grow Engineering Fund-KU. On July 1, 2012, through July 1, 2021, the first \$10.5 million credited to the Expanded Lottery Act Revenues Fund is to be transferred equally to each of the three newly created funds. The funding shall be matched by the universities on a \$1 for \$1 basis from non-state sources.

The Act also amends the enacting statute for the Expanded Lottery Act Revenues Fund to expand its uses to include the University Engineering Initiative Act.

Finally, the Act requires the Secretary of Commerce to conduct a review of the universities' plans to meet the goals established by the Act on or before the first day of the 2018 regular session.

### **Postsecondary Technical Education Law Updates**

**SB 143** makes technical corrections and updates related to postsecondary technical education. The bill updates terminology, removes definitions for terms no longer used, eliminates vocational school references, adds individual institution-specific references, updates and removes obsolete sections of identified statutes, and repeals statutes no longer needed. As part of the statutory update, members of the Postsecondary Technical Education Authority include the designees of the Commissioner of Education, the Secretary of Commerce, and the Secretary of Labor.

The bill creates the Postsecondary Tiered Technical Education State Aid Act (the Act), replacing the current funding structure. Beginning with FY 2012, and in each fiscal year thereafter, each community college and technical college and the Washburn Institute of Technology are eligible for postsecondary tiered technical education state aid from the State General Fund for credit hours approved by the State Board of Regents, using a credit hour cost calculation model that would include all of the following concepts:

- Arrange into categories or tiers, technical education programs, recognizing cost differentials. (For example, programs with similar costs comprise one of six tiers.)
- Consider target industries critical to the Kansas economy.
- Respond to program growth.
- Consider local taxing authority for credit hours generated by in-district students.
- Include other factors and considerations determined necessary by the State Board of Regents.

The State Board of Regents establishes the rates to be used as the State's share in a given year, as well as in the actual distribution. The bill prohibits receipt of both tiered technical education state aid and non-tiered course state aid for any one credit hour. (A non-tiered course is a general education course.)

The bill provides for fund accounting and management requirements related to state aid received under the Act. The bill authorizes the State Board of Regents to adopt policies necessary or desirable to implement and administer the Act.

The bill provides that each community college and technical college is eligible for a grant from the State General Fund, in an amount determined by the State Board of Regents for non-tiered course credit hours approved by the State Board of Regents after dialogue with community college and technical college presidents.

The bill makes a technical correction to KSA 76-769 related to State purchasing laws for Regents institutions. This correction ensures that universities are not exempt from procurement requirements related to construction.

### **Calculation of Local Option Budget; Continuation of 20-Mill Property Tax Levy**

**HB 2015** extends the sunset date to June 30, 2014, for the current method of calculating the local option budget of a school district. Under the existing law, when the base state aid per pupil (BSAPP) is \$4,433 or less, a school board may calculate the local option budget based on a BSAPP of \$4,433, or an amount that does not exceed an amount of 30.0 percent of its general fund budget, whichever is greater, plus the amount received in special education state aid in school year 2008-09, or the current appropriation, whichever is higher.

The bill also reauthorizes the school district property tax mill levy for the 2011–2012 and 2012–2013 school years. The bill extends the deadline for repeal of the \$20,000 residential property tax exemption to the end of tax year 2012.

**Funds Related to University Student Housing; Johnson County Education Research Triangle Sales Tax; Fees for Private and Out-of-State Postsecondary Education Institutions; and Veterinary Students at Kansas State University**

**HB 2020** allows revenues from rents, boarding fees, and other charges related to university student housing at State universities to go to either the Housing System Suspense Fund or directly to the Housing System Operations Fund, at the discretion of the university. In addition, the bill allows interest earned from the Housing System Operations Fund and Housing System Repairs Fund to be transferred into those funds. (Prior law allowed interest earned from the Housing System Suspense Fund to be transferred into that Fund.)

The bill requires that the interest earnings from the Johnson County Education Research Triangle sales tax be transferred from the State General Fund to the Johnson County Education Triangle Fund of the University of Kansas, the University of Kansas Medical Center, and Kansas State University. The bill requires that the interest earnings be transferred by the tenth day of each month and be determined by the average daily balance in each of the respective funds in the preceding month and the net earnings rate for the Pooled Money Investment Board portfolio for the preceding month.

The bill continues the new categories and fee levels established for FY 2011 that the State Board of Regents may charge private and out-of-state postsecondary educational institutions in order to carry out the Board’s statutory and regulatory responsibilities through July 1, 2012. The fees listed in the bill are the maximum allowable amounts and are shown below.

For institutions domiciled or having their principal place of business within Kansas:

Initial application fees:

- Non-degree granting institution..... \$2,000
- Degree granting institution..... \$3,000

Initial evaluation fee (in addition to initial application fees):

- Non-degree level..... \$750
- Associate degree level..... \$1,000
- Baccalaureate degree level ..... \$2,000

**Funds Related to University Student Housing; Johnson County Education Research Triangle Sales Tax; Fees for Private and Out-of-State Post Secondary Education Institutions; and Veterinary Students at Kansas State University—HB 2020**

- Master’s degree level..... \$3,000
- Professional or doctoral degree level..... \$4,000

Renewal application fees:

- Non-degree granting institution..... 2 percent of gross tuition, but not less than \$800, nor more than \$25,000
- Degree granting institution..... 2 percent of gross tuition, but not less than \$1,600, nor more than \$25,000

New program submission fees, for each new program:

- Non-degree program.....\$250
- Associate degree program..... \$500
- Baccalaureate degree program ..... \$750
- Master’s degree program..... \$1,000
- Professional or doctoral degree program..... \$2,000
- Program modification fee, for each program..... \$100

Branch campus site fees, for each branch campus site:

- Initial non-degree granting institution ..... \$1,500
- Initial degree granting institution ..... \$2,500

Renewal branch campus site fees, for each branch campus site:

- Non-degree granting institution..... 2 percent of gross tuition, but not less than \$800, nor more than \$25,000
- Degree granting institution..... 2 percent of gross tuition, but not less than \$1,600, nor more than \$25,000
- Onsite branch campus review fee, for each site ..... \$250

Representative fees:

- Initial registration..... \$200
- Renewal of registration ..... \$150
- Late submission of renewal of application fee ..... \$125
- Student transcript copy fee ..... \$10
- Returned check fee..... \$50

Changes in institution profile fees:

- Change of institution name ..... \$100
- Change of institution location..... \$100
- Change of ownership only ..... \$100

For institutions domiciled or having their principal place of business outside of Kansas:

Initial application fees:

- Non-degree granting institution..... \$4,000
- Degree granting institution ..... \$5,500

Initial evaluation fee (in addition to initial application fees):

- Non-degree level..... \$1,500
- Associate degree level..... \$2,000
- Baccalaureate degree level ..... \$3,000
- Master’s degree level..... \$4,000
- Professional or doctoral degree level..... \$5,000

Renewal application fees:

- Non-degree granting institution.....3 percent of gross tuition, but not less than \$2,400, nor more than \$25,000
- Degree granting institution .....3 percent of gross tuition, but not less than \$3,000, nor more than \$25,000

New program submission fees, for each new program:

- Non-degree program..... \$500
- Associate degree program..... \$750
- Baccalaureate degree program ..... \$1,000
- Master’s degree program..... \$1,500
- Professional or doctoral degree program..... \$2,500
- Program modification fee, for each program..... \$100
- Branch campus site fees, for each branch campus site:
  - Initial non-degree granting institution..... \$4,000
  - Initial degree granting institution..... \$5,500

Renewal branch campus site fees, for each branch campus site:

- Non-degree granting institution.....3 percent of gross tuition, but not less than \$2,400, nor more than \$25,000
- Degree granting institution .....3 percent of gross tuition, but not less than \$3,000, nor more than \$25,000
- Onsite branch campus review fee, for each site ..... \$500

Representative fees:

- Initial registration ..... \$350
- Renewal of registration ..... \$250
- Late submission of renewal of application fee ..... \$125
- Student transcript copy fee ..... \$10
- Returned check fee ..... \$50

Changes in institution profile fees:

- Change of institution name ..... \$100
- Change of institution location ..... \$100
- Change of ownership only ..... \$100

Finally, the bill removes the requirement in existing law that second year Kansas State University veterinary medical students who perform spay or neuter surgeries at animal shelters be supervised by a faculty member of Kansas State University’s Veterinary Medical Center. The bill requires that such students performing spay or neuter surgeries will do so as part of a spay or neuter program as part of curriculum under the direct supervision of a licensed veterinarian. In addition, the bill limits students to performing spay or neuter surgeries on dogs or cats belonging to a pound or animal shelter, and not dogs or cats belonging to a member of the public. This portion of the bill became effective May 19, 2011, upon publication in the *Kansas Register*.

**School for the Blind—Training Programs**

**HB 2078** allows the School for the Blind to conduct training programs year round. Prior law allowed training programs at the School for the Blind to be conducted only during the summer. In comparison, the law does not prohibit the School for the Deaf from conducting training sessions at any time during the year.

**Due Process Rights of Teachers**

**Sub. for HB 2191** allows school districts to offer employment contracts to teachers for one or up to two additional years (that is, a fourth or a fourth and fifth year contract) at the end of the teacher’s probationary period, thus extending until the sixth year of employment the ability of the teacher to attain due process rights. (Prior law stated that a new teacher in a school district, area vocational-technical school, or community college cannot attain due process rights in less than three years; there was no provision in prior law to extend that time.)

Any teacher offered a contract under the provisions of the bill will be evaluated and a plan of assistance will be written to assist the teacher in meeting areas needing improvement as noted in the evaluation. Before signing or rejecting the contract, a teacher will have

not less than 48 hours from the time the contract is offered to review and consider the contract and plan of assistance.

In addition, the bill requires school districts to annually file a report with the State Board of Education and the House and Senate Committees on Education, containing information regarding numbers of teachers offered due process rights.

The provisions of the bill related to the additional two years of probationary employment and the reporting requirements expire on July 1, 2016.

## ELECTIONS AND ETHICS

### **Distribution of Inauguration Funds Not Obligated for Expenses**

**SB 67** changes the allowable uses of gubernatorial inaugural funds not obligated for payment of inaugural expenses. After the Adjutant General is reimbursed for expenses incurred in connection with the inauguration, the bill allows residual funds to be donated to a 501(c)(3) charitable organization. Residual funds also may continue to be directed to the Executive Mansion Gifts Fund for expenditures related to the governor's residence, historic properties, or both. The bill removes a provision allowing funds to be directed to the Governmental Ethics Commission Fee Fund.

### **Expanded Voting Opportunities for Overseas and Military Voters**

**SB 103** expands voting opportunities for certain absentee federal services voters and military personnel and their family members. The bill allows overseas voters to vote a full ballot at all elections; apply for, receive, and return their ballots by electronic means; and vote a write-in ballot, if needed. The measures allow the State to comply with two federal laws governing the voting process for military and overseas voters: the Uniformed Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment Act.

#### ***Expansion of Federal Service Voters' Ballots***

The bill expands the ballot forms for absentee voters living overseas, who are called federal services voters, under UOCAVA. The bill clarifies the ballot and eliminates certain exclusions from the ballot (local questions, state constitutional amendments, and political party precinct committee positions), so that ballots for these voters will include all offices and any proposition or question for which the voter otherwise is entitled to vote.

#### ***E-balloting for Certain Federal Services Voters and Military Personnel***

The bill allows certain federal services voters (*i.e.*, those residing outside the United States or those who are members of the United States armed forces or a spouse or dependent of a member of the armed forces and a qualified elector who cannot vote timely by mail) to apply for registration and an absentee ballot by electronic mail or other electronic method authorized by the Secretary of State. The voter may then return the ballot by electronic means under certain circumstances. The bill extends confidentiality protections currently in place for ballots submitted by facsimile to ballots submitted via electronic mail.

Additionally, the bill changes the time frame for which an application to vote such an absentee ballot would be valid from through the next two regularly scheduled general elections for national or state office, to through the end of the calendar year.

### ***Federal Write-in Absentee Ballot***

The bill allows overseas voters to vote a Federal Write-in Absentee Ballot (FWAB) under certain circumstances, in conformity with federal law: if the person submitted a ballot application, the ballot was not received, and the FWAB is submitted from outside the United States.

### **Filing Deadlines**

**SB 125** changes the filing deadline from June 10 to June 1 for candidates for national, state (including governor and lieutenant governor), county, and township offices. The bill also removes language regarding certain 1998 elections.

The bill also changes the filing deadline for extension districts from five weeks prior to the election to the Tuesday ten weeks before the election.

### **Voter Identification**

**HB 2067** changes the requirements for providing voter identification at elections, effective January 1, 2012 and publication in the statute book. The bill requires photo identification of all in-person voters at every election (with the exception of certain voters who are exempted), and requires inclusion of the number on or a copy of a specified form of photo ID for all voters submitting advance ballots by mail for every election. Existing law does not require a photo ID, nor does it require ID be provided at every election. The bill allows for the issuance of a free photo ID card to anyone who qualifies and signs an affidavit.

The bill also requires any person registering to vote on or after January 1, 2013, to submit evidence of U.S. citizenship.

### ***Free Nondriver's Identification Cards***

The bill prohibits the Kansas Department of Revenue Division of Vehicles from requiring or accepting payment for a nondriver's ID card issued to anyone 17 or older for purposes of meeting the voter identification requirements in KSA 25-2308. Each such individual is required to sign an affidavit stating he or she plans to vote and that he or she does not have any of the forms of identification acceptable under the bill. Such a person also must provide evidence of being registered to vote.

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**Identification Requirements for Voting at the Polls on Election Day**

The bill:

- Eliminates the prior provision that only first-time voters who did not provide ID when they registered must provide ID, and eliminates the list of acceptable ID forms.
- Requires every person voting at the polls on election day (with some exceptions; listed below) to provide one form of ID from a specified list, if the ID contains the name and photograph of the voter and has not expired. (Expired documents will be valid if the bearer is 65 years of age or older.) The bill authorizes the Secretary of State to define the types of acceptable identification with greater specificity using rules and regulations. Following are the specified ID forms allowed:
  - A driver's license, whether issued by Kansas or by another state or district of the United States;
  - A state ID card, whether issued by Kansas or by another state or district of the United States;
  - A concealed carry of handgun or weapon license, whether issued by Kansas or by another state or district of the United States;
  - A United States passport;
  - An employee badge or ID document issued by a municipal, county, state, or federal government office or agency;
  - A military ID document issued by the United States;
  - A student ID card issued by an accredited postsecondary education institution in Kansas; or
  - A public assistance ID card issued by a municipal, county, state, or federal government office or agency.
- Exempts the following persons from the photo ID requirement when voting:
  - Those who have a permanent physical disability that makes it impossible for them to travel to obtain a qualifying ID form and who are qualified for permanent advance voting status;
  - Members of the uniformed service on active duty who, if on duty, are absent from the county on election day;
  - Members of the merchant marine who are absent from the county on election day;
  - The spouse or dependent of a member of either the uniformed service or merchant marine (under the above-named circumstances) who, by reason of the member's duty or service, is absent from the county on election day; and

- Any voter whose religious beliefs prohibit photographic identification. Any person seeking this exemption must complete a declaration concerning his or her religious beliefs and transmit it to the county election officer or the Secretary of State. The declaration form must be made available on the official Secretary of State website.
- Revises the Secretary of State's authority to adopt rules by making clarifications and by stating that the requirement that a voter provide one of the specified ID forms may not be altered.

### ***Identification Requirements for Voting by Advance Ballot***

The bill:

- Requires each person voting by advance ballot to be transmitted *in person* to provide, for every election, the same form of ID as is required of those voting at the polls on election day (see above).
- Requires each person voting by advance ballot to be transmitted *by mail* to provide, for every election, one of the following:
  - The voter's current and valid Kansas driver's license or nondriver's ID card number; or
  - A copy of any one of the same ID forms as required of those voting at the polls on election day.
- Prohibits the county election officer from providing an advance ballot to a person (when the ballot is to be returned *by mail*) unless the county election official verifies that the person's signature (contained in the ID form the person provides) matches the one on file in the county voter registration records.
  - The signature verification could be done by electronic device or by human inspection.
  - If the signatures do not match, the county election officer must attempt to contact the person and offer another opportunity to provide a signature for purposes of verifying identity. If unable to reach the person, the county election officer is authorized to transmit a provisional ballot, which may be counted only if the signature included with the ballot can be verified.
- Prohibits the county election officer from providing an advance ballot to a person (when the ballot is to be returned *by mail*) unless the person

provides the required ID, but the county election officer is required to provide information to the person regarding the voter's right to vote a provisional ballot. The county election officer also is required to provide the person an opportunity to provide the ID required.

- In conjunction with this requirement, the bill requires all Kansas state offices and any offices of any subdivision of the state to allow any person seeking to vote by advance ballot to use a photocopying device to make one photocopy of an ID document at no cost.
- Requires a voter whose ballot is returned to the county election officer by someone other than the voter to designate in writing the person authorized to return the ballot. The person so designated by the voter is required to sign a statement that the designee has not exercised undue influence on the voting decisions of the voter and agrees to deliver the ballot as directed by the voter.
- Authorizes the Secretary of State to adopt rules and regulations regarding identification for advance voting.

### ***Advance Voting Crimes***

The bill revises the statute on advance voting crimes in these ways:

- Marking or transmitting more than one advance voting ballot is changed to “knowingly” marking or transmitting more than one advance voting ballot.
- Interfering with or delaying the transmission of any advance voting ballot application from a voter to the county election officer is changed to “knowingly” interfering with or delaying the transmission.
- Marking, signing, or transmitting the advance voting ballot or envelope by a person other than the voter is changed to “knowingly” marking, signing, or transmitting the ballot or envelope.
- “Willfully” and falsely affirming, declaring, or subscribing to any material fact in an affirmation form for an advance voting ballot is changed to “knowingly” and falsely affirming, declaring, or subscribing to any material fact in an affirmation form.

### ***Proof of Citizenship for Voter Registration***

As of January 1, 2013, the bill:

- Requires every person to provide evidence of U.S. citizenship when he or she registers to vote. The county election officer or Secretary of State's Office is required to accept any registration application that is not accompanied by such evidence in person at the time of filing the application; however, the person is not registered until this evidence is provided. Once satisfactory evidence is provided, the county election officer must indicate so in the person's permanent voter file. Documents satisfying this proof-of-citizenship evidence requirement are confidential until July 1, 2016, and include any one the following:
  - Driver's license or nondriver's ID card issued by the appropriate agency in any state in the United States, if the agency indicates on the license or nondriver's ID card that the person has provided satisfactory proof of U.S. citizenship.
  - Birth certificate that verifies U.S. citizenship to the satisfaction of the county election officer or Secretary of State.
  - Pertinent pages of a U.S. valid or expired passport.
  - Naturalization documents or the number of the naturalization certificate, with further instructions if only the number is provided.
  - Other documents or methods of proof of U.S. citizenship issued by the federal government pursuant to the Immigration and Nationality Act of 1952 (including its amendments).
  - Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.
  - Consular Report of Birth Abroad of a Citizen of the United States of America.
  - Certificate of Citizenship issued by the U.S. Citizenship and Immigration Services.
  - Certification of Report of Birth issued by the U.S. Department of State.
  - American Indian Card issued by the U.S. Department of Homeland Security with the classification "KIC."
  - Final adoption decree showing the applicant's name and U.S. birthplace.
  - Official U.S. military record of service showing the applicant's birthplace in the U.S.
  - An extract from a U.S. hospital birth record created at the time of a U.S.-born applicant's birth.
- Permits an applicant who is a U.S. citizen but does not have any of the acceptable proof-of-citizenship documents to submit any evidence that the applicant believes demonstrates he or she is a U.S. citizen. The applicant must contact the Secretary of State Elections Division directly by submitting a form, at which time the Secretary of State must notify the State Election

Board. The State Election Board (composed of the Lieutenant Governor, the Secretary of State and the Attorney General) must meet on the call of the Secretary of State as needed to assess an individual's information provided as evidence of citizenship. The process that must be followed – including an opportunity for the applicant to request a hearing, and what happens if the State Election Board finds the applicant's evidence insufficient to establish citizenship – is specified in the bill. The Secretary of State is required to make additional rules as necessary to implement the requirement that the State Election Board meet on this matter.

- Deems any person registered to vote in Kansas on the effective date of this act to have provided satisfactory citizenship evidence already. A voter who moves within the state or modifies his or her registration records for any other reason is not required to submit evidence of citizenship.
- States that proof of voter registration from another state is not satisfactory evidence of U.S. citizenship.
- If evidence of citizenship is deemed to be unsatisfactory due to an inconsistency between the document submitted and the name or sex provided on the application, the bill provides for an affidavit to accompany the proof of citizenship to be assessed by the county election officer or Secretary of State.
- Requires all evidence-of-citizenship documents submitted be kept confidential by the county election officer or the Secretary of State and maintained as provided by Kansas record retention laws. This requirement expires on July 1, 2016, unless the Legislature reenacts it as part of the review of exceptions required pursuant to the Kansas Open Records Act.
- Permits the Secretary of State to adopt rules and regulations in order to implement these requirements.

The bill also prohibits the Secretary of Health and Environment from charging or accepting any fee for a certified copy of a birth certificate if the birth certificate is requested by a person 17 or older for the purposes of meeting the citizenship requirement for voter registration. A person requesting a copy of his or her birth certificate for this purpose is required to sign an affidavit and submit it to the Secretary stating he or she plans to register to vote and that he or she does not possess any of the documents that constitute evidence of citizenship. A county must assist with and transmit forms for a birth certificate to the State Registrar's Office within the Department of Health and Environment at no charge to any person applying for a birth certificate for the purposes of registering to vote.

### ***Publicizing Changes to Voter Identification Requirements***

The bill requires the Secretary of State to provide notice of the ID requirements; the notice, at a minimum, shall use ads and public service announcements in print, broadcast television, radio, and cable television media, as well as publication on the Secretary's and Governor's websites.

### ***Adjusting Election-Related Deadlines***

The bill changes deadlines and dates in several election-related statutes:

- Provides that nomination petitions and the signatures on them will be checked within ten days, including weekends and holidays. Weekends and holidays also will be included in the five days allowed for a county recount.
- Provides that if a county is conducting a recount, the county will set a day, subject to approval by the Secretary of State, when the county election officer will submit the intermediate abstract.
- Moves back the day when the county election officer shall present original records to the county board of canvassers from Friday after the election to the following Monday or, if notice has been published, to the second Thursday following the election (to allow additional time for the voter of a provisional ballot to submit proof of identity).
- Changes deadlines for recount requests to the second Friday following the election.

### ***Severability***

The bill requires any provision of this act to be severed from the rest of the act, if it is held to be unconstitutional under either the U.S. or Kansas Constitutions. The remainder of the act would remain valid and in effect.

## **Changes to Election Laws—Presidential Primary, Filing Deadlines, Local Primary Elections, Campaign Treasurer's Reports, Filling a Vacated Senate Office, and Others**

**Senate Sub. for HB 2080** makes several changes to state election laws.

### ***Presidential Preference Primary***

Under the bill, the date of the next presidential preference primary in Kansas moves from 2012 to 2016. The bill also changes the filing deadline for a candidate who wishes

to appear on the ballot of the presidential preference primary from February 12 to seven weeks before such an election. The bill allows darkening of an oval, in addition to making a mark in a square, to indicate a vote in a presidential preference primary.

### ***Filing Deadlines in Redistricting Years***

Candidate filing deadlines in redistricting years are changed in the following ways:

- If new districts are established in law on or before May 10 (a change from June 10), the deadline to file a nomination petition or declare intention to become a candidate will be June 1 (a change from June 24).
- If new districts are established in law after May 10, the candidate deadline will be June 10 (a change from July 12).

### ***Local Governments—Primary Election Triggers***

For a school district, city officer, or community college trustee office, the bill requires a primary election only if more than three candidates would be on the ballot. The bill also requires the names of the top two vote-getters in the primary election to be placed onto the ballot for the general election. If the election-at-large method is used, the bill requires a primary election only if the number of candidates is more than three times the number to be elected, and the number on the general election ballot would equal twice the number to be elected.

### ***Finney County Drainage District No. 2 Term of Office***

The bill changes the term of office for directors of Drainage District No. 2 of Finney County from a three-year staggered term to a four-year staggered term.

### ***Campaign Treasurer's Reports***

The bill changes the filing requirements for campaign treasurer's reports for candidates for state office other than those elected on a statewide basis by allowing them to be filed electronically only with the Secretary of State.

### ***Candidates Appearing in Public Service Announcements***

The bill prohibits a candidate running for public office from appearing in public service announcements or having the candidate's name appear in public service announcements paid for with government funds, or certain specified private funds, beginning 60 days before the primary election and continuing through the general election. These prohibitions extend to both electronic and print media; however, the agency website and regularly

used print material of the office would be excluded. Intentional violations of this prohibition can result in civil penalties.

### ***Ending the Overlap Between Voter Registration and Advance Voting***

The bill changes the deadline for voter registration to the 21st day prior to the election (from the 15th day), to end the overlap between the beginning of advance voting and the end of voter registration.

### ***Filling a Vacated Senate Office***

The bill changes election requirements for filling a vacated Senate office. If the vacancy occurs before May 1 (changed by the bill from October 15) in the second year of the term, a senator will be elected in the next general election. Anyone appointed to the office will serve until that election. The bill specifies that the nomination and election process of the successor senator will be the same as that for a regular Senate term. A person appointed to a Senate office vacated after May 1 in the second year of a term will stay in the office for the remainder of the term.

### ***Technical Changes***

Finally, the bill makes technical amendments that include the following:

- Gives authority for the Secretary of Revenue to adopt rules and regulations regarding the issuance of a free, non-driver's identification card for voting purposes, as prescribed in 2011 HB 2067;
- Allows the Secretary of Health and Environment to adopt rules and regulations regarding the issuance of a free certified copy of a birth certificate to be used to register to vote, as prescribed in 2011 HB 2067; and
- Changes the filing deadline for candidates for the governing body of extension districts from Wednesday to Tuesday, ten weeks before the election.

## ENERGY AND UTILITIES

### Kansas 911 Act

**Sub. for SB 50** enacts new law relating to 911. Provisions of the bill apply to all modes of service, including telephone, cell phone, Voice over Internet Protocol (VoIP), prepaid wireless, and other service capable of contacting a public safety answering point (PSAP). Major provisions of the bill are described below.

Many sections of the bill do not take effect until January 1, 2012.

#### ***Payment and Collection of 911 Fees (excluding prepaid wireless service)***

- Imposes a 911 fee of \$0.53 per month per subscriber account, effective January 1, 2012. The 911 Coordinating Council, pursuant to rules and regulations, may lower the 911 fee or may raise it to not more than \$0.60 if it finds that moneys generated by the fee are in excess of or are below the cost required to operate a PSAP, based on expenditure information reported to the Council;
- Requires the fee to be paid by the service user (*e.g.*, owner of the phone), and collected by the service provider (*e.g.*, telephone company) monthly. The duty to collect fees begins January 1, 2012; and
- Requires service providers to remit fees to the local collection point administrator (LCPA) within 15 days of the end of the calendar month, along with a return for the preceding month, and to retain records of fee collections for three years.

#### ***Prepaid Wireless Service***

- Imposes a prepaid wireless 911 fee of 1.06 percent per retail transaction which occurs in Kansas, with the fee to be paid by the consumer (*e.g.*, the purchaser of the prepaid card), effective January 1, 2012;
- Requires a proportionate increase or decrease in the prepaid wireless 911 fee if the subscriber monthly 911 fee is changed;
- Requires sellers to remit all prepaid wireless 911 fees collected to the Department of Revenue by electronic filing, at the same filing frequency as they remit sales tax;

- Requires the Department of Revenue to transfer all remitted prepaid wireless 911 fees to the LCPA within 30 days of receipt;
- Authorizes the Department of Revenue to audit a seller's prepaid wireless 911 fee compliance at the time of sales and use tax audits;
- Allows the Department to retain up to \$70,000 of remitted funds in fiscal year 2012 only, to pay for programming and other one-time costs for establishing a system for collecting the prepaid wireless 911 fee; and
- Requires that the prepaid wireless 911 fee be the only 911 funding obligation imposed on prepaid wireless service.

### ***Distribution of Fee Moneys***

- Requires the LCPA to distribute fees to PSAPs within 30 days of receipt. Each PSAP receives a percentage of the fees generated from its users. This amount varies based on the population of the county, which is as follows:

<b>Population</b>	<b>Percent of Fees</b>
80,000 or more	82 percent
65,000 - 79,999	85 percent
55,000 – 64,999	88 percent
45,000 – 54,999	91 percent
35,000 – 44,999	94 percent
25,000 – 34,999	97 percent
Less than 25,000	100 percent

- Provides that each county will receive a minimum distribution of \$50,000;
- Directs that all moneys remaining after distribution will be transferred to the 911 State Grant Fund, along with fees with no identifiable source; and
- Requires the LCPA to transfer up to \$2 million annually of fees collected on prepaid wireless service to the 911 State Grant Fund. Prepaid receipts in excess of \$2 million annually will be distributed to PSAPs according to the formula shown above.

### ***Use of Fee Moneys***

- Restricts the use of fees collected, including interest, to only necessary and reasonable costs incurred by PSAPs for the following uses:

- Implementation of 911 services;
  - Purchase of 911 equipment and upgrades;
  - Maintenance and license fees for 911 equipment;
  - Training of personnel;
  - Monthly recurring charges billed by service suppliers;
  - Installation, service establishment, and non-recurring start-up charges billed by the service supplier;
  - Charges for capital improvements and equipment or other physical enhancements to the 911 system; and
  - The original acquisition and installation of road signs designed to aid in the delivery of emergency service.
- Disallows expenditures from fee moneys to lease, construct, expand, acquire, remodel, renovate, repair, furnish, or make improvements to buildings or similar facilities. In addition, the bill disallows expenditures to purchase subscriber radio equipment;
  - Requires PSAPs to report their expenditures from 911 fee moneys annually to the 911 Coordinating Council and for the Council to include detailed reports of those expenditures in the Council's annual report to the Legislature's utilities committees; and
  - Requires PSAPs that are found to have spent 911 fee moneys on unauthorized uses to repay those funds plus 10 percent to the LCPA for deposit in the 911 State Grant Fund. The bill sets out due process protections for those PSAPs.

### **911 Coordinating Council**

- Creates the 911 Coordinating Council to monitor the delivery of 911 services, develop strategies for future enhancements to the 911 system, and distribute grant funds to PSAPs. After January 1, 2012, the Council also will designate the LCPA subject to the consent of the Legislative Coordinating Council;
- Establishes membership requirements of the Council, to include 16 voting members (12 appointed by the Governor and four legislators appointed by legislative leadership) and 10 non-voting members appointed by the

Governor. Voting members are limited to no more than two three-year terms;

- Assigns duties to the Chairperson of the 911 Coordinating Council as listed below. The Chairperson, who must have extensive experience with 911 in Kansas, is appointed by and serves at the pleasure of the Governor. The Chairperson's duties include:
  - Coordinating Enhanced 911 and Next Generation 911 services in the state;
  - Implementing statewide 911 planning;
  - Ensuring that policies adopted by the 911 Coordinating Council are carried out;
  - Acting as a liaison between the LCPA and the Council;
  - Assisting in development of regulations; and
  - Administering the federal grant fund, and distributing federal grants as recommended by the Council.
- Limits contracts between the 911 Coordinating Council and the LCPA to no longer than two years with authority to extend to three years subject to processes set out in rule and regulations. Specifies that the LCPA is not a state agency, makes the LCPA subject to the Kansas Open Records and Open Meetings acts, and requires the LCPA to treat moneys received as public funds pursuant to the state Banking Code; and
- Designates the Department of Administration as the entity to provide staffing to the 911 Coordinating Council prior to January 1, 2012. After that date, the LCPA provides staffing to the Council.

#### ***Rules and Regulations, Immunity***

- Authorizes the 911 Coordinating Council to adopt rules and regulations necessary to carry out the Act, including but not limited to:
  - Creating a uniform reporting form designating how moneys, including 911 fees, have been spent by the PSAPs;
  - Establishing procedures for determining whether 911 fees should be raised or lowered, within the specified limit, based on information provided on uniform reporting forms;

- Recommending standards for training of PSAP personnel;
  - Requiring service providers to notify the 911 Coordinating Council;
  - Setting standards for coordinating and purchasing equipment; and
  - Assessing civil penalties.
- Directs that rules and regulations necessary to begin administration of the act be adopted by December 31, 2011; and
  - Except as provided by the Kansas Tort Claims Act, and except for failure to use ordinary care, or for intentional acts, the LCPA and providers shall not be liable for payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining, or providing 911 service.

#### ***Audits and Reviews***

- Requires yearly audits of the receipts and disbursements of the LCPA by a licensed municipal accountant or certified public accountant;
- Allows the LCPA to require an audit of any provider's books and records concerning collection and remittance of 911 fees, with the audit cost paid from the 911 State Grant Fund;
- Requires an audit of the 911 system by Legislative Post Audit on or before December 31, 2013, and at least once every three years thereafter. Audits are to be contracted, with the cost of the audit paid from the 911 State Grant Fund; and
- Mandates legislative review of the Act at the regular 2014 Legislative Session and every five years thereafter.

#### ***Cost Recovery***

- Does not limit providers from recovering directly from their customers the costs associated with designing, developing, deploying and maintaining 911 service, as well as the providers' cost of collection and administration of the 911 fees.

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**911 State Grant Fund**

- Directs the LCPA, upon advice and consent of the 911 Coordinating Council, to establish the 911 State Grant Fund, which is not part of the State Treasury; and
- The 911 Coordinating Council is responsible for ensuring that 911 State Grant Fund moneys are spent only for the following purposes:
  - Projects involving the development and implementation of Next Generation 911;
  - Costs associated with PSAP consolidation or cost-sharing projects;
  - Expenses related to the 911 Coordinating Council, up to 1.5 percent of the total receipts remitted by the providers and the Department of Revenue to the LCPA;
  - Audits of PSAPs conducted by Legislative Post Audit and audits of providers directed by the LCPA; and
  - Other costs incurred by PSAPs specified in the Use of Fee Moneys section of this document.

**911 Federal Grant Fund**

- Establishes the 911 Federal Grant Fund in the State Treasury to receive grant moneys from the federal government, and establishes related funds as needed for receipt of moneys from other sources effective January 1, 2012; and
- Sets out allowable uses for grant moneys.

**Dissolution of Current Process**

- Certifies all unobligated funds remaining in the Wireless Enhanced 911 Grant Fund on January 1, 2012, and transfers the funds to the LCPA for deposit in the 911 State Grant Fund;
- Discontinues the wireless and VoIP enhanced 911 local and grant fees on January 1, 2012; and
- Abolishes the Kansas Wireless Enhanced Advisory Board on January 1, 2012.

### **Other Provisions**

- Requires information received by the Department of Revenue in compliance with this act to be confidential and not disclosed except in accordance with other provisions of law with respect to the enforcement and collection of tax;
- Allows the Secretary of Revenue to provide information to the LCPA from returns filed by sellers of prepaid wireless services for the purpose of verifying seller compliance with collection and remittance of such fees; and
- Creates an exemption to the Kansas Open Records Act for information provided by providers to the LCPA or to the 911 Coordinating Council, upon request of the party submitting the records.

### **Telecommunication Deregulation**

**Sub. for SB 72** amends existing telecommunications law to allow any price-cap regulated local exchange carrier that has deregulated a majority of its local exchange access lines to elect to be regulated as a telecommunications carrier rather than as a local exchange carrier. Under the bill, a local exchange carrier that elected to be regulated as a telecommunications carrier is referred to as an “electing carrier.”

The carrier must provide the Kansas Corporation Commission (KCC) with at least 90 days’ notice of its intention to be regulated as a telecommunications carrier, along with a verified statement that the majority of its access lines are deregulated and information about the number of access lines the carrier serves in each of its exchanges. The KCC is required to review the information. Unless the KCC determines within 45 days that the majority of the carrier’s access lines are not deregulated, the KCC is required to designate the carrier as an electing carrier.

The bill outlines the following rights and responsibilities of an electing carrier:

- An electing carrier is subject to price cap regulation for lifeline services, but otherwise is not subject to rate regulation by the KCC;
- An electing carrier is subject to no more regulation than other telecommunications carriers operating in Kansas (e.g., wireless carriers and cable companies), except that it remains subject to existing requirements regarding reasonable resale of its retail service, unbundling and interconnection obligations, intrastate access charges, and the Kansas Lifeline Service Program. In addition, an electing carrier remains eligible to receive funding from the Kansas Universal Service Fund (KUSF);

- An electing carrier can charge no more for single residential or business lines in its rural exchanges (exchanges with less than 6,000 local exchange access lines) than the average of its rates for those lines in its urban exchanges (exchanges with 75,000 or more local exchange access lines);
- An electing carrier could be relieved of its requirement to serve as carrier of last resort (COLR) in its urban exchanges by providing written notice to the KCC of the specific urban exchanges in which the carrier elects to be relieved of that obligation;
- Neither an electing carrier that chooses to be relieved of its COLR obligation in an urban exchange, nor any local exchange carrier that does not have COLR responsibility in an exchange, is eligible for KUSF funding for COLR obligations or for high cost support in that exchange. Such carriers remain eligible for KUSF support for the Kansas Lifeline Services Program;
- An electing carrier is required to offer single residential local exchange access lines in its exchanges;
- An electing carrier is required to allow interconnection by a telecommunications carrier to transmit and route voice traffic between the electing carrier and the telecommunications carrier, regardless of the technology used to originate and terminate the call;
- An electing carrier and all local exchange carriers are required to allow consumers to use a signed document called a “letter of agency” to satisfy the notification requirement when a consumer wishes to change telecommunications carriers; and
- The local service rates of electing carriers will not be included when determining the average of residential local service rates used to calculate KUSF support for rural telephone companies.

(Note: Currently, AT&T and CenturyLink are the only price-cap regulated local exchange carriers in Kansas, and only AT&T meets the criteria to become an electing carrier.)

The bill also modifies the statutory contents of the annual price deregulation report prepared by the KCC. Changes in rates for nonwireless basic local telecommunications service in deregulated exchanges still will be reported, but the KCC will no longer be required to make recommendations to the Governor and Legislature on changes needed in state law based on a specific analysis of those changes. New information required in the report for price deregulated exchanges includes the following:

- Current rates for services and services available in a deregulated exchange provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used to provide service; and
- The number of competitors in a deregulated exchange including, but not limited to, facilities-based carriers, commercial mobile radio service, or broadband-based service providers.

## **Electric Supply and Demand Reports; Gas System Reliability Surcharge**

**SB 224** contains provisions related to electric supply and demand reports and to the gas system reliability surcharge.

### ***Electric Supply and Demand Reports***

The bill requires the Kansas Corporation Commission (KCC) to issue a biennial report on electric supply and demand for all electric utilities in Kansas, beginning February 1, 2013. The report shall include, but not be limited to, generation capacity needs, system peak capacity needs, and renewable generation needs associated with the 2009 Kansas renewable energy standards. The report will be submitted to the House Energy and Utilities Committee and the Senate Utilities Committee.

### ***Gas System Reliability Surcharge***

The bill allows a regulated natural gas company that collects a gas system reliability surcharge from its customers to request an extension of up to 12 months beyond the current 60-month requirement for a full rate review by the KCC. A motion requesting the extension must be filed with the KCC, which determines the reasonable or necessary length of the extension, up to 12 months.

The gas system reliability surcharge allows a natural gas utility to begin rate recovery of capital spent on certain types of projects prior to a full rate review by the KCC.

## **Severance of Wind and Solar Rights; Markings on Anemometer Towers**

**SB 227** addresses two property issues involving renewable energy: preventing the permanent severance of wind and solar rights from a tract of land, and establishing daylight marking requirements for anemometer towers. (Anemometers are instruments for measuring and recording wind speed.)

### ***Severance of Wind and Solar Rights***

The bill amends the law concerning conveyance of real estate. The bill allows only the surface owner of a tract of land to use the land to produce wind- or solar-generated energy, unless the owner has entered into a lease or easement for those rights for a definite period. The requirement does not apply to leases filed before July 1, 2011. In addition, the requirement does not affect any otherwise enforceable restriction on the use of the land for production of wind or solar energy, nor does it prohibit conservation easements.

The bill also requires any conveyance for solar resources to include the same types of information that must be included in an instrument conveying interest in wind resources.

### ***Visibility Marking Requirements for Anemometer Towers***

The bill requires specific daylight visibility markings for any anemometer tower that is at least 50 feet in height and that is located outside the corporate boundaries of a city, provided the appearance of the tower is not otherwise mandated by state or federal law.

The following markings are required at the time the tower is erected: the top one-third of the anemometer tower must be painted in equal, alternating bands of aviation orange and white; two marker balls must be attached to and evenly spaced on each outside guy wire; and one or more seven-foot safety sleeves must be placed at each anchor point.

The requirements apply to any anemometer tower erected on or after July 1, 2011. Towers erected before that date are required to be marked within two years of the effective date of the act. Failure by an owner of an anemometer tower to properly mark the tower is a class C nonperson misdemeanor.

### **National Broadband Plan**

**SR 1832 and HR 6027** urge the Federal Communications Commission (FCC) to make substantive change to the National Broadband Plan to ensure that rural areas have access to the same high-quality, affordable communication services that are available in urban areas. Currently, the Plan calls for access to broadband speeds at 100 megabits per second by 2020 in urban areas, and at four megabits per second in rural areas. Specifically, the FCC is urged to modify the Plan to develop a universal service support mechanism that would provide efficient and effective incentives for broadband network deployment and operation, and that would keep broadband service affordable. The members of the Kansas congressional delegation are urged to work with the FCC to ensure that commissioners understand the dramatic alterations needed to the Plan to ensure quality broadband service is available throughout Kansas and the country.

## Environmental Protection Agency Regulations

**HCR 5009** urges the Environmental Protection Agency to continue to allow state permit-writers the flexibility to evaluate power plants on a site-by-site basis when determining the best available technology for cooling water intake structures to minimize adverse environmental impacts. The resolution states that a one-size-fits-all approach mandating the use of cooling towers could cause more adverse environmental impacts (including increases in emissions of greenhouse gases and particulate matter, evaporative water loss and solid waste production) than it prevents (fish impingement and entrainment).

## Environmental Train Wreck

**HR 6008** expresses concern about the numerous new regulations proposed by the Environmental Protection Agency (EPA) particularly in the area of air quality and regulation of greenhouse gas emissions. The regulations are sometimes referred to as the “train wreck.” The resolution urges Congress to adopt legislation prohibiting the EPA from regulating greenhouse gas emissions, to impose a moratorium on new air quality regulation by the EPA for at least two years (except in the case of an imminent health or environmental emergency), and to require the Administration to undertake a comprehensive study of the cumulative effect of the proposed regulations on America’s economic competitiveness, including a cost-benefit analysis of all current and planned EPA regulations.

## Regulation of Interstate Underground Gas Storage Fields

**HR 6024** urges the Federal Energy Regulatory Commission, the U.S. Department of Transportation and the Kansas Corporation Commission to adopt legislation or policies that would provide Kansas, and other states, administrative jurisdiction to assure the safe operation of wellbores associated with the underground storage of natural gas that is in interstate transportation. A recent federal court ruling precludes state authorities from regulating the safety of underground storage of gas in interstate transportation.

## Regulation of Hydraulic Fracturing

**HR 6025** urges the U.S. Congress to preserve the primacy of the states to regulate hydraulic fracturing as a component of states’ regulatory programs for drilling, completion, operation, and plugging of oil and gas wells; and to maintain the exemption from the Safe Drinking Water Act for hydraulic fracturing.

## FINANCIAL INSTITUTIONS AND INSURANCE

### Risk-Based Capital Requirements

**SB 15** updates the effective date for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners (NAIC) and specified in Kansas law from December 31, 2009, to December 31, 2010.

### Uninsured Motorists—Prohibition from Right to Recover Non-Economic Loss

**SB 136** enacts new law to provide that anyone operating an uninsured vehicle who, at the time of an auto accident, has not maintained personal injury protection benefits coverage as mandated by law (the Kansas Automobile Injury Reparations Act) would be prohibited from having a cause of action for the recovery of non-economic loss sustained as a result of the accident.

The prohibition from having a cause of action for non-economic loss would not apply and a cause of action for non-economic loss could be maintained if the court finds by clear and convincing evidence that the person bringing the cause of action did not knowingly, at the time of the accident, drive a motor vehicle that was without personal injury protection benefits coverage as mandated by law.

The prohibition from having a cause of action for non-economic loss also would not apply to any person who, at the time of the accident, failed to maintain coverage for a period of forty-five days or less and had maintained continuous coverage for at least one year prior to such failure to maintain coverage.

Additionally, the bill provides that any person who is convicted of, or pleads guilty to, an alcohol or drug-related violation in connection with an auto accident also would be prohibited from this recovery. The violations referenced in the bill include the suspension and restriction of driving privileges for test refusal, test failure or drug-related conviction (KSA 8-1014) and driving under the influence (DUI) of alcohol or drugs (KSA 8-1567).

Personal injury protection benefits are defined in existing law to mean the disability benefits, funeral benefits, medical benefits, rehabilitation benefits, substitution benefits and survivors' benefits required to be provided in motor vehicle liability insurance policies pursuant to this act. Economic damages generally include the cost of medical care, past and future, and related benefits, including lost wages, loss of earning capacity and other such losses; non-economic losses would include claims for pain and suffering, mental anguish, injury and disfigurement not affecting earning capacity, and other losses which cannot easily be expressed in monetary terms.

## Portable Electronics Insurance Act

**SB 170** creates the Portable Electronics Insurance Act. The Act will regulate the licensing and sale of or offer of coverage for portable electronic devices. The Act will take effect and be in force from and after January 1, 2012, and publication in the statute book.

### *Definitions*

Among the definitions established under the Act:

- “Location” means any physical location in the State of Kansas.
- “Portable electronic device” means “an electronic device that is portable in nature. The term portable electronic device also includes any accessory for such device and any service related to the use of such portable electronic device that is sold to a customer.”
  - The term would not include devices used exclusively by communication companies or commercial entities that provide service to a customer.
- “Portable electronics insurance” means “insurance providing coverage for the repair or replacement of portable electronics devices which may provide coverage for portable electronics devices against any one or more of the following causes of loss: loss, theft, are inoperable due to mechanical failure, malfunction, damage or other similar cause of loss.”
  - The term would not include service contracts (defined by KSA 2010 Supp. 40-201a), any policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty, or any homeowner’s, renter’s, private passenger automobile, commercial multiperil, or similar policy.

### *Licensure Requirements*

Under the Act, a vendor will be required to hold a limited lines license to sell or offer policies for portable electronics insurance. Vendors will be required to meet requirements to be a producer, including:

- Paying all fees to be an insurance producer;
- Complying with all of the same terms and conditions that are specified for an insurance producer license; and

- Submitting information to the Insurance Commissioner as may be required, including any information or documentation needed to determine professional competence, good character and trustworthiness of the vendor.

The vendor also will be required to provide, at the time of application and on a quarterly basis thereafter, a list to the Commissioner of all locations in Kansas where it offers coverage.

### ***Disclosure of Information***

Vendors also will be required under the Act, among other things, to provide information at locations where portable electronics insurance is offered. The information is required to disclose that portable electronics insurance coverage may provide a duplication of coverage; to state that customer enrollment is not required in order to purchase or lease portable electronics devices or services; to summarize the material terms of the insurance coverage; to summarize the process for filing a claim; and to state that the customer may cancel coverage enrollment under the policy at any time and receive any applicable unearned premium refund.

Other provisions of the new act include a requirement for the insurer to develop a training program for employees and authorized representatives of the vendors who sell or offer portable electronics insurance. Charges for portable electronics insurance coverage will be permitted to be billed and collected by the vendor. If the coverage is included in the cost associated with the purchase or lease of portable electronics devices or related services, the vendor will be required to disclose to the customer that the coverage is included with the portable electronics or related services.

The Insurance Commissioner is authorized to impose on the supervising entity or vendor penalties allowed under Chapter 40 (the Insurance Code) if the supervising entity, vendor or employee or other authorized representative of the vendor violates provisions of this act or commits other violations of Insurance law: the Unfair Claims Settlement Practices Model Regulation (KSA 40-1-34); unfair methods of competition or unfair and deceptive acts or practices (40-2404); and provisions of the Uniform Insurance Agents Licensing Act (40-4909).

The bill also provides for termination and change of policy conditions, including:

- An insurer may not change the terms and conditions of a policy of portable electronics insurance more than once in a six-month period; and
- An insurer may not terminate an individually-enrolled customer based solely upon the age of such enrolled customer's covered portable electronic device.

Provisions also are made for notification by the insurer of a proposed termination of a customer's policy.

Finally, the Insurance Commissioner is permitted to adopt rules and regulations to implement the Act.

## **Kansas Life and Health Insurance Guaranty Association Act—Amendments**

**SB 179** amends certain coverage, definitions, liability, and assessment provisions in the Kansas Life and Health Insurance Guaranty Association Act (Guaranty Association Act). The Guaranty Association Act enables the Guaranty Association to provide certain protections to Kansas residents who are holders of life and health insurance policies and individual annuities with an insolvent insurer.

### ***Coverage for Policies and Contracts (KSA 40-3003)***

Among the amendments to coverage requirements, the bill:

- Excludes structured settlement annuities (SSAs) from being governed by a certain coverage provision (limited to persons who are owners of or certificate holders under policies and contracts).
- Updates application to non-residents, including the clarification of when a person is not eligible for coverage (insurer not licensed in the state at the time specified in the state's guaranty association laws).
- Addresses the siting of coverage by stating that the Act is intended to provide coverage to a person who is a payee under an SSA or that person's beneficiary (results in a move of coverage from the contract owner's state to the payee's state of residence).
- Clarifies that coverage would be provided by only one state's association (disallows the possibility of multiple states' associations providing coverage to the same person).

### ***Definitions (KSA 40-3005)***

The bill also makes amendments to the definitions created under the Guaranty Association Act, including:

- Updating "impaired insurer," "member insurer," "resident," and "supplemental contract." Other technical changes are made to the listing of definitions. The

amendment to the term “resident” deems U.S. citizens residing outside of the U.S. as residents of the insolvent insurer’s domiciliary state.

- Specifying an exclusion to the term “premium” to limit the assessable premium of a single owner of multiple non-group policies of life insurance. The coverage limitation provided under the Act would be \$5 million per owner.
- Adding definitions for the terms “policyholder” and “contract holder,” “structured annuity settlement” and “unallocated annuity contract.” The definition of “policyholder” and “contract holder” specifies that the person is the legal owner or is otherwise vested with legal title to the policy or contract.

### ***Liability (KSA 40-3008)***

The bill also addresses liability provisions under the Act to:

- Amend a discretionary trigger in the law to make the trigger for impaired insurers applicable to both foreign and domestic insurers.
- Limit the ability of the Association to loan money to an impaired insurer; under the bill, the Association will be permitted to provide loans and notes for funding its coverage obligations.
- Clarify application of the provisions to both insurance policies and annuity contracts.
- Allow the Association, with the approval of the receivership court, the ability to work with the domiciliary insurance commissioner to change premium rates when determined to be necessary.
- Amend a provision to allow for the Association’s standing to appear or intervene in a state court to include persons or property against which the Association may have rights through subrogation or otherwise.
- Address contractual obligations for a policy or contract by clarifying that coverage, including the Moody’s interest rate adjustment provision, applies to an indexed interest on equity index products and limits that coverage to contract values that have been credited and not subject to forfeiture (date of insolvency or impairment).
- Increase limits for certain health insurance benefits. The state limit will be \$100,000 for coverages not defined as disability insurance or basic hospital,

medical and surgical insurance or major medical insurance or long-term care insurance; \$300,000 for disability insurance; \$300,000 for long-term care insurance; and \$500,000 for basic hospital, medical and surgical insurance or major medical insurance.

- Clarify the coverage and limitations applicable to a payee under a structured settlement annuity.
- Insert a provision (see definition of “premium” and an exclusion created) to limit coverage of single owners of multiple nongroup life policies to \$5 million.
- Insert provisions for covered policies for which the Association becomes obligated after an entry of an order for liquidation (estate assets).
- Clarify that the Association will not be required to cover obligations that do not materially affect economic values or benefits of the covered policy or contract.
- Provide the Association with the right to assume an insolvent insurer’s ceded contract of reinsurance.
- Permit the Association to continue, subject to the receivership court’s approval, coverage of index products by using alternative policies or contracts for fixed interest under the stated provisions.

### **Assessments (KSA 40-3009)**

Among the amendments to assessments provided for in the Act, the bill:

- Increases the maximum annual Class A assessment that can be made on a non-pro rata basis from \$150 to \$300 (per member insurer).
- Provides a calculation method for the annual aggregate limitation on assessments in the event the Association must make two or more assessments in one calendar year for multiple insolvencies occurring in different years.

### **Insurance Code Investment Provisions—Designation of Trust Companies**

**SB 185** amends an investment provision in the Insurance Code to authorize certain insurance companies (those other than 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.

### **Bank Commissioner—Trust Department Assessments**

**HB 2056** amends a provision in the Banking Code that outlines how the Bank Commissioner determines the amounts to assess banks and trust companies for examination and administrative expenses. (The assessments fund a portion of the activities of the Bank Commissioner.) The bill requires the Bank Commissioner to use the December 31 report submitted to the Federal Deposit Insurance Corporation, rather than the March 31 report as required by prior law, as the basis for both determining assessments of the trust departments of banks and granting inactive status to a trust department that reports zero assets on its call report.

### **Insurance Rate Filing, Exemption of Trade Secrets, Copyrighted Material**

**HB 2074** amends a rate filing provision for certain lines of property and casualty insurance in the Insurance Code to exempt trade secrets and copyrighted material in an insurance filing or any supporting documentation for the filing from disclosure in open record requests.

“Trade secret” is assigned its meaning from the Kansas Uniform Trade Secrets Act:

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Under the prior law, an insurance rate filing and any supporting information submitted to the Insurance Commissioner by an insurance company was open to public inspection and access.

## **Amendments to the Insurance Code (Group Life Insurance Participation Requirements; External Review of Adverse Health Care Decision, Certain Consumer Protections; and Coverage for Children, Increasing Maximum Lifetime Benefit in the State High Risk Pool); Exclusion of Insurance Coverage for Certain Abortions**

**HB 2075** makes several amendments to the Insurance Code to delete specified participation percentages required for covered employees to place a group life insurance policy in effect, to amend certain provisions associated with the external review of an adverse decision (a denial of coverage for a proposed or delivered health care service), to provide coverage under the State High Risk Pool for children in certain instances and increase the maximum lifetime benefit for the Pool, and to provide for the exclusion of insurance coverage for and require an optional rider of coverage for certain abortions.

### ***Group Life Insurance—Policy Requirements***

Specifically, the bill amends a statute governing policy requirements for group life insurance to delete specified participation percentages required for covered employees to place a group life policy in effect. Under the bill, policy premiums could be paid by the policyholder, the insured employee, or both. The bill also deletes requirements that group life policies must cover a specified number of individuals at the date of issue. Finally, the bill deletes the limitation of coverage (50.0 percent in existing law) allowed for dependents covered under an employee's group life insurance policy.

Under prior law, employer group life insurance premiums were paid by the policyholder.

### ***External and Internal Review, Health Insurance***

The bill also amends certain provisions associated with the external review of an adverse decision (a denial of coverage for a proposed or delivered health care service).

### ***Adverse Health Care Decisions***

Specifically, the bill increases the time, from 90 to 120 days, an insured person has to request an external review. Under the law, an external review must be completed within seven business days when an emergency medical condition exists; the bill reduces that time frame to 72 hours after the date of the request for an expedited external review, or as expeditiously as the insured's medical condition or circumstances require.

The bill also expands the definition of "emergency medical condition" to include:

- A medical condition where the time frame for completion of a standard external review would seriously jeopardize the insured's ability to regain maximum function; or
- A medical condition for which coverage has been denied on a determination that the recommended or requested health care service or treatment is experimental or investigational, if the insured's treating physician certifies, in writing, that the recommended or requested health care service or treatment for the medical condition would be significantly less effective if not promptly initiated.

The bill also provides that when an insurer or health insurance plan has failed to strictly adhere to all internal appeal procedure requirements as prescribed by state or federal law, the claimant (insured) shall be deemed to have exhausted the internal claims and appeal process regardless of whether the insurer or the health plan asserts its substantial compliance with the appeal procedure or any error it committed was minimal.

#### ***External Review Organizations (EROs)***

The bill also provides that an External Review Organization's fees for the performance of external reviews may be paid by the Insurance Commissioner, by the insurer (health insurance company), or by the health plan. The bill states that in no event would the insured be responsible for any portion of the fees associated with the performance of external reviews.

The bill also amends the law governing External Review Organizations to:

- Clarify the frequency allowed for an external review (previously limited to one review during the same year for any request arising out of the same set of facts) to specify that external review would be limited to one external review during a period of twelve consecutive months commencing on the date of the initial request.
- Delete language allowing an insured the option of designating which external review process will be utilized (state or federal), for those instances in which external review processes are available pursuant to federal law.
- Require that, with exception for decisions of the External Review Organizations reviewed directly by the district court, the decision of the ERO is binding on the insured and the insurer or health insurance plan.

***Kansas Uninsurable Health Insurance Plan Act— Amendments***

The bill amends the Kansas Uninsurable Health Insurance Plan Act (the Act governing the administration of the State High Risk Pool) to:

- Allow the Kansas Health Insurance Association (the Pool’s administrator) to accept children under the age of 19 who are otherwise eligible for the Pool, if no coverage is available under an individual health insurance policy for purchase in the county in which the child lives.
- Increase the statutory lifetime limit from \$2.0 million to \$3.0 million.

***Exclusion of Coverage for Certain Abortions; Optional Rider for Coverage***

The bill also requires all individual or group health insurance policies or contracts (including the municipal group-funded pool and the State Employee Health Plan) which are issued or renewed on and after July 1, 2011, to exclude coverage for abortions unless the procedure is necessary to preserve the life of the mother. The bill provides that coverage may be obtained through an optional rider for which an additional premium is paid. The bill also requires that the premium of the optional rider of coverage be calculated so that it fully covers the estimated cost of covering elective abortions (actuarial basis).

The bill further prohibits a health insurance exchange, established by either the State of Kansas or the federal government, from offering health insurance contracts, plans or policies that provide coverage for elective abortions. A health insurance exchange also will be prohibited from offering coverage for elective abortions through the purchase of an optional rider.

Provisions of the bill apply to all policies, contracts, and certificates of insurance delivered, renewed, or issued within Kansas or for an individual who resides or is employed in the state and to nonprofit medical and hospital service corporations.

***Definitions***

Among the definitions established in the provisions relating to elective abortions are:

“Abortion” is defined to mean “the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child and which causes the premature termination of the pregnancy.”

“Elective” is defined to mean “an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; provided, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which will result in her death.”

### ***Severability***

Further, the bill states that if the provisions of new law pertaining to the exclusion of coverage for certain abortions is held invalid, the invalid provision shall not affect other provisions or applications of the Act.

### **Surplus Lines Multi-State Compliance Compact; Amendments to the Insurance Code (Anti-Fraud Plans; Time Requirements for Municipal Pools and Group-Funded Workers Compensation Pools)**

**HB 2076** makes amendments to certain statutory time requirements specified for municipal pools and group-funded workers compensation pools; extends the sunset provision that allows anti-fraud plans to remain confidential from July 1, 2011, to July 1, 2016; enacts the Surplus Lines Insurance Multi-State Compliance Compact; and makes amendments to the law governing the allocation of surplus lines’ premium tax revenue.

### ***Kansas Municipal Group-Funded Pool Act***

Specifically, the bill amends provisions in the Kansas Municipal Group-Funded Pool Act to increase two-time limitations among the statutory requirements:

- From 30 to 60 days, the requirement that application for certificate of authority to operate a pool be made to the Insurance Commissioner prior to the proposed inception date of the pool; and
- From 90 to 150 days, the time permitted for the pool’s filing of an independent, audited financial statement with the Insurance Commissioner after the end of the pool’s fiscal year.

### ***Anti-fraud Plans, Sunset Provision (Open Records Act)***

The bill also repeals prior law and enacts new law to extend the sunset provision that allows anti-fraud plans submitted to the Insurance Commissioner to be confidential and not public record, from July 1, 2011, to July 1, 2016.

### ***Group-Funded Workers Compensation Pools***

The bill amends a requirement in the law governing group-funded workers compensation pools to increase the time permitted for the pool’s filing of an independent, audited financial

statement with the Insurance Commissioner from 90 days to 150 days after the end of the pool's fiscal year.

### **Surplus Lines Insurance Multi-State Compliance Compact**

The bill enacts the Surplus Lines Insurance Multi-State Compliance Compact and makes amendments to the law governing the allocation of surplus lines' premium tax revenue. The model compact legislation (known as SLIMPACT-Lite, a National Conference of Insurance Legislators [NCOIL] initiative) is intended to comply with requirements of the Nonadmitted and Reinsurance Reform Act of 2010 [the NRRRA], legislation enacted in Title V, Subtitle B of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. (Enactment of this Act authorizes Kansas to join the Compact as a Compacting State).

The Compact becomes effective and binding upon legislative enactment of the Compact by two Compacting States. The Commission becomes effective for purposes of adopting rules and creating the clearinghouse when there are a total of ten Compacting and Contracting States or when the Compacting and Contracting States represent greater than 40 percent of the surplus lines insurance premium volume.

Legislatures, under the provisions of Article 14, could withdraw from the Compact by enacting a statute repealing the enacting statute for the Compact.

#### ***NRRRA requirements, Purposes of the Compact (Preamble, Article 1)***

Among the stated purposes of the Compact are:

- To implement the express provisions of the NRRRA;
- To protect the premium tax revenues of the Compacting States through facilitating the payment and collection of premium tax on non-admitted insurance; and to protect the interests of the Compacting States by supporting the continued availability of such insurance to consumers; and to provide for allocation of premium tax for non-admitted insurance of multi-state risks among the States in accordance with uniform allocation formulas to be developed, adopted, and implemented by the Commission;
- To establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to non-admitted insurance of multi-state risks, in accordance with rules to be adopted by the Commission;
- To adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for non-admitted insurance of multi-state risks and single-state risks, in accordance with rules to be

adopted by the Commission, thereby promoting the overall efficiency of the non-admitted insurance market; and

- To establish the Surplus Lines Multi-State Compliance Compact Commission.

### **Definitions (Article 2)**

Among the definitions established under the Compact (in compliance with definitions and provisions established under the NRRRA):

- “Home State” means (i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or (ii) if 100 percent of the insured risk is located out of the State [in part (i)], the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.
- “Non-Admitted Insurer” means an insurer that is not authorized or admitted to transact the business of insurance under the law of the Home State.
- “Principal Place of Business” means the state where the insured maintains its headquarters and where the insured’s high-level officers direct, control and coordinate the business activities of the insured.
- “Surplus Lines Insurance” means insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the Home State; for purposes of the Compact, the term also means excess lines insurance as may be defined by applicable State law.

### **Organization and Powers**

The 16 articles of the Compact address: Purpose; Definitions; Establishment of the Commission and Venue; Authority to Establish Mandatory Rules; Powers of the Commission; Organization of the Commission; Meetings and Acts of the Commission; Rules and Operating Procedures: Rulemaking; Commission Records and Enforcement; Dispute Resolution; Review of Commission Decisions; Finance; Compacting States, Effective Date and Amendment; Withdrawal, Default and Termination; and Binding Effect of Compact and Other Laws.

The Compact would create the Surplus Lines Insurance Multi-State Compliance Compact Commission (Commission) whose powers include the adoption of mandatory rules which establish exclusive Home State authority regarding non-admitted insurance of multi-state risk, allocation formulas, clearinghouse transaction data, a clearinghouse

for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating and enforcing compliance with the provisions of the Compact, its bylaws and rules.

The powers of the Commission are outlined in Article 5, with 23 separate stated powers. The Commission would consist of one member from each of the Compacting States; each member would be entitled to one vote (Article 6). The Commission would be responsible for the payment of reasonable expenses of its establishment and organization. The Commission is permitted to accept contributions, grants, and other forms of funding from State stamping offices, Compacting States and other sources to fund the costs of initial operations. The Commission is required, under the Compact, to collect a fee payable to the insured directly or through a surplus lines licensee on each transaction process through the clearinghouse to cover the cost of operations and activities of the Commission (Article 12).

In addition to the Commission, the organizational structure of the Compact includes:

- An Executive Committee (no more than 15 Compacting State representatives) whose duties will include establishing the organizational structure and appropriate procedures for the Commission to provide for the creation of rules and operating procedures.
- An Operations Committee (no more than 15 representatives) whose duties will include making recommendations to the Executive Committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with state stamping office systems. Representatives serving on the Committee will be individuals who have extensive experience or employment in the surplus lines insurance business.
- Legislative and Advisory Committees. The Legislative Committee would be composed of state legislators and is to monitor the operations of and make recommendations to the Commission. The Commission will be permitted to establish Advisory Committees.

Finally, the Compacting legislation provides that the Insurance Commissioner, or an alternate designated by the Commissioner, would represent Kansas on the Surplus Insurance Multi-State Compliance Compact.

### ***Regulation of Surplus (Excess) Lines in Kansas; Amendments***

Among the amendments to prior law, the Insurance Commissioner will be permitted, upon receipt of an application, to issue an excess lines coverage license to any licensed

property and casualty agent (Kansas or any other state) and those agents will be allowed to negotiate for insureds whose home state is Kansas. The bill also amends the collection method and allocation of premium taxes for surplus lines insurance in law to conform to the requirements of the NRRRA. The tax rate of 6.0 percent on gross premiums would remain unchanged. The bill further provides that in instances where a state failed to enter into a compact or reciprocal allocation procedure, the net premium tax collected will be retained by the State (Kansas). Finally, the bill increases from \$1.5 million to \$4.5 million, the capital or surplus requirement (from the annual statement) for inclusion on the white list of eligible surplus lines insurers.

### ***Effective Dates***

The Surplus Lines Insurance Multi-State Compliance Compact provisions and the amendments to surplus lines insurance provisions in prior law became effective upon publication in the *Kansas Register*. All other provisions will become effective on and after July 1, 2011.

### **State Board of Accountancy—Professional Corporations**

**HB 2124** removes a limitation placed on professional corporations in the law and instead permits a professional corporation to be in partnership with one or more corporations or individuals and be registered with the State Board of Accountancy. Under the prior law, a professional corporation in partnership with one or more corporations or individuals could not be registered with the Board as a partnership unless it was registered prior to January 1, 2007.

### **Workers Compensation—State Fair Board; Master Policies; Assigned Risk Pool; Schedule Rating**

**HB 2139** enacts and amends certain workers compensation provisions and amends insurance rate filing and risk classification law.

### ***Workers Compensation—State Fair Board***

The bill enacts new law to authorize the State Fair Board (Board), notwithstanding the self-insurance assessment rating provisions in the law, to purchase workers compensation insurance from an admitted carrier. The bill further provides that the contract for the purchase of the workers compensation insurance must comply with the competitive purchase process outlined in existing law for the Division of Purchases (Department of Administration). If the contract includes a premium or rate in excess of \$500, the bill provides that it must be purchased on the basis of sealed bids. The contract, under the bill, would not be subject to the requirements for purchase through the state Committee on Surety Bonds and Insurance.

The bill also provides that if the Board enters into a private contract for the purchase of workers compensation insurance, the Board would no longer be subject to the self-insurance assessment and the Director of Accounts and Reports would then cease the transfer of any amounts for the self-assessment for the Board, with one exception; the Board would continue to be assessed for any moneys paid relating to existing claims made by the Board within the self-insurance fund until all claims have been closed and settled.

If the Board opts to enter into a private contract, the bill provides that the State Workers Compensation Self-Insurance Fund (the SSIF) would not be liable for compensation of any claims under the Workers Compensation Act relating to the Board during the term of the private contract. Finally, the Board would be required to notify the Secretary of Administration and the Kansas Health Policy Authority of the effective date of any workers compensation policy acquired pursuant to the contract provisions of the bill.

#### ***Workers Compensation—Limitations on Issuance of Master Policies; Rule and Regulation Authority***

The bill also amends a rate filing statute (as amended by 2011 HB 2074) to provide that any entity purchasing a workers compensation policy for the covered employees of more than one employer pursuant to a shared employment relationship (e.g. a PEO, Professional Employment Organization) must purchase the workers compensation policy on a separate multiple coordinated policy basis. These policies must be issued pursuant to the Workers Compensation Act (KSA 44-501 *et seq.*) from an insurer holding a certificate of authority to do business in Kansas and providing workers compensation coverage.

The bill grants the Insurance Commissioner the authority to allow an insurer to issue coverage through a master policy if the Commissioner is satisfied that the insurer is able to track and report individual client experience to the advisory organization in a manner that is acceptable to the Commissioner. Such master policies would be required to be filed with the Commissioner prior to approval.

The bill further authorizes the Insurance Commissioner to adopt such rules and regulations as are reasonable and necessary to carry out the purpose and provisions for the purchase of workers compensation policies through a shared employment relationship.

#### ***Workers Compensation—Assigned Risk Pool***

The bill also deletes a requirement in the law governing the workers compensation assigned risk pool that prohibits the Insurance Commissioner from approving workers compensation rates or rating plans when the annual premium is less than \$2,250 (with some exceptions). The bill instead provides that the Commissioner approve rates and rate modifications which can include the application of surcharges, experience modifications,

or other rating variables. Under prior law, the approval of the application, modifications and other rating variables had been limited to claims experience and individual risk.

The bill deletes out-of-date requirements for the workers compensation assigned risk pool to reduce both its assessments and its size (premium volume) before the years 1997 and 1999, respectively.

***Workers Compensation—Schedule Rating***

Finally, the bill deletes an exception in the law that disallowed schedule rating for workers compensation policies. [Schedule rating will allow an insurer to adjust the premium from a filed rate based on special or unique characteristics of the business.]

## HEALTH

### **Abolishing KHPA and Establishing the Division of Health Care Finance within KDHE**

**Executive Reorganization Order (ERO) No. 38** abolishes the Kansas Health Policy Authority (KHPA) and establishes the Division of Health Care Finance within the Department of Health and Environment (KDHE) effective July 1, 2011.

Upon establishing the new Division, ERO 38 titles the head of the Division the Director of Health Care Finance, who is to be appointed and serve at the pleasure of the Secretary of Health and Environment, with the Governor's approval, and be an unclassified employee under the Kansas Civil Service Act. The Secretary is required to appoint the employees who, in the Secretary's and Director's judgment, are needed to carry out the duties of the Division.

In abolishing the KHPA, the order transfers all its statutory powers, duties and functions to the KDHE, the Division of Health Care Finance, the Secretary, and the Director. ERO 38 also transfers all powers, duties, and functions of any state agency, department, board, commission or council relating to the Patient Protection and Affordable Care Act [Public Law 111-148, 124 Stat. 119 (2010)] and the Health Care and Education Reconciliation Act of 2010 [Public Law 111-152, 124 Stat. 1029 (2010)] to the same entities and officials or their designees. The order deems every act performed in these capacities by KDHE and its new Division, along with the Secretary and Director, to have the same force and effect as if performed by the KHPA. All KHPA rules and regulations, orders, and directives in effect which relate to transferred functions are deemed transferred as well, until revoked, nullified, or changed.

With respect to KHPA and related fund and account balances, ERO 38 transfers all within the State Treasury to KDHE for the Division of Health Care Finance, to be used only for the purpose for which the appropriation originally was made. The Division succeeds to all relevant property, property rights and records, and the Governor is the final authority in resolving a conflict surrounding this succession.

Finally, the Order makes a number of relevant administrative and other requirements. The ERO speaks to the status of lawsuits or other proceedings, as well as the status of related criminal actions. The Order also addresses details regarding the transfer of KHPA officers and employees.

## **Home and Community Based Services Waiver for Individuals with Developmental Disabilities Provider Assessment**

**SB 210** establishes a provider assessment on the gross revenues received by entities providing services to individuals with developmental disabilities. The proceeds of the provider assessment will be used to draw down additional federal funds for the Medicaid Home and Community Based Services Waiver for Individuals with Developmental Disabilities (HCBS/DD). The increased funding will be utilized to increase provider reimbursement rates for HCBS/DD waiver providers. The bill authorizes an assessment for the fiscal year that approval is achieved and the subsequent four fiscal years.

### ***Calculation and Collection***

The bill defines gross revenues and specifies that the calculation to determine gross revenues excludes state or local-only funded revenues as well as revenues from services provided to individuals who are not developmentally disabled. “Gross revenues” also excludes the receipt of any charitable donations received by the entities. The developmental disabilities waiver provider assessment (provider assessment) will be an annual assessment based upon the maximum federally allowed rate of gross revenues.

The assessment received for waiver participants will be achieved by not increasing payments to providers to account for the entire enhanced funding stream on a claim-by-claim basis. To capture provider assessment payments for non-waiver participants revenue, quarterly payments will be collected from providers on those amounts. The provider assessment will be effective the first month after the federal Centers for Medicare and Medicaid Services authorizes developmental disabilities as an approved service class and approves the Kansas waiver submission to establish a provider assessment for this provider class. The provider assessment is effective for five fiscal years.

### ***Administration and Rules and Regulations Authority***

The Kansas Health Policy Authority (KHPA) is directed to administer and collect the assessment. In addition, the bill allows the KHPA to collect administrative costs not exceeding 0.5 percent of collections in the first year and up to \$100,000 each year thereafter. The KHPA is authorized to assess penalties on providers who do not pay the full amount of the assessment of the lesser of \$500 per day or 2.0 percent owed for the fiscal year. The bill directs the KHPA to adopt rules and regulations within 30 days of federal approval of the assessment. The bill also creates a new no limit fund, the Quality Based Community Assessment Fund for the KHPA. Interest earnings from balances in the Fund shall be credited to the Fund.

### ***Nullification/ Termination***

The bill makes the provider assessment null and void if:

- The Centers for Medicare and Medicaid Services (federal) does not authorize the provider assessment;
- HCBS/DD waiver provider payment rates are reduced;
- Medicaid eligibility criteria are reduced; or
- Medicaid services are reduced.

The bill terminates the assessment if:

- Any funds are transferred or revert back to the State General Fund; or
- Funds are used to supplant or replace existing funding.

If the provider assessment becomes null and void or terminates, any funds collected will be returned to providers on a pro-rated basis.

### **Medical Gas Piping System Repairs**

**HB 2082** revises KSA 12-1509 by allowing limited maintenance on gas piping systems to be performed by hospital maintenance personnel if the gas piping system is already installed. Under the prior law, maintenance could only be performed only by an individual licensed as a plumber and professionally certified as a medical gas installer.

### **Funeral Home Closure—Notification Requirements**

**HB 2083** requires any funeral director in charge of a facility that closes to notify all those who have purchased a prefinanced funeral agreement that they need to transfer their agreements to another facility. The notification must be provided prior to the facility's closing, and a copy of all such letters must be provided to the State Board of Mortuary Arts.

### **Omnibus Health Bill**

**HB 2182**, the Omnibus Health Bill, includes the following: Pharmacy Audit Integrity Act; Health Care Freedom Act; Inclusion of Mail Service Pharmacies in the Utilization of Unused Medications Act; Changes to the Addictions Counselor Licensure Act; Sports Injury Prevention Act and Participation of High School Athletes in Non-School Swimming and Non-School Diving Athletic Training; Amendment to the Physical Therapy Practice Act; Kansas Health Information Technology and Exchange Act; Amendments to Statutes on Regional Trauma Councils and the Advisory Committee on Trauma; Amendments to the Nurse Practices Act and Optometrist Definition Change; Amendments to Current Law on Emergency Medical Services; Franchise Practice of Dentistry and Changes to the Dental Practices Act; and Annual Benefit Cigar Dinner Exemption to the Kansas Indoor Clean Air Act.

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## Summary of Provisions

The bill enacts and amends several health-related provisions in Kansas law. Generally, the bill does the following:

- Creates the Pharmacy Audit Integrity Act which defines a Pharmacy Benefits Manager (PBM) under the Act, outlines the procedures for conducting an audit, details the audits to which the Act does not apply, and provides for an appeals process.
- Enacts the Health Care Freedom Act, which outlines the individual right of Kansas residents to choose to purchase or refuse to purchase health insurance.
- Permits mail order pharmacies physically located outside of Kansas, but licensed within the state, to donate unused prescription medication under the Utilization of Unused Medications Act.
- Makes changes in Chapter 45 of the 2010 Session Laws of Kansas (the Addictions Counselor Licensure Act, which becomes effective on July 1, 2011) with regard to definitions, requirements for licensure and continuing education, denial or restriction of licensure, licensure requirements for the practice of addiction counseling, and the scope of the Addictions Counselor Licensure Act.
- Creates the School Sports Injury Prevention Act and adds provisions governing the participation by student athletes in a Kansas state high school league-sponsored sport or competition while participating in non-school swimming athletic training, non-school diving athletic training, or both.
- Amends the Physical Therapy Practice Act by expanding the allowable professional designations for physical therapists (PTs) and physical therapy assistants (PTAs), including the use of designations of educational degrees, certifications or credentials earned.
- Creates the Kansas Health Information Technology and Exchange Act. The stated purpose of this Act is to harmonize state law with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules with respect to individual access to protected health information, safeguarding protected health information, and the use and disclosure of protected health information to facilitate the development and use of health information technology and health information exchange.

- Amends the law governing the membership of the Regional Trauma Councils (RTCs) and the Advisory Committee on Trauma (ACT) to make the committees and officers “peer review committees” and “peer review officers” who are to be granted peer review protection while acting in an official capacity under this act, only with regard to reviews of incidents involving trauma injury or trauma care. Disclosure of information to the Secretary of Health and Environment related to such review does not waive the peer review privilege.
- Amend the law to update the title of an Advanced Registered Nurse Practitioner (ARNP) to Advanced Practice Registered Nurse (APRN), changes licensure and education requirements for the role of the APRN, makes a definitional change regarding optometrists, and permits reinstatement of lapsed nurse licenses upon meeting specified requirements. The reinstatement provision expires January 1, 2012.
- Makes changes to the law regarding emergency medical services provided by individuals regulated by the Board of Emergency Medical Services (BEMS). Changes made in 2010 law allowed Emergency Medical Services (EMS) attendants to transition from authorized activities to scope of practice, changed the names of some attendant levels to reflect national nomenclature, and allowed for enhancement of skills set to create the ability to provide a higher level of care. The bill makes changes to support the transition and to provide options for those required to meet the transition requirements.
- Enacts new law to allow the franchise practice of dentistry in Kansas and revises portions of the Dental Practices Act pertaining to definitions and oversight functions of the Kansas Dental Board. Under prior law, licensed dentists were prohibited from entering into arrangements with unlicensed proprietors and specifically prohibited from the franchise practice of dentistry.
- Amends the Kansas Indoor Clean Air Act, which bans smoking in enclosed areas or public places while providing specific exemptions where smoking is allowed. The bill adds an exemption from the statewide smoking ban for any annual benefit cigar dinner or other cigar dinner of a substantially similar nature when specific conditions are met.

The bill also contains a severability clause which allows the continued effect of remaining provisions should any provision or clause of the bill be held invalid.

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## Effective Dates

With the exception of provisions related to three subject areas, all other parts of this bill take effect on publication in the statute book. One is Advanced Practice Registered Nursing, which becomes effective on January 1, 2012. The other two, the Kansas Dental Practices Act provisions and the provision for reinstatement (in certain circumstances) of a registered professional nurse's license if that license has lapsed for more than 13 years, became effective on publication in the *Kansas Register* on June 9, 2011.

Greater detail of the bill's content follows.

## Pharmacy Audit Integrity Act

The Pharmacy Audit Integrity Act applies to contracts between an auditing entity and a pharmacy entered into, extended or renewed on or after July 1, 2011, and does not apply to any audit, review or investigation that is initiated based upon suspected or alleged fraud, willful misrepresentation or abuse.

**Definition.** The bill defines a Pharmacy Benefits Manager (PBM) as a person, business or other entity that performs pharmacy benefits management and includes a person or other entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, not-for-profit hospital or medical service organization, insurance company, third-party payor, or health program administered by the State Board of Pharmacy.

**Audit Procedures.** The bill requires entities conducting pharmacy audits to comply with the following procedures:

- Provide a minimum of seven days' written notice to a pharmacy prior to conducting an on-site initial audit;
- Require audits that involve clinical or professional judgment to be conducted by or done in consultation with a licensed pharmacist;
- Limit the period covered by an audit to two years from the date of claim submission to, or adjudication by, the entity conducting the audit;
- Allow pharmacies to request an extension of not more than seven days from the date of an originally scheduled on-site audit;
- Permit pharmacies to use the records of a hospital, physician or other authorized practitioner to validate the pharmacy record;

- Allow the use of any legal prescription which complies with the regulations of the State Board of Pharmacy to validate claims for prescriptions, refills or changes in prescriptions;
- Require similarly situated pharmacies to be audited under the same standards and parameters; and
- Require an auditing entity to establish a written appeals process.

***Audit Calculations.*** The bill requires any entity conducting an audit to follow these requirements with regard to calculations:

- Overpayment and underpayment amounts will be based on actual amounts and not projections;
- Extrapolation cannot be used in calculating recoupments or penalties for audits, unless required by state or federal contracts;
- Payments to auditing companies cannot be based on a percentage of the recovery amount, unless required by contracts; and
- Accrual of interest during the audit period will not be permitted.

***Audit Report Timeline and Appeals.*** The bill does the following:

- Requires delivery of the preliminary audit report to the pharmacy within 60 days after the audit's conclusion;
- Allows a minimum of 30 days following receipt of the preliminary audit for the pharmacy to provide documentation on any audit discrepancies;
- Requires delivery of a final audit report to the pharmacy within 120 days after receipt of a preliminary audit report or final appeal, whichever is later;
- Requires recoupment of disputed funds or repayment of funds to the entity by the pharmacy, if allowed by contracts, to the extent demonstrated or documented in the pharmacy audit findings, after final internal disposition of the audit including the appeals process;
- Allows for the withholding of future payments to a pharmacy if an identified discrepancy for an individual audit exceeds \$20,000, pending finalization of the audit;

- Protects the confidentiality of audit information, unless disclosure is required by federal or state law;
- Limits an auditor's access to previous audit reports of a pharmacy to those performed by the same entity;
- Requires an auditing entity to provide a copy of the final report, including the disclosure of any money recouped, upon request of the plan sponsor; and
- Allows a pharmacy to provide a copy of the report to the Insurance Commissioner, provided the report does not contain any personally identifiable health information in violation of the provisions of HIPAA.

### **Health Care Freedom Act**

The bill enacts the Health Care Freedom Act, which codifies the individual right of Kansas residents to choose to purchase or refuse to purchase health insurance. The bill states the government is prohibited from interfering with a resident's right to purchase or refuse to purchase the insurance.

The bill states it is a resident's right to enter into a private contract with health care providers for lawful health care services, and that the government is prohibited from interfering with this right. The bill allows a person or employer to pay directly for the services and establish a prohibition against penalizing or fining for doing so. Likewise, the bill allows a health care provider to accept direct payment for lawful health care services and establish a prohibition against penalizing or fining for doing so.

The bill prohibits any state agency or other state entity from requiring an agreement to participate in Medicare, Medicaid or any other insurance plan, health care system or health information technology or benefit exchange as a condition for the licensure, registration or certification of a health care provider. State agencies and other governmental entities are not allowed to prohibit participation by a health care provider in a health information organization for either health information technology or benefit exchange based on whether the health care provider participates in Medicare, Medicaid or any other insurance plans or health care systems.

The bill provides that government is prohibited from enacting a law that restricts any of the rights detailed in the Act or that imposes a form of punishment for exercising the rights. The bill also states none of the Act's provisions shall render a resident liable for any type of punishment or penalty as a result of the resident's failure to obtain health insurance coverage or participate in any health care system or plan.

The bill defines a number of terms, including “direct payment or pay directly” and “lawful health care services.”

### **Utilization of Unused Medications Act—Donations**

Mail order pharmacies that are licensed in Kansas, but not physically located in the state, are allowed under the bill to make donations of unused prescription medications under the Utilization of Unused Medications Act. Only mail order pharmacies physically located within the state formerly were allowed to donate medication to be distributed under the Act. This bill also revises a statute dealing with medication packaging requirements under the Act. The bill deletes the requirement that medications in tamper-evident packaging be hermetically sealed.

### **Addictions Counselor Licensure Act**

The bill makes certain changes in Chapter 45 of the 2010 Session Laws of Kansas.

**Definitions.** Specifically, the bill does the following:

- Eliminates case management from the scope of “addiction counseling”;
- Expands independent practice, as applied to addiction counseling and licensed clinical addiction counselors, to include not only the diagnosis and treatment of substance abuse disorders but to allow for both independent practice and diagnosis and treatment of substance abuse disorders; and
- Allows a licensed addiction counselor, on and after July 1, 2011, to practice in treatment facilities exempted under KSA 59-29b46(m). (Among the exempted facilities are licensed medical care facilities, licensed adult care homes, community-based alcohol and drug safety action programs, and state institutions at which detoxification services may have been obtained.)

**Licensure Requirements.** The bill does the following:

- Changes, from August 1 to September 1, 2011, the effective date of the provision prohibiting individuals engaging in the practice of addictions counseling or representing themselves as the following without first obtaining the requisite license under the Act: licensed addiction counselors, addiction counselors, substance abuse counselors, alcohol and drug counselors, licensed clinical addiction counselors, clinical addiction counselors, clinical substance abuse counselors, or clinical alcohol and drug counselors.

- Provides that an applicant for licensure as an addiction counselor who holds a Baccalaureate degree in a related field have:
  - Included as part of the related field course work, a minimum number of semester hours of course work in substance abuse disorders, without the specific requirement that the course work be in the diagnosis and treatment of substance abuse disorders; or
  - Additional course work in addiction counseling including course work in substance abuse disorders, to be distinguished from practicum.
- Provides applicants seeking licensure as clinical addiction counselors (who are licensed addiction counselors or meet all of the requirements for licensure as addiction counselors) a new option to enable the applicants to meet a part of the licensure requirements. This option is completion of a Master's degree in a related field and licensure by the Board as a licensed addiction counselor.
- Eliminates, as a condition of licensure, that individuals who are “grandfathered in” under the Act as licensed addiction counselors have been actively engaged in the practice of addiction counseling in Kansas as registered alcohol and other drug counselors, alcohol and drug credentialed counselors, or credentialed alcohol and other drug abuse counselors within three years of the effective date of this act, and instead requires that these individuals be registered in Kansas in those capacities in the same period of time.
- Eliminates, as a condition of licensure, that individuals who would be grandfathered in under the Act as licensed clinical addiction counselors have been actively engaged in the practice of addiction counseling in Kansas as alcohol and other drug counselors within three years of the effective date of this act, and instead would require registration in Kansas in that capacity in the same period of time.
- Provides (upon application, payment of fees and completion of applicable continuing education requirements) that individuals credentialed by the Department of Social and Rehabilitation Services (SRS) as alcohol and drug counselors who have been actively engaged in the practice, supervision or administration of addiction counseling in Kansas for not less than four years; hold a Master's degree in a related field; and whose last registration or credential in Kansas prior to the effective date of this act was not suspended or revoked, be:
  - Licensed as clinical addiction counselors;

- Able to engage in the independent practice of addiction counseling; and
- Authorized to diagnose and treat substance use disorders specified in the edition of The Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association designated by the Behavioral Sciences Regulatory Board (Board) by rules and regulations.

**Licensure Requirements—Other Jurisdictions.** The bill provides for the issuance of a license to an applicant currently registered, certified or licensed to practice addiction counseling in another jurisdiction if:

- The standards required in that jurisdiction are substantially equivalent to the requirements of the Addictions Counselor Licensure Act and rules and regulations of the Board; or
- The applicant demonstrates compliance with standards adopted by the Board.

**Continuing Education.** The bill clarifies the continuing education requirements to distinguish between requirements applicable only to clinical addiction counselor applicants and those applicable to both the clinical addiction counselor applicants and addiction counselor applicants.

**Denial or Restriction of Licenses.** The bill removes the requirement for a hearing prior to Behavioral Sciences Regulatory Board refusal to grant a license or Board action to suspend, revoke, condition, limit, qualify or restrict any licensure issued under this act and requires only the opportunity for a hearing.

**Scope.** The bill clarifies the scope of the Act so as not to be construed as authorizing the practice or applying to the activities and services of other professions licensed by the Board.

## Health and Safety of School Athletes

**School Sports Injury Prevention Act.** The bill enacts the School Sports Injury Prevention Act, which applies to any public or accredited private high school, middle school, or junior high school. The State Board of Education is required to distribute information regarding the nature of risks of concussion and head injury. Further, the new law requires that a student suffering, or suspected of having suffered, a concussion or head injury be immediately removed from a sport competition or practice. Specific

conditions must be met before a student would be allowed to return to competition or practice.

The bill requires:

- The State Board of Education, in cooperation with the Kansas State High School Activities Association (KSHSAA), to gather information on the nature and risk of concussion and head injury, including the dangers of continuing to play or practice after suffering such an injury, and distribute the information to coaches, school athletes, and parents or guardians of school athletes;
- A concussion and head injury information release form be signed by the athlete and the athlete's parent or guardian and returned to the school prior to participation in any sport competition or practice session. A new signed release form must be returned to the school each school year that a student participates in sports competitions and practice sessions;
- Immediate removal of a school athlete from a sport competition or practice session if a concussion or head injury has been suffered or is suspected;
- Evaluation by a health care provider (defined under the Act as a person licensed by the State Board of Healing Arts to practice medicine and surgery) of any school athlete who has been removed from a sport competition or practice session; and
- Written clearance by the health care provider performing the evaluation prior to return to competition or practice.

The bill exempts a health care provider who provides a written clearance, and is not an employee of the school district, from liability for civil damages resulting from any act or omission in rendering care, except for acts or omissions which constitute gross negligence or willful or wanton misconduct.

**Participation by High School Athletes.** The bill also prevents the KSHSAA and its member high schools, as well as administrators, principals, coaches, teachers and others affiliated with the KSHSAA and member high schools, from adopting rules or regulations or interpreting existing rules and regulations in such a way as to prohibit a student athlete from training with any Kansas State High School League-sponsored sport or competition while the student is participating in non-school swimming athletic training, non-school diving athletic training, or both, during the high school sport season and throughout the year if:

- The non-school swimming, non-school diving athletic training, or both, is under the jurisdiction of and sanctioned by the national body of the sport, U.S.A. Swimming, Inc., or U.S.A. Diving, Inc., and is conducted in a manner which protects the health and safety of a student athlete; and
- The student athlete meets the reasonable and ordinary requirements established by the school for participation in the student athlete's high school swimming program or diving program, or both, including requirements designed to protect the health and safety of such student athlete.

### **Physical Therapy Practice Act**

The bill amends the Physical Therapy Practice Act by expanding the allowable professional designations for physical therapists (PTs) and physical therapy assistants (PTAs), including the use of designations of educational degrees, certifications or credentials earned. The bill also inserts a definition for the phrase "recognized by the Board" and makes technical amendments.

***Licensed Physical Therapists.*** The bill does the following:

- Allows a licensed PT to designate or describe himself or herself as a "doctor of physical therapy," and use similar abbreviations or words. In written or oral communication, when using the letters or term "Dr." or "Doctor" in conjunction with a licensed PTs professional practice, PTs must identify themselves as a "physical therapists" or "doctors of physical therapy";
- Allows licensed PTs to list or use in conjunction with their names any letters, words, abbreviations or other insignia to designate educational degrees, certifications or credentials recognized by the Board of Healing Arts (Board) which the PT has earned; and
- Prohibits the use of the term "doctor of physical therapy" by an individual not licensed as a PT or whose license has been suspended or revoked in any manner.

***Physical Therapy Assistants.*** The bill allows certified PTAs to list or use in conjunction with their names any letters, words, abbreviations or other insignia to designate educational degrees, certifications or credentials which the PTA has earned.

### **Kansas Health Information Technology and Exchange Act**

The bill creates the Kansas Health Information Technology and Exchange Act, with the stated purpose of harmonizing state law with the Health Insurance Portability and

Accountability Act of 1996 (HIPAA) privacy rules with respect to individual access, safeguarding, and the use and disclosure of protected health information to facilitate the development and use of health information technology and health information exchange.

**Definitions.** Among the applicable definitions in the Act are the following:

- “Approved HIO” means a health information organization operating in the state which has been approved by the Kansas Health Information Exchange, Inc. (Corporation);
- “Covered entity” means a health care provider, a health care component of a hybrid entity, a health plan or a health care clearinghouse;
- “Health care provider” means a health care provider, as that term is defined by the HIPAA privacy rule, that furnishes health care to individuals in the state; and
- “Health information technology” means an information processing application using computer hardware and software for the storage, retrieval, use and disclosure of health information for communication, decision-making, quality, safety and efficiency of health care. Health information technology includes, but is not limited to an electronic health record; a personal health record; health information exchange; electronic order entry; and electronic decision support.

**Duties of Covered Entity.** The bill requires a covered entity to:

- Provide an individual or the individual’s personal representative with access to the individual’s protected health information which is maintained by the covered entity in a designated record set in compliance with HIPAA privacy rules; and
- Implement and maintain appropriate administrative, technical and physical safeguards to protect the privacy of protected health information in a manner consistent with HIPAA rules.

**Disclosure of Information.** A covered entity is prohibited under the bill from the use and disclosure of protected health information, with certain exceptions as follows:

- The use and disclosure is consistent with an authorization that satisfies HIPAA requirements;
- The use and disclosure without authorization is permitted under applicable sections of the HIPAA privacy rules; or

- The use and disclosure is as required under 45 C.F.R. 164.502 of the HIPAA privacy rules.

Further, notwithstanding the above conditions, the Act does not permit the disclosure of protected health information by a covered entity to an approved HIO without an authorization which satisfies HIPAA, unless:

- A current participation agreement exists between the covered entity and the approved HIO;
- The disclosure to the approved HIO is done in a manner consistent with the approved HIO's established procedures;
- Prior to disclosure to the approved HIO, the covered entity must provide the individual (whose information is to be disclosed), or the individual's representative, with notice required under Section 32 of this Act relating to participation agreements; and
- The covered entity restricts disclosure to the approved HIO of any protected health information concerning the individual that is the subject of a written request by the individual, or the personal representative, for reasonable restrictions on disclosure of all or any specified categories of the individual's protected health information, following the covered entity's receipt of the written request.

A covered entity that uses or discloses protected health information in compliance with this section of this Act is immune from any civil or criminal liability or adverse administrative action as a result or related to the disclosure.

**Authorization Form.** The Act requires that, within six months of the effective date of the Act, the Secretary of the Kansas Department of Health and Environment (KDHE) develop and adopt by rules and regulations a standard authorization form for the use and disclosure of protected health information which meets HIPAA requirements for use and disclosure. A properly completed standard authorization form is considered valid authorization for the disclosure requested.

Within six months of the effective date of the Act, the Secretary of KDHE must develop educational material designed to increase awareness and improve understanding of the newly created standard authorization form for the use and disclosure of protected health information.

**Fees for Copies.** Under the Act, the covered entity is allowed to charge fees for furnishing copies of the protected health information record, with the fees established and

updated by the Secretary of KDHE. No fees may be charged for disclosures between a covered entity and an approved HIO.

**Conflicts with State Law.** Any provision of state law in conflict with provisions of the Act is superseded by the rules set out in the Act, except that the Act may not limit or restrict the application and effect of the Kansas statutes regarding peer review, risk management, or any statutory health care provider-patient privilege. The Act may not limit or restrict the ability of a state agency to require the disclosure of protected health information by any person or entity pursuant to law.

**Public Health Purpose for Disclosure.** The Act allows a health care provider to disclose protected health information without authorization to any state agency for any public health purpose required by law.

**Setting of Standards of HIOs.** The Kansas Health Information Exchange, Inc. (Corporation) must establish and revise standards for the approval and operation of statewide and regional HIOs operating in the state as approved HIOs. Among these standards are those needed for satisfaction of certification standards for health information exchanges promulgated by the federal government and adherence to nationally recognized standards for interoperability.

**Approval Process.** The Corporation is required by the Act to establish and implement processes for the approval of an HIO, the re-approval of HIOs at appropriate intervals, and for the investigation of reported concerns and complaints regarding approved HIOs and measures to address the deficiencies.

**Participation Agreement Requirements.** The Corporation also must establish requirements for participation agreements. Among the requirements are procedures to allow a covered entity to disclose protected health information to an approved HIO, to allow the covered entity access to health information from the HIO, and to establish specifications of the written notice to the individual before disclosure of information. The written notice may be incorporated into the covered entity's notice of privacy practices required under the HIPAA privacy rule. The information required in the written notice is set out in this section of the Act.

**HIO Receipt of Financial Support.** The Act requires an HIO to be approved to be eligible for financial support from the State, or assistance or support from the State in securing any other source of funding.

**HIO Immunity for Use or Disclosure.** An approved HIO that uses or discloses protected health information in compliance with rules adopted by the Corporation is immune from civil or criminal liability or any adverse administrative action resulting from such use or disclosure.

**Uniform Electronic Transactions Act.** Except for a printing issue, the bill would have amended part of the Uniform Electronic Transactions Act to allow the definition of “transaction” to include actions or sets of actions occurring between two or more persons relating to the conduct of health care. With this amendment, transactions among entities and persons covered in the Act would have fallen under the Uniform Electronic Transactions Act. (A Revisor’s Note will be added at the end of the statute to explain this issue.)

**Statutes Repealed.** The Act repeals statutes dealing with access to health care records, enforcement and rule and regulation authority.

### **Regional Trauma Council and Advisory Committee on Trauma**

The bill amends the law to limit peer review protection to reviews of incidents involving trauma injury or trauma care. Any meeting, or part of any meeting, of the Advisory Committee on Trauma (ACT) or of a Regional Trauma Council (RTC) during which a review of incidents involving trauma injury or trauma care is discussed must be conducted in a closed session. The ACT, any RTC, and officers of any of these committees, when acting in their official capacity in considering incidents of a trauma injury or trauma care, are considered peer review committees and peer review officers.

The bill allows the ACT, an RTC or an officer thereof to advise, report to, and discuss activities, information, and findings of the committee related to incidents of trauma injury or trauma care with the Secretary of Health and Environment without waiving peer review privilege. The records and findings of these committees or officers remain privileged. The provisions of this bill related to peer review and disclosure of information to the Secretary of Health and Environment related to incidents of trauma injury or trauma care expire on July 1, 2016, unless reviewed and reenacted by the Legislature prior to that date. The bill also makes technical amendments to the law.

A “peer review officer or committee” defined (KSA 2010 Supp. 65-4915) as:

- An individual employed, designated or appointed by, or a committee of or employed, designated or appointed by, a health care provider group and authorized to perform peer review; or
- A health care provider monitoring the delivery of health care at correctional institutions under the jurisdiction of the Secretary of Corrections.

### **Advanced Practice Registered Nursing (APRN)**

**APRNs.** The bill makes the following specific changes to the Nurse Practice Act regarding APRN:

- Replaces all references to an ARNP in statute with APRN;
- Requires an APRN to be licensed, instead of holding a certificate of qualification as currently is required;
- Replaces language referring to the disciplinary action which may be taken against a holder of a certificate of qualification to instead apply to the holder of a temporary permit;
- Replaces the use of “categories” in describing the types of ARNPs with “roles” (Under prior law, the four recognized categories are Nurse Practitioner, Clinical Nurse Specialist, Certified Nurse Midwife, and Certified Registered Nurse Anesthetist);
- Requires a Master’s or higher degree for an APRN;
- Allows an ARNP registered to practice prior to the effective date of the Act to be deemed licensed as an APRN without requiring the filing of a new application;
- Treats any application for registration which has been filed but not granted prior to the effective date of the Act, to be processed as an application for licensure under this bill; and
- Requires continuing education for an APRN specific to the advance practice nursing role.

***Optometrist Definition Change.*** The bill changes the definition of “practitioner” with regard to the licensure of an optometrist in the Regulation of Pharmacists Act.

***Reinstatement of Lapsed Nurse License.*** The bill permits a registered professional nurse whose license has lapsed to apply to the nursing board for reinstatement as a registered professional nurse, and waives the requirement to complete a refresher course, if the following conditions are present:

- The nursing license has lapsed for more than 13 years;
- The nurse has been employed for at least 10 of the last 13 years while providing the type of patient care that is substantially comparable to patient care provided by a registered professional nurse.

The nurse is to be reinstated as a registered professional nurse upon application to the Board of Nursing (Board), review by the Board of the nurse's work history, and payment of the reinstatement fee. The reinstatement provision expires on January 1, 2012.

## Emergency Medical Services

The bill amends the law regarding emergency medical services provided by individuals regulated by the Board of Emergency Medical Services (Board). Changes made in 2010 law allowed Emergency Medical Services (EMS) attendants to transition from authorized activities to scope of practice, changed the names of some attendant levels to reflect national nomenclature, and allowed for enhancement of skill sets to create the ability to provide a higher level of care.

Specifically, the bill makes changes to support the transition and to provide options for those required to meet the transition requirements. The bill does the following:

- Allows EMS attendants the option to transition to a lower level of certification, if they so choose;
- Changes the initiation date for transition from January 1, 2011, to December 31, 2011, to allow attendants complete certification cycles to accomplish the transition requirements;
- Allows transitioning upon application and completion of requirements, in addition to renewal times provided in current law; and
- Permits an emergency medical technician-intermediate (EMT-I), an advanced emergency medical technician (Advanced EMT), an emergency medical technician (EMT), an emergency medical technician-defibrillator (EMT-D) and an emergency medical responder (EMR) to provide medical services within their scope of practice when authorized by medical protocols or upon order when direct voice communication is maintained and monitored by specific authorized medical personnel.

The bill expands the Board membership to include two additional members who are physicians and are actively involved in emergency medical services. The rule and regulation authority of the Board in specific areas, among which are licensure fees and requirements for a quality assurance and improvement program for ambulance services, also is expanded. Further, the bill expands the grounds for disciplinary action against an operator, an attendant, an instructor-coordinator, and a training officer.

**EMS Board Membership.** The bill increases the Board membership from thirteen to fifteen members with the Governor appointing two physicians who are actively involved in emergency medical services, bringing the total number of physicians on the Board to

three. The two new physician members serve staggered terms which begin after July 1, 2011.

**EMS Board Authority.** The rule and regulation authority of the Board is expanded to include the adoption of rules and regulations for fees for licensure, temporary licensure, and renewal of licensure for ambulances and rescue vehicles; requirements for a quality assurance and improvement program for ambulance services; and staffing requirements for attendant or medical services personnel for ambulance services and vehicles.

Further, the bill states that nothing in the Act or Chapter 65, Article 61 of Kansas Statutes Annotated, dealing with emergency medical services, authorizes the Board to specify who may or may not ride in a helicopter that is being used as an ambulance.

**Definition Changes.** The term “medical adviser” changes to “medical director” when referring to a physician.

A “training officer” means a person who is certified under this Act to teach, coordinate or both, initial courses of instruction for first responders or emergency medical responders and continuing education as prescribed by the Board.

**Transitions for EMS Licensees.** The bill provides that a number of EMS certificate holders may transition to a higher level under specified conditions. The following table lists the types of certificates and the conditions that must be met for each in order to make the transition. Failure to meet the transition requirements results in forfeiture of the certificate holder’s certification.

CERTIFICATE(S) HELD	TRANSITION TO (CERTIFICATE TYPE)	CONDITIONS OPTION 1	CONDITIONS OPTION 2	IF EMT FAILS TO MEET EITHER OPTION 1 OR 2 OF THE TRANSITION REQUIREMENTS
Emergency Medical Technician-Intermediate (EMT-I); or EMT-I held together with EMT-Defibrillator (EMT-D) Section 83	Advanced EMT	By application, upon successful completion of the Board-prescribed transition course and validation of cognitive and psychomotor competency as determined by Board rules and regulations; or	Upon application for renewal (first or second opportunity after 12/31/2011), provided the individual has completed all continuing education hour requirements including successful completion of a transition course. Does not have to file an original application for certification as an Advanced EMT.	May complete the Board-prescribed EMT or Emergency Medical Responder (EMR) transition course, provide validation of cognitive and psychomotor competency and complete all continuing education requirements including successful completion of a Board-prescribed transition course. Then certificate holder may either (1) apply to transition to an EMT or an EMR (depending on course successfully completed); or (2) upon renewal application for renewal of certificate(s), individual will be renewed as an EMT or EMR, depending on course successfully completed. Does not have to file an original application for certification as an EMT or an EMR.
EMT-D (Section 85)	Advanced EMT	By application, upon successful completion of an EMT-I initial course of instruction and the completion of the Board-prescribed transition course, and validation of cognitive and psychomotor competency as determined by Board rules and regulations; or	Same as above except (1) transition is from EMT-D to Advanced EMT; and (2) application for renewal refers to the second opportunity after 12/31/2011.	Same as above.
EMT at current basic level (Section 84)	EMT	By application, upon successful completion of the Board-prescribed transition course and validation of cognitive and psychomotor competency as determined by Board rules and regulations; or	Same as above except transition is from EMT at current basic level to EMT; and (2) application for renewal refers to the first opportunity after 12/31/2011. Does not have to file an original application for certification as an EMT.	May complete the Board-prescribed EMR transition course, provide validation of cognitive and psychomotor competency and complete all continuing education requirements including successful completion of a Board-prescribed transition course. Then, upon application for renewal of an EMT certificate, EMT would be deemed to hold a certificate as an EMR without having to file an original application as an EMR.
First Responder (Section 86)	EMR	Same as above; or	Same as above except (1) transition is from First Responder to EMR; and (2) application for renewal refers to the first opportunity after 12/31/2011. Does not have to file an original application for certification as an EMR.	N/A

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**Scopes of Practice, Emergency Medical Technician-Intermediate (EMT-I).** The bill provides that an individual holding a valid certificate as an EMT-I may:

- Perform veni-puncture for the purpose of blood sampling collection and initiation and maintenance of intravenous infusion of saline solutions, dextrose and water solutions and ringers lactate IV solutions, endotracheal intubation and administration of nebulized albuterol when:
  - Approved by medical protocols; or
  - Ordered by voice contact by radio or telephone monitored by a physician, physician assistant where authorized by a physician, advanced registered nurse practitioner where authorized by a physician, or licensed professional nurse where authorized by a physician, and direct communication is maintained.

**Scopes of Practice, Advanced Emergency Medical Technician.** The bill provides that an Advanced Emergency Medical Technician who has completed successfully an approved course of instruction, local specialized device training and competency validation may perform any of the listed interventions, by the use of the devices, medications and equipment, or any combination of such, as specifically identified in rules and regulations, when:

- Authorized by medical protocols; or
- Upon order when direct communication is maintained by radio, telephone or video conference with a physician, physician assistant where authorized by a physician, advanced registered nurse practitioner where authorized by a physician, or licensed professional nurse where authorized by a physician.

The bill allows electrocardiogram (ECG) interpretation and clarifies that both generic or trade name medications could be administered by one or more of the listed methods when authorized by medical protocols or upon order when direct communication is maintained, as described previously.

**Scopes of Practice, Emergency Medical Technician (EMT).** The bill eliminates the monitoring of a peripheral intravenous line delivering intravenous fluids during interfacility transport from the scope of practice of an EMT.

Upon transition, prior law provides that an EMT who has completed successfully an approved course of instruction, local specialized device training and competency validation may perform any activities identified in KSA 65-6144, and any of the listed interventions,

by the use of the devices, medications and equipment, or any combination of such, as specifically identified in rules and regulations, when:

- Authorized by medical protocols; or
- Upon order when direct communication is maintained by radio, telephone or video conference with a physician, physician assistant where authorized by a physician, advanced registered nurse practitioner where authorized by a physician, or licensed professional nurse where authorized by a physician.

**Scope of Practice, Emergency Medical Technician-Defibrillator (EMT-D).** The bill provides that an individual holding a valid certificate as an EMT-D may perform any of the activities identified in KSA 65-6121, electrocardiographic monitoring and defibrillation when:

- Approved by medical protocols; or
- Ordered by radio or telephone voice contact monitored by a physician, physician assistant where authorized by a physician, advanced registered nurse practitioner where authorized by a physician, or licensed professional nurse where authorized by a physician, and when direct communication is maintained.

**Scope of Practice, Emergency Medical Responder.** The bill provides that, upon transition, an Emergency Medical Responder who has completed successfully an approved course of instruction, local specialized device training and competency validation may perform any of the listed interventions, by the use of the devices, medications and equipment, or any combination of such, as specifically identified in rules and regulations, when:

- Authorized by medical protocols; or
- Upon order when direct communication is maintained by radio, telephone or video conference and is monitored by a physician, physician assistant where authorized by a physician, advanced registered nurse practitioner where authorized by a physician, or licensed professional nurse where authorized by a physician.

**Medical Director.** The bill changes the term “medical adviser” to “medical director” in the statutes dealing with liability for civil damages and the duties of a medical director. The bill also requires each emergency medical service to have a medical director whose duties would include the implementation of medical protocols and to approve and monitor the education of the attendants.

**Requirements for Attendant's Certificate.** The bill adds payment of a fee as required by rules and regulations adopted by the Board to the requirements to be met before the Board would grant an attendant's certificate.

**Disciplinary Action, Operator.** The bill adds engaging in unprofessional conduct, as defined by rules and regulations of the EMS Board, as a new ground for disciplinary action against an operator.

**Disciplinary Action, Attendant, Instructor-Coordinator, or Training Officer.** The bill creates a new ground for disciplinary action against an attendant, instructor-coordinator, or training officer when disciplinary action has been taken by a licensing or other regulatory authority of another state, agency of the government, U.S. territory or other country. A certified copy of such disciplinary record or order, or other disciplinary action, by any of these entities would be *prima facie* evidence of such fact.

### **Amendments to the Dental Practices Act; Proprietor Arrangements**

The bill enacts new law to allow the franchise practice of dentistry in Kansas and revise portions of the Dental Practices Act pertaining to definitions and oversight functions of the Kansas Dental Board (Board). Under prior law, licensed dentists were prohibited from entering into arrangements with unlicensed proprietors and specifically prohibited from the franchise practice of dentistry.

Under the bill, a "dental franchisor," with exceptions to the definition described later, is defined as any person or entity, pursuant to a written agreement, who provides dental practice management services, or dental material or equipment necessary for dental practice management, to a licensed dentist under a lease or an agreement for compensation. A person or entity entering into an agreement with a licensed dentist for dental office administrative services is required to register with the Board. The bill also allows licensed dentists to practice dentistry as employees of a general hospital in counties with a population of less than 50,000.

**Definitions.** The bill makes the following changes to the Act:

- Revises the definition of "proprietor" to mean any person who employs dentists or dental hygienists in the operation of a dental office and eliminate language referring to proprietors placing or retaining ownership of dental material or equipment in the possession of a dentist or dental hygienist by lease or other agreement for compensation;
- Adds a definition for "dental franchisor," as defined above, and clarifies that a person or entity is not a dental franchisor if the agreement with the dentist:

- Permits interference with the professional judgment of the dentist;  
or
- Contains terms constituting a violation of the Dental Practices Act, rules and regulations adopted by the Board, any orders or directives issued by the Board or any other applicable law;
- Adds a definition for “licensed dentist” to mean a dentist licensed under the Dental Practices Act; and
- Adds a definition for “unlicensed proprietor” to mean any person or entity not authorized to own or operate a dental practice that enters into an agreement with a dentist or dental hygienist related to the practice of dentistry or dental hygiene which:
  - Permits interference with the professional judgment of the dentist;  
or
  - Contains terms constituting a violation of the Dental Practices Act, rules and regulations adopted by the Board, any orders or directives issued by the Board or any other applicable law.

***Oversight by the Kansas Dental Board.*** The bill does the following:

- Adds a new category of disciplinary action available to the Board, specifically to limit the license of a dentist;
- Deletes the requirement to have the name of a professional dental practice approved by the Board and instead requires that the name may not misrepresent the dentist to the public, with the Board having the authority to determine the issue of misrepresentation; and
- Adds a new section of law requiring registration with the Board for any unlicensed person or entity (term excludes a professional corporation or limited liability company composed of dentists) entering into an agreement with a licensed dentist to provide dental office administrative services. Any person or entity required to register has 30 days to complete the registration. The 30 days begins either on the date of execution of the contract or agreement or 30 days from July 1, 2011, depending upon whether the contract or agreement existed prior to July 1, 2011. Any changes in the company name and contact information for the registered person or entity who are parties to the agreement must be reported within 30 days of such change. This new section includes language permitting the Board to inspect the contract or agreement.

**Employment with General Hospitals.** The bill permits a licensed dentist to practice dentistry as an employee of a general hospital in a county with a population of less than 50,000.

**Dental Franchises.** The bill does the following:

- Deletes language prohibiting the franchise practice of dentistry.
- Revises language to permit the division of fees between a licensed dentist and a dental franchisor.
- Adds a new section of law to do the following:
  - Prohibits any contract or agreement involving a licensed dentist from containing language that would permit specified functions to be controlled by a person or entity other than a licensed dentist;
  - Permits a person or entity, acting on behalf of a licensed dentist, to perform or arrange for office administrative services;
  - Specifies the parties which are allowed to enter into agreements with a licensed dentist, professional corporation or limited liability company owned by a licensed dentist; and
  - Adds an indemnification clause to protect the parties to the agreement.
- Makes technical changes.

### **Kansas Indoor Clean Air Act—Amendment**

The bill amends the Kansas Indoor Clean Air Act, which bans smoking in enclosed areas or public places while providing specific exemptions where smoking is allowed. The bill adds an exemption from the statewide smoking ban for any annual benefit cigar dinner or other cigar dinner of a substantially similar nature that is:

- Conducted for charitable purposes by a 501(c)(3) not-for-profit organization;
- Conducted no more than once per calendar year; and
- Has been held during the three previous years.

## JUDICIARY

### **Driving Under the Influence**

**House Sub. for SB 6** amends various administrative and criminal statutes related to driving under the influence (DUI). The bill addresses professional licensing consequences for DUI, permits saliva testing, creates a Community Corrections Supervision Fund and related funding provisions, amends the commercial DUI statute to make it more consistent with the DUI statute, adjusts the implied consent provision as to urine samples, restructures alcohol and drug evaluations and treatment, adjusts administrative penalties for DUI, creates a DUI administrative hearing fee, increases fines for DUI and commercial DUI, amends postrelease provisions for DUI, adds a DUI lookback date for previous convictions, increases the blood or breath testing window for DUI and commercial DUI, overhauls the reporting of DUI and commercial DUI to the KBI central repository, allows expungement of a DUI after 10 years, and makes technical changes related to DUI and commercial DUI.

### ***Professional Licensing***

The bill creates a statutory provision prohibiting a professional licensing body from suspending, denying, terminating, or failing to renew a professional license solely because the licensee was convicted of, pled guilty or *nolo contendere* to, or entered into a diversion regarding a first time DUI. The provision clarifies that the licensing body, after proper notice and hearing, may take alternative corrective measures regarding such violation, and the provision does not limit the authority of the Division of Vehicles of the Department of Revenue to restrict, revoke, suspend or deny a driver's license or commercial driver's license.

### ***Saliva Testing***

The bill creates a statutory provision requiring the Kansas Bureau of Investigation (KBI) to adopt rules and regulations allowing saliva testing for law enforcement purposes and listing approved saliva testing devices. The implied consent statute is amended to add saliva testing.

### ***Community Corrections Supervision Fund***

The bill creates the Community Corrections Supervision Fund to be used to provide grants for community correctional services under KSA 75-52,111 to implement the supervision provisions contained in the bill.

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**Commercial DUI**

The commercial DUI statute, KSA 2010 Supp. 8-2,144, is amended to ensure consistency with DUI under KSA 2010 Supp. 8-1567, as follows:

- The blood or breath testing window is increased from 2 hours to 3 hours.
- Second-time offenders on house arrest are required to serve 120 hours of confinement within the residence, and third-or-subsequent offenders on house arrest are required to serve 240 hours of confinement within the residence. Such offenders on house arrest are required to be electronically monitored.
- Second-time offenders placed in work release are required to serve 120 hours of confinement, including an initial minimum of 48 consecutive hours of imprisonment. Third-or-subsequent offenders placed in work release are required to serve 240 hours of confinement, including the same initial minimum imprisonment.
- The minimum and maximum fines for a second offense are increased by \$250. The minimum fine for first or third offenses are increased by \$250. An amount of \$250 from each fine will be directed into the Community Corrections Supervision Fund created by the bill.
- All offenders are required to complete an alcohol and drug evaluation pursuant to the amended provisions of KSA 8-1008 and to follow any recommendation as ordered by the court.
- The sentence for any conviction for commercial DUI when one or more children under 14 years of age are in the vehicle at the time of the offense will be enhanced by one month, which the judge may order to be served on house arrest, work release, or other conditional release.
- Legal use of drugs is not a defense to commercial DUI of drugs.
- In lieu of payment of a fine under this section, the court may order the defendant to perform community service. The defendant will receive credit on the fine of \$5 per hour of community service, and the community service must be performed within one year after imposition of the fine or earlier if so ordered.

- Before filing a complaint alleging commercial DUI, a prosecutor must obtain motor vehicle violations records from the Division of Vehicles and criminal history from the KBI.
- The court is required to electronically report every conviction or diversion agreement for commercial DUI and obtain criminal history information from the KBI before sentencing.
- Upon a conviction, the Division of Vehicles is required to suspend, restrict, or suspend and restrict the offender's driving privileges under KSA 8-1014.
- Cities or counties are allowed to prohibit commercial DUI as long as the minimum penalty is no lower than the statutory minimum, the maximum penalty is no higher than the statutory maximum, and restitution is authorized.
- Any municipal offense that would constitute a felony must be referred to the county or district attorney for prosecution.
- No plea bargaining which permits a person charged with commercial DUI to avoid the mandatory penalties established by the section is allowed.

References to the commercial DUI statute are added to a variety of other statutory provisions to ensure consistency with references to DUI under KSA 2010 Supp. 8-1567.

### ***Urine Samples***

The bill amends the implied consent provision for collection of a urine sample to require supervision by a person licensed to practice medicine and surgery, licensed as a physician's assistant, or acting under the direction of such licensed person; a registered nurse or licensed practical nurse; or a law enforcement officer of the same sex as the person being tested.

### ***Restructuring of Alcohol and Drug Evaluations and Treatment***

The bill removes many of the provisions in KSA 8-1008 regarding evaluation and supervision of DUI offenders under the alcohol and drug safety action program (ADSAP). To replace ADSAP, the bill requires the Department of Social and Rehabilitation Services (SRS) to develop a standardized substance abuse evaluation. Evaluation and treatment will be provided by a "provider" who is licensed by the Behavioral Sciences Regulatory Board and is compliant with SRS requirements.

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**Administrative Penalties**

The bill amends the administrative penalties for test refusal as follows:

- For a second test refusal, driving privileges will be suspended for one year, followed by a two-year ignition interlock restriction.
- For a third test refusal, driving privileges will be suspended for one year, followed by a three-year ignition interlock restriction.
- For a fourth test refusal, driving privileges will be suspended for one year, followed by a four-year ignition interlock restriction.
- For a fifth test refusal, driving privileges will be suspended for one year, followed by a 10-year ignition interlock restriction.

The administrative penalties for a test failure or an alcohol or drug-related conviction in Kansas are amended as follows (there is no change to the penalty for a second occurrence):

- Between July 1, 2011, and June 30, 2015, for a first occurrence, driving privileges will be suspended for 30 days for all offenders, followed by a 180-day ignition interlock restriction, or a one-year ignition interlock restriction for offenders with certain previous violations on their record. On and after July 1, 2015, the penalty for a first occurrence will return to the former provision, which was a 30-day suspension and a 330-day restriction to driving for certain purposes, with an ignition interlock option.
- For a third occurrence, driving privileges will be suspended for one year, followed by a two-year ignition interlock restriction.
- For a fourth occurrence, driving privileges will be suspended for one year, followed by a three-year ignition interlock restriction.
- For a fifth occurrence, driving privileges will be suspended for one year, followed by a 10-year ignition interlock restriction.

For a first time test failure or alcohol or drug-related conviction, the prior violations that will trigger the one-year ignition interlock restriction include open container, minor in possession, those violations listed in the habitual violator statute, three or more moving violations in a single year, or any other suspension or revocation of driving privileges.

The administrative penalties for test failure with a blood or breath alcohol concentration of .15 or greater are amended so that for a fifth occurrence, driving privileges will be suspended for one year, followed by a 10-year ignition interlock restriction.

A person subject to a 10-year ignition interlock restriction will be permitted to petition the district court for relief from this restriction after five years of the restriction have been served. The court must consider whether the person's driving privileges have been limited by another action of the Division of Vehicles or a court and whether the person has proven installation, maintenance, and use of the interlock device throughout the five-year period.

A person subject to administrative penalties under the previous version of this section will be allowed to apply to have the new penalties applied retroactively. There is a \$100 fee for such application. The first \$100,000 generated by this fee will be credited to the Division of Vehicles Operating Fund, with the remainder credited to the Community Corrections Supervision Fund.

A person whose driving privileges have been suspended for one year will be allowed, after 45 days of such suspension, to apply to the Division of Vehicles for an ignition interlock restriction for the remainder of the suspension period for the purposes of getting to and from work, school, an alcohol treatment program, and the ignition interlock provider for maintenance purposes. A violation of the restrictions will add an additional year's suspension.

The bill maintains a provision allowing a person under an ignition interlock restriction to operate an employer's vehicle without an ignition interlock device during normal business activities, as long as the person does not own or control the vehicle or business. The bill clarifies that this provision does not apply to an interlock ignition restriction granted for the remainder of a one-year suspension period.

Administrative penalties for tampering with or requesting another to blow into an ignition interlock device are amended from the previous penalty of a two-year suspension to the following:

- On a first conviction, the ignition interlock restriction will be extended 90 days; and
- On a second or subsequent conviction, the original interlock restriction period will be restarted.

The administrative penalty for operating a vehicle not equipped with an ignition interlock device is changed from a two-year suspension to a restart of the original interlock restriction period.

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**Administrative Hearing Fee**

The bill amends the DUI administrative hearing statute to add a \$50 hearing fee to cover administrative costs of the hearing. The fee is required regardless of whether the hearing was in person or by telephone.

**DUI**

The bill amends the DUI statute, KSA 2010 Supp. 8-1567, as follows:

- The minimum and maximum fines for second offenses are increased by \$250. The minimum fine for first or third offenses are increased by \$250. An amount of \$250 from each fine will be directed into the Community Corrections Supervision Fund created by the bill.
- The classification of a third conviction is changed from a nonperson felony to a class A, nonperson misdemeanor, unless the offender has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration.
- All offenders are required to complete an alcohol and drug evaluation pursuant to the amended provisions of KSA 8-1008 and to follow any recommendation as ordered by the court.
- Upon expiration of a term of imprisonment for a third, fourth or subsequent DUI conviction, the offender will be placed in the custody of the community correctional services program for a mandatory one-year period of supervision. The court will determine whether the offender should be assigned to community corrections or court services based upon a risk assessment tool. During supervision, the offender will be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a Department of Social and Rehabilitation Services-designated care coordination agency, to include assessment and, if appropriate, treatment. The bill accordingly amends the Community Corrections Act to clarify that DUI offenders may be supervised by community correctional services programs.
- For first and fourth or subsequent convictions for DUI, the court may place the offender under house arrest to serve the remainder of the minimum sentence after 48 (for first conviction) or 72 (for fourth or subsequent conviction) hours imprisonment.

- Second-time offenders on house arrest must serve 120 hours of confinement within the residence, and third-or-subsequent offenders on house arrest must serve 240 hours of confinement within the residence. Such offenders on house arrest must be electronically monitored.
- Second-time offenders placed in work release must serve 120 hours of confinement, including an initial minimum of 48 consecutive hours of imprisonment. Third-or-subsequent offenders placed in work release must serve 240 hours of confinement, including the same initial minimum imprisonment.
- Only DUI convictions occurring on or after July 1, 2001, will be counted in determining the current conviction classification.
- Legal use of drugs is not a defense to DUI of drugs.
- The blood or breath testing window for DUI is increased from 2 hours to 3 hours.
- Existing criminal interlock, impound, and immobilization provisions for second or subsequent convictions are removed in light of the revised administrative penalties.

### ***KBI Central Repository***

The bill requires the KBI Director to adopt rules and regulations on or before July 1, 2012, requiring district courts to report to the central repository the filing of all cases alleging a DUI or commercial DUI. The Director must adopt rules and regulations on or before July 1, 2013, requiring such reporting to be electronic.

The bill makes the filing of a charge a reportable event for purposes of the central repository.

The bill requires municipal court judges to ensure that the municipal court reports the filing and disposition of any DUI case to the KBI central repository. After July 1, 2013, such reporting must be made electronically.

### ***Expungement***

The bill allows a petition for expungement of a DUI (under KSA 8-1567 or municipal equivalent) after 10 years.

### **Technical Changes**

Throughout the bill, various references and other language are revised to ensure statutory consistency and reflect current law.

### **Kansas Code of Civil Procedure Recodification Follow-Up**

**SB 9** amends the Kansas Code of Civil Procedure as a follow-up to the 2010 recodification of the Code. Most of the amendments are non-substantive, technical changes. These changes correct typographical errors, make the civil code provision consistent with other Kansas statutory provisions, or make the civil code caption consistent with the corresponding caption in the Federal Rules of Civil Procedure, on which the Kansas code is modeled.

The more substantive changes are:

- The time period for filing a motion to transfer an appeal to the Supreme Court is expanded from 20 days to 30 days, to correspond with the increased time allowed for docketing an appeal;
- The time period provided for a court adjudicating a juvenile offense to send case files to the sentencing court is changed from 5 working days to 7 days;
- The bill clarifies that the three-day mail rule of KSA 60-260(d) applies to service by fax and electronic means; and
- The bill adds requirements for a docket fee and case file number for foreign subpoenas filed in Kansas.

### **Earned Income Tax Credit Exemption**

**SB 12** allows an individual debtor in a bankruptcy proceeding to exempt the debtor's right to an Earned Income Tax Credit (EITC) for one tax year. The bill does not limit the availability of the EITC for payment of child support or spousal maintenance.

### **Kansas Domestic Relations Recodification**

**SB 24** recodifies domestic relations statutes into a single domestic relations code. The bill makes no substantive changes to the statutes.

## **Abolishment of Kansas Parole Board; Creation of Prisoner Review Board; Transfer of Duties**

**Executive Reorganization Order (ERO) No. 34** establishes the Prisoner Review Board within the Department of Corrections, abolishes the Kansas Parole Board, and transfers the powers, duties and functions of the Kansas Parole Board to the Prisoner Review Board, all effective July 1, 2011. The Prisoner Review Board will consist of three members appointed by the Secretary of Corrections from among the existing employees of the Department of Corrections, and the Review Board will be administered under the supervision of the Secretary of Corrections. SR 1817 would have disapproved ERO 34 but failed on a Senate vote.

## **Disability Rights, Transfer of the Commission on Disability Concerns**

**Executive Reorganization Order (ERO) No. 35** transfers the Commission on Disability Concerns (the Commission), its powers, duties, and functions from the Department of Commerce to the Governor's Office, where it will have an advisory role to the Governor. The Governor will appoint an executive director of the Commission and the Governor's Office will provide office space and personnel as needed. Any reference or designation to the Commission in a statute, regulation, contract, or other document will be deemed to apply to the Commission attached to the Governor's Office.

Pursuant to the ERO, all officers and employees of the Commission will be transferred to the Governor's Office. Likewise, the balance of all funds will be carried over to the Governor's Office and used only for the purpose for which the appropriation was originally made.

## **Kansas Offender Registration Act**

**House Sub. for SB 37** makes several changes to the Kansas Offender Registration Act (the Act) to bring Kansas into compliance with the federal Adam Walsh Sex Offender Registration and Notification Act (SORNA). First, the bill amends KSA 22-4902(a) by limiting the definition of "offender" to sex offenders, violent offenders, and drug offenders, all of which are defined in the bill, in addition to persons required to register in other states or by a Kansas court for a crime that is not otherwise an offense requiring registration. The definitions of sex offenders, violent offenders, and drug offenders incorporate the crimes removed from the current definition of "offender." The bill also defines other key terms.

In KSA 22-4903, a first conviction of failure to comply with the provisions of the Act becomes a severity level 5, person felony, (formerly a level 6, person felony); a second conviction remains a level 5, person felony; and a third or subsequent conviction becomes

a level 3, person felony. Additionally, failure to comply with the Act for more than 180 consecutive days is considered an aggravated violation, a level 3, person felony.

KSA 22-4904 consolidates the duties of several entities into a single statute and incorporates those things SORNA requires of each. Each entity's responsibilities are outlined in its own subsection as follows:

- (a) Courts (at the time of sentencing or disposition for an offense requiring registration);
- (b) Staff of a correctional facility;
- (c) Staff of a treatment facility;
- (d) Registering law enforcement agencies;
- (e) Kansas Bureau of Investigation (KBI);
- (f) Attorney General;
- (g) Kansas Department of Education;
- (h) Secretary of Health and Environment; and
- (l) The clerk of any court of record.

KSA 22-4905 outlines offender registration requirements. An offender must register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender resides or intends to reside, maintains employment or intends to maintain employment, or attends school or intends to attend school. Exceptions exist for anyone physically unable of registering in person at the discretion of the registering law enforcement agency.

Further, sex offenders must report in person four times a year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment, or is attending school. Violent offenders and drug offenders, at the discretion of the registering law enforcement agency, are required to report in person three times each year and by certified letter one time each year. If incapacitated, the registering law enforcement agency may allow violent offenders and drug offenders to report by certified letter four times a year. An offender must register during the month of the offender's birth, and every third, sixth, and ninth month occurring before and after the offender's birthday. Each time, the offender must pay a \$20 fee, with some exceptions.

Offenders also must register in person within three business days of commencement, change, or termination of residence, employment status, school attendance, or other information required on the registration form with the registering law enforcement agency where last registered and provide written notice to the KBI. Similarly, an offender must register within three business days of any name change. Finally, the offender must submit to the taking of an updated photograph when registering or to document any changes in identifying characteristics; renew any driver's license or identification card annually; surrender any drivers' licenses or identification cards from other jurisdictions when Kansas is the offender's primary residence (an exception exists for active duty members of the military and their immediate family); and read and sign registration forms indicating whether the requirements of this section have been explained.

The bill provides special conditions for registration in certain circumstances. If in the custody of a correctional facility or in the care or custody of a treatment facility, the bill requires offenders to register with that facility within three business days of arrival, but does not require them to update their registration until they are allowed to leave. If receiving inpatient treatment at any treatment facility, the offender must inform the registering law enforcement agency of the offender's presence at the facility and the expected duration of the treatment. If an offender is transient, the bill requires the offender to report in person to the registering law enforcement agency of the county or location of jurisdiction within three business days of arrival, and every 30 days thereafter, or more often at the discretion of the registering law enforcement agency. If traveling outside the U.S., the offender must notify the registering law enforcement agency and the KBI 21 days prior to travel, and within three days of making travel arrangements.

Offenders are required to register for 15 or 25 years, or for life, depending on the offense as outlined in KSA 22-4906. Those crimes requiring registration for 15 years are capital murder; murder in the first degree; murder in the second degree; voluntary manslaughter; involuntary manslaughter; criminal restraint when the victim is less than 18; a sexually motivated crime; a person felony where a deadly weapon was used; manufacture or attempted manufacture of a controlled substance; possession of certain drug precursors; when one of the parties is less than 18, sexual battery, adultery, patronizing a prostitute, or lewd and lascivious behavior; or attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for 25 years are criminal sodomy when one of the parties is less than 18; indecent solicitation of a child; electronic solicitation; aggravated incest; indecent liberties with a child; unlawful sexual relations; sexual exploitation of a child; aggravated sexual battery; promoting prostitution; or any attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for life are second or subsequent convictions of an offense requiring registration; rape; aggravated indecent solicitation of a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; aggravated

human trafficking; sexual exploitation of a child; promoting prostitution; kidnapping; aggravated kidnapping; or any attempt, conspiracy, or criminal solicitation of any of these crimes. Additionally, any person declared a sexually violent predator is required to register for life. Offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and that is a severity level 1 non-drug felony or an offgrid felony, also must register for life.

For offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult and that is not a severity level 1 non-drug felony or an off-grid felony, a court may:

- Require registration until the offender reaches 18, 5 years after adjudication or, if confined, 5 years after released from confinement, whichever occurs later;
- Not require registration if it finds on the record substantial and compelling reasons therefor; or
- Require registration, but with the information not open to the public or posted on the internet (the offender would be required to provide a copy of such an order to the registering law enforcement agency at the time of registration, which in turn, would forward the order to the KBI).

KSA 22-4907, concerning the form used for registration, is amended to require KBI approval of the form, rather than preparation; information in addition to that already required; and that the signature of the offender be witnessed by the registering officer. The bill also amends the provisions in this section governing the mandatory collection of DNA samples.

In KSA 22-4909, concerning the availability of statements and other information collected pursuant to the Act, the bill clarifies what information is required to be posted on a website sponsored or created by a registering law enforcement agency or the KBI.

Finally, the bill amends KSA 38-2312, which governs the expungement of juvenile records, and 2010 Session Laws Ch. 136, Sec. 254, which governs expungement of adult records, to provide that an offender required to register pursuant to the Act cannot expunge any conviction or part of the offender's criminal record while the offender is required to register. (2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code and will go into effect July 1, 2011.)

## **Various Crimes and Criminal Procedures**

**House Sub. for SB 55** creates or amends law relating to search warrants and interception orders for electronic communication information, search incident to arrest, the crimes of harassment by telecommunications device and sexual exploitation of a child, required factors in determining conditions of release, employment of city and county prisoners, relief from firearm prohibitions for a person adjudicated mentally ill, expunged records, grand juries, direct appeals to the Supreme Court, community corrections, house arrest, arrest expungement fees, DUI offender house arrest and work release, and the forfeiture of appearance bonds.

### ***Search Warrants and Interception Orders for Electronic Communication Information***

The bill amends the statute governing issuance of search warrants to allow a magistrate to issue a search warrant for seizure of information concerning the user of an electronic communication service; information concerning the location of electronic communication systems; or any other information made through an electronic communication system. The bill clarifies that jurisdiction under this provision extends to information held by entities registered to do business in Kansas or to entities outside Kansas that are located in jurisdictions recognizing the authority of the magistrate to issue the search warrant. “Electronic communication service” and “electronic communication system” are given the same meaning as defined in KSA 22-2514.

The bill amends the statute governing application for orders authorizing interception of a wire, oral or electronic communication to clarify that a judge may direct a provider of electronic communication service, regardless of the location or principal place of business of such provider, to furnish information, facilities, and assistance to an applicant seeking to intercept communications by a person served by the provider.

The bill clarifies that the sections containing the above provisions shall not be construed to require a search warrant for cellular location information in an emergency situation pursuant to KSA 22-4615.

### ***Search Incident to Arrest***

The bill repeals KSA 22-2501, which codified the exception to the warrant requirement for a search made incident to an arrest by a law enforcement officer.

### ***Harassment by Telecommunications Device***

The bill amends the crime of harassment by telecommunications device to include the use of a telecommunications device to transmit an obscene, lewd, lascivious, or indecent image or text. The bill makes it illegal to use a telecommunications device to transmit any

comment, request, suggestion, proposal, image, or text with intent to abuse, threaten, or harass any person at the receiving end.

Additionally, the bill defines “telecommunications device” to include telephones, cellular telephones, telefacsimile machines, and any other electronic device which uses an electronic communication service. The bill removes the word “filthy” from the description of proscribed communication content and clarifies that a person charged under this section also may be charged with and convicted of indecent solicitation of a child, electronic solicitation, sexual exploitation of a child, or promoting obscenity. Finally, the bill makes several technical amendments to ensure consistency.

### ***Sexual Exploitation of a Child***

The bill amends the crime of sexual exploitation of a child to prohibit the following conduct:

- Employing, using, persuading, inducing, enticing or coercing a person the offender believes to be under 18 years of age to engage in sexually explicit conduct with the intent to promote any performance; or
- Promoting any performance that includes sexually explicit conduct by a person the offender believes to be under 18 years of age, knowing the character and content of the performance.

(Note: The bill, as formatted, appears to make additional changes. However, these actually are changes made by the 2010 Legislature. The 2010 changes must be formatted as amendments in this bill because the recodification of the Criminal Code, also authorized by the 2010 Legislature, will not go into effect until July 1, 2011.)

### ***Required Factors in Determining Conditions of Release***

The bill amends KSA 2010 Supp. 22-2802 by adding the following factor to the required considerations by a magistrate at a first appearance in determining the conditions of release of a criminal defendant: “whether the defendant is lawfully present in the United States.”

### ***Employment of County and City Prisoners***

The bill allows charitable employment of prisoners, or persons awaiting trial or held on civil process, in municipal or county jails as an alternative to public employment. It increases the rate of compensation for prisoners to \$5 credit toward fines and costs per each full hour worked. Similarly, persons awaiting trial or held on civil process will be

credited \$5 toward any fines and costs for each full hour worked, or paid in an agreed amount not less than \$5 per day.

Under the bill, a court is authorized to order community service in lieu of payment of fines. The person ordered to perform community service will receive a \$5 credit for each full hour worked and will be required to complete the community service within one year after the fine is imposed or one year after release from imprisonment or jail, whichever is later, unless the court requires earlier completion.

### ***Relief from Firearm Prohibitions for a Person Adjudicated Mentally Ill***

The bill creates a new section allowing a person who has been adjudicated mentally ill to petition for relief from state and federal firearm prohibitions and governs the contents of the person's petition for such relief as well as a court's duties in considering and granting the petition.

Pursuant to the bill, a court may grant relief only if it determines the petitioner would not be likely to act in a manner dangerous to public safety and if granting relief will not be contrary to the public interest. The court must provide documentation of a granted petition to the Kansas Bureau of Investigation (KBI) and, immediately upon receiving such documentation, the KBI must enter the order into the appropriate state and federal databases. The new section also defines some of its key terms.

### ***Expunged Records***

The bill amends KSA 12-4516a and 22-2410 to require courts to make expunged records and related information available to the KBI to complete a person's criminal history record information within the central repository or to provide information or documentation to the Federal Bureau of Investigation (FBI) to determine a person's qualification to possess a firearm.

The bill also amends the definition of "criminal history record information" in KSA 22-4701 to include "any supporting documentation" and prohibits courts or criminal justice agencies from assessing fees and charges against the central repository for providing criminal history record information.

The bill amends KSA 38-2312 to require courts to send certified copies of juvenile expungement orders to the KBI, which is then required to notify every juvenile or criminal justice agency that may possess records or files ordered to be expunged.

The bill allows the custodians of records or files from an expunged juvenile adjudication or records of an arrest, conviction, diversion, and incarceration related to an expunged crime to disclose that information to the KBI to complete a person's criminal history record

information within the central repository or to provide information or documentation to the FBI to determine a person's qualification to possess a firearm.

Finally, the bill amends KSA 22-4705, regarding the KBI central repository, to specify that no court or criminal justice agency may charge the central repository for providing criminal history information to the repository, unless the court or agency has previously provided the same information.

### ***Grand Juries***

The bill amends KSA 22-3001, concerning grand juries, by allowing the district or county attorney in such attorney's county to petition the chief judge of the district court to order a grand jury to be summoned to investigate alleged violations of an off-grid felony; a severity level 1, 2, 3, or 4 felony; or a drug severity level 1 or 2 felony. The bill requires the chief judge to consider the petition and, if found to be in proper form, order a grand jury to be summoned.

### ***Direct Appeals for Certain Off-Grid Offenses***

The bill amends KSA 22-3601 to remove cases involving certain off-grid offenses from the list of appeals that are to be taken directly to the Kansas Supreme Court, rather than to the Court of Appeals. The offenses are:

- Aggravated human trafficking, when the offender is 18 years of age or older and the victim is less than 14 years of age;
- Rape, when the offender is 18 years of age or older and the victim is under 14 years of age;
- Aggravated criminal sodomy, when the offender is 18 years of age or older and the victim is under 14 years of age;
- Aggravated indecent liberties with a child, when the offender is 18 years of age or older and the victim is under 14 years of age;
- Sexual exploitation of a child, when the offender is 18 years of age or older and the child is under 14 years of age;
- Promoting prostitution, when the offender is 18 years of age or older and the prostitute is less than 14 years of age; and
- An attempt, conspiracy, or criminal solicitation of any of the above offenses.

### **Community Corrections**

The bill amends KSA 75-5291(a)(3), which requires adult offenders sentenced to community supervision in Johnson County for certain felonies to be placed under court services or community corrections supervision, by extending the expiration of that provision from January 1, 2011, to July 1, 2013.

The bill amends KSA 75-52,112, which governs a community corrections grant program overseen by the Secretary of Corrections. Effective July 1, 2011, the program's previous goal of "reducing each community corrections program's revocation rate by at least 20 percent" will be replaced with the goal of "achieving and maintaining a supervision success rate of at least 75 percent or improving such rate by at least 3 percent from the previous year."

"Supervision success rate" is defined in this section as the percentage of those persons under supervision in a community corrections program whose supervision is not revoked and remanded to the custody of the Department of Corrections for imprisonment.

Consistent with these changes, the bill modifies provisions concerning priority of awards, giving preference to counties in which the supervision success rate for offenders on community supervision is significantly lower than the statewide average, which target a higher supervision success rate than required (75 percent or 3 percent annual supervision success rate improvement), or which target the successful reentry of offenders who are considered medium or high risk for revocation. Similarly, the bill amends the subsection concerning grant applications by requiring in an applicant's proposal a plan to achieve and maintain a supervision success rate of at least 75 percent, improve such rate by at least 3 percent from the previous year, or target the successful reentry of offenders who are considered medium or high risk for revocation.

### **House Arrest**

The bill amends law concerning house arrest by allowing municipal judges to sentence a defendant convicted of violating an ordinance to house arrest. Further, the bill allows a court to consider assigning a defendant to a house arrest program prior to imposing a sentence for nondrug-grid crimes. House arrest also may be imposed as a sanction for offenders who fail to comply with conditions of parole or postrelease supervision. Defendants are not eligible for a house arrest program if convicted of an off-grid felony, any nondrug crime ranked in severity levels 1 through 5, or any felony ranked in severity levels 1 through 3 of the drug grid.

The offender on house arrest is required to consent to monitoring by one or more of the following:

- An electronic monitoring device on the offender's person or in the offender's home;
- A remote blood alcohol monitoring device; or
- A home telephone verification procedure.

The Secretary of Corrections or the court is authorized to contract for independent monitoring services which are able to provide monitoring 24 hours a day, every day of the year, and any other services as determined by the Secretary.

The bill also requires the court to inform the offender and any other people residing with the offender at the time house arrest is entered of the nature and extent of house arrest monitoring and to obtain the written agreement of the offender to comply with all requirements. The offender must remain within the property boundaries of the offender's residence at all times during the house arrest, except as allowed in the house arrest agreement.

Additionally, an offender must allow any law enforcement, community corrections, or court services officer or duly authorized agent of the Department of Corrections to enter the offender's residence to verify compliance with the conditions of the house release. Key terms for the house arrest provisions are defined in the bill.

(Note: The bill, as formatted, appears to also make changes regarding a domestic violence offender assessment and ballistic resistant material. However, these are actually changes made by the 2010 Legislature. The 2010 amendments must be formatted as amendments in this bill, because the recodification of the Criminal Code, also authorized by the 2010 Legislature, will not go into effect until July 1, 2011.)

### ***Arrest Expungement Fees***

The bill exempts from payment of arrest expungement petition docket fees any petitioner who has had criminal charges dismissed because a court has found there was no probable cause for the arrest, has been found not guilty in court proceedings, or has had the charges against the petitioner dropped.

### ***House Arrest and Work Release for DUI***

The bill specifies that DUI offenders placed on house arrest must be electronically monitored, second-time offenders on house arrest must serve 120 hours of confinement within the residence, and third-or-subsequent offenders on house arrest must serve 240 hours of confinement within the residence.

Second-time offenders placed in work release must serve 120 hours of confinement, including an initial minimum of 48 consecutive hours of imprisonment. Third-or-subsequent offenders placed in work release must serve 240 hours of confinement, including the same initial minimum imprisonment.

### ***Forfeiture of Appearance Bonds***

The bill repeals KSA 2010 Supp. 22-2807a to resolve a direct date conflict between that statute and KSA 2010 Supp. 22-2807. KSA 2010 Supp. 22-2807a allowed default judgment against the appearance bond obligor after 14 days. KSA 2010 Supp. 22-2807 allows default judgment against the obligor after 60 days and sets a two-year limitation on entry of judgment against an obligor. The 60-day, two-year provision now controls, pursuant to this bill.

### **Court Clerk—Duties; Court Costs; Attorney-Client Privilege and Work-Product Protection**

**House Sub. for SB 63** amends the duties of a court clerk by removing the requirements that the clerk keep the papers in each case in a wrapper or folder and that the clerk initial the date and time stamp on each paper.

The bill also gives the Kansas Supreme Court, rather than the chief judge of a district court, the authority to order that records and information of the district court be kept in a computer information storage and retrieval system.

The bill clarifies that court costs may be assessed under the Asset Seizure and Forfeiture Act.

Finally, the bill provides certain safeguards against waiver of attorney-client privilege or work-product protection. The safeguards include:

- If a waiver is found, it will apply only to information actually disclosed, unless: the waiver was intentional, undisclosed information concerned the same subject matter, and fairness required the disclosed and undisclosed information to be considered together.
- Inadvertent disclosure in a court or agency proceeding will not operate as a waiver if the holder of the privilege took reasonable steps to prevent disclosure and took prompt, reasonable steps to rectify the error.
- Disclosure made in a non-Kansas proceeding will not waive the privilege in a Kansas proceeding if the disclosure would not constitute a waiver under

Kansas law or under the law of the jurisdiction where the waiver occurred. Whichever law provides the most protection against a waiver will apply.

- A court may order that disclosure in litigation pending before the court does not constitute a waiver.
- Parties may enter into agreements as to the effect of disclosures within the proceeding, although such agreements will not be binding upon non-parties unless incorporated into a court order.

The bill defines “attorney-client privilege” and “work-product protection” and makes technical amendments to KSA 60-426 and KSA 60-3003 to ensure consistency in wording.

### **Court Fees; Court of Appeals—Additional Judge Position**

**SB 97** extends for one year the judicial surcharge the Legislature authorized in 2010 Senate Sub. for HB 2476 to fund non-judicial personnel. The bill increases the surcharge by 25 percent in FY 2012.

The bill also delays the expansion of the Court of Appeals from 13 to 14 judges for one year, until December 31, 2012.

### **Kansas Commission on Peace Officers’ Standards and Training**

**HB 2001** makes technical changes concerning spending that were not made when the Kansas Commission on Peace Officers’ Standards and Training (KCPOST) separated from the Kansas Law Enforcement Training Center (KLETC). Specifically, it amends the statute governing the Law Enforcement Training Reimbursement Fund to give KCPOST the authority to expend money from that fund, which is located in the State Treasury. The Fund receives \$1 from the \$20 assessment imposed by KSA 12-4117(a) in each case filed in municipal court other than a non-moving traffic violation, where there is a finding of guilt, plea of guilty, plea of no contest, forfeiture of bond, or a diversion.

### **Penalties for Identity Theft, Identity Fraud**

**Senate Sub. for HB 2008** adds subsection (u) to 2010 Session Laws Ch. 136, Sec. 285, providing that the penalty for identity theft, identity fraud, and attempt or conspiracy to commit those crimes is presumptive imprisonment when the person being sentenced has a prior conviction of identity theft, identity fraud, or attempt or conspiracy to commit those crimes. 2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code and will go into effect July 1, 2011.

## Civil Forfeiture

**HB 2010** adds the following to the list of offenses giving rise to civil forfeiture pursuant to the Kansas Asset Seizure and Forfeiture Act:

- Embezzlement;
- Mistreatment of a dependent adult;
- Giving a worthless check;
- Forgery;
- Making false information;
- Criminal use of a financial card;
- Unlawful acts concerning computers;
- Identity theft and fraud; and
- Electronic solicitation.

The bill removes theft of livestock from the list; however, theft as defined in 2010 Session Laws Ch. 136, Sec. 87, remains on the list.

## Controlled Substances (Also see Senate Sub. for HB 2049)

**Due to errors in the signed HB 2023, Senate Sub. for HB 2049 was enacted to correct the errors (See Senate Sub. for HB 2049).**

**HB 2023** amends KSA 65-4105, 65-4107, 65-4109, 65-4111, and 65-4113, which govern the scheduling of controlled substances, to bring Kansas' law into agreement with the federal schedule. Specifically, the bill adds to the list of controlled substances included in:

- Schedule I: 4-Bromo-2,5-dimethoxyphenethylamine; 2,5-dimethoxy-4-(n)-propylthiopenenthylamine (2C-7); Alpha-methyltryptamine, aka AMT; and 5-methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT).

- Schedule II: Dihydroetorphine; Oripavine; Remifentanil; Tapentadol; and Lisdexamfetamine.
- Schedule III: Embutramide, and any material, compound, mixture, or preparation containing Buprenorphine, which was previously a schedule V controlled substance.
- Schedule IV: Dichloralphenazone; Fospropofol; and Zopiclone.
- Schedule V: Lacosamide (R)-2-acetoamido-N-benzyl-3-methoxypropionamide, and Pregabalin (S)-3-(aminomethyl)-5-methylhexanoic acid.

### Rules and Regulations Filing Act

**HB 2027** amends the Rules and Regulations Filing Act (the Act) by deleting the existing definition of “rule and regulation,” “rule,” and “regulation,” including several provisions exempting specific rules and regulations from formal rulemaking under the Act, and replacing it with a simplified definition. It also expands the definition of “person” to include individuals and companies or other legal or commercial entities.

The bill gives precedential value to orders issued in an adjudication against a person who was not a party to the original adjudication when the order is:

- Designated by the agency as precedent;
- Not overruled by a court or other adjudication; and
- Disseminated to the public in one of the following ways:
  - Inclusion in a publicly available index of all orders designated as precedent, maintained by the agency and published on its website;
  - Publication in full on the agency website in a format allowing key terms searches; or
  - Being made available to the public in any other manner required by the Secretary of State.

The bill also allows statements of policy to be treated as binding within the agency when directed to agency personnel concerning their duties or the internal management or organization of the agency.

The bill states that agency-issued forms, whose contents are governed by rule and regulation or statute, and guidance and information the agency provides to the public do not give rise to a legal right or duty and are not treated as authority for any standard, requirement, or policy reflected in the forms, guidance, or information. Further, the bill provides the following are not subject to the Act:

- Policies relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution;
- Parking and traffic regulations of any state educational institution under the control and supervision of the State Board of Regents;
- Rules and regulations relating to the emergency or security procedures of a correctional institution; and
- Orders issued by the Secretary of Corrections or any warden of a correctional institution.

Similarly, statutes that specify the procedures for issuing rules and regulations will apply rather than the procedures outlined in the Act.

Finally, the bill creates a new section giving state agencies the authority to issue guidance documents without following the procedures set forth in the Act. Under the terms of this new section, guidance documents can contain binding instructions to state agency staff members, except presiding officers. Presiding officers and agency heads can consider the guidance documents in an agency adjudication, but are not bound by them. To act in variance with a guidance document, an agency must provide a reasonable explanation for the variance and, if a person claims to have reasonably relied on the agency's position, the explanation must include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interests. The bill requires each state agency to maintain an index of the guidance documents; publish the index on the agency's website; make all guidance documents available to the public; file the index in any other manner required by the Secretary of State; and provide a copy of each guidance document to the Joint Committee on Administrative Rules and Regulations (may be provided electronically).

## **Kansas Uniform Trust Code**

**HB 2028** creates a new section to be part of the Kansas Uniform Trust Code giving the trustee of a trust an insurable interest in the life of an individual insured under a life insurance policy owned by the trustee acting in a fiduciary capacity or that designates the trust itself as the owner under certain circumstances. Pursuant to the bill, the trustee

has an insurable interest if, when the policy is issued, the insured is either a settlor of the trust or an individual in whom a settlor of the trust has, or would have had, if living at the time the policy was issued, an insurable interest. Additionally, to have an insurable interest, the bill requires the life insurance proceeds be primarily for the benefit of one or more trust beneficiaries who have either an insurable interest in the life of the insured, or a substantial interest engendered by love and affection in the continuation of the life of the insured, and who are related within a third degree, either by blood or law, or are the insured's stepchildren or the children of the insured's stepchild, either by blood or law.

### **Kansas Tort Claims Act**

**HB 2029** adds ultrasound technologists working under the supervision of a person licensed to practice medicine and surgery to the list of persons included in the definition of "charitable health care providers" for the purposes of the Kansas Tort Claims Act. The bill requires ultrasound technologists to be registered in any area of sonography credentialed through the American Registry of Radiology Technologists, the American Registry for Diagnostic Medical Sonography, or Cardiovascular Credentialing International.

### **Kansas Open Records Act Exceptions**

**HB 2030** extends for five years exceptions to the Kansas Open Records Act that are set to expire July 1, 2011. The bill also amends KSA 12-2819, concerning the Metropolitan Transit Authority Act, and KSA 12-5611, 12-5711, and 12-5811, concerning county riverfront authorities, to clarify that the only documents and records exempt from open records requests are those kept or prepared by each authority for contract negotiations or civil proceedings to which the individual authorities are a party.

### **Departure Sentence Hearings in Felony Cases**

**HB 2038** amends 2010 Session Laws Ch. 136, Sec. 298, concerning hearings to consider a departure sentence in felony cases. (2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code, and will go into effect July 1, 2011.) The bill makes clear that when a court determines it is in the interest of justice to impose a departure sentence, which requires a separate departure sentence proceeding, the proceeding must take place in front of a jury, unless the jury is waived.

### **Crimes, Requirements After a Vehicle Collision**

**HB 2044** amends KSA 8-1602, 8-1604, 8-1605, and 2010 Session Laws Ch. 136, Sec. 292 concerning required action and notification in a motor vehicle accident. (2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code and will go into effect July 1, 2011.)

First, the bill adds accidents resulting in damage to an attended vehicle or property to the list of vehicle accidents requiring a person to immediately stop and remain at the scene of the accident until all the requirements imposed by these statutes are fulfilled. Further, the bill amends the penalties for leaving the scene of an accident as follows:

- For property damages of less than \$1,000, a first conviction is a class C misdemeanor, a second committed within one year of the first is a class B misdemeanor, and a third or subsequent committed within one year of the second is a class A misdemeanor;
- Injury to a person or property damage of \$1,000 or more is a class A misdemeanor;
- Great bodily harm to a person is a severity level 8 misdemeanor (from level 10); and
- Death of a person is a severity level 6 felony (from level 9), except when a person involved in an accident knew or should have known that the accident resulted in injury or death, which is a severity level 5 felony.

The bill also requires that, as provided for in KSA 8-15,107, a driver in an accident involving no death, apparent injury, or hazardous materials make every reasonable effort to remove the vehicle from the road when the vehicle obstructs the regular flow of traffic if it can be done safely, without towing, and without causing further damage to the vehicle or roadway.

Next, the bill clarifies that “insofar as possible,” a driver in an accident resulting in injury, death, or damage to an attended vehicle must make efforts immediately to determine whether any person involved in the accident was injured or killed and render reasonable assistance to an injured person.

Further, when a police officer is not present, the driver of a vehicle involved in the accident or an occupant 18 years or older must report the accident by the quickest available means of communication to the nearest police officer if there is property damage of \$1,000 or more or any person involved in the accident is injured or killed. Pursuant to the bill, the driver or an occupant 18 years or older also must report the accident to the police if an injured person, the driver or occupant of the other car, or a person attending a vehicle or other property damaged in the accident is not present or in a condition to receive the required information.

Additionally, in an accident with an unattended vehicle, the bill requires the driver to stop immediately if there is damage to any vehicle or property and locate the owner to provide the owner with the required information, or leave a securely attached and

conspicuously located writing with the required information. A first conviction for failure to do so is a class C misdemeanor, a second committed within one year of the first is a class B misdemeanor, and a third or subsequent committed within one year of the second is a class A misdemeanor.

The bill also provides that if a person is convicted for leaving the scene of an accident on or after July 1, 2011, each prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication for DUI will be counted as one person felony for criminal history purposes. Similarly, if a person is convicted of leaving the scene of an accident resulting in injury, great bodily harm, or death, the bill provides that a prior conviction for the following statutory crimes convicted after July 1, 2011, will be counted as a person felony for criminal history purposes:

- KSA 8-235, driving a vehicle without a license;
- KSA 8-262, driving while license is canceled, suspended, or revoked;
- KSA 8-287, driving while one's privileges are revoked for being a "habitual violator";
- KSA 8-291, violating restrictions on driver's license or permit;
- KSA 8-1566, reckless driving;
- KSA 8-1567, driving under the influence of alcohol or drugs;
- KSA 8-1568, fleeing or attempting to elude a police officer;
- KSA 8-1602, leaving the scene of an accident resulting in injury, great bodily harm, or death;
- KSA 8-1605, failing to contact the owner of a vehicle following an accident causing damage to unattended property;
- KSA 40-3104, failing to obtain motor vehicle liability insurance coverage;
- 2010 Session Laws Ch. 136, Sec. 40(a)(3), involuntary manslaughter committed while DUI; and
- 2010 Session Laws Ch. 136, Sec. 41, vehicular homicide.

## Controlled Substances

Senate Sub. for HB 2049 repeals HB 2023, as signed by the Governor on March 28, 2011. Senate Sub. for HB 2049 includes appropriate provisions and corrected provisions of HB 2023, adds new provisions and amends existing provisions pertaining to the scheduling of controlled substances.

Senate Sub. for HB 2049 includes provisions found in HB 2023 which add to the list of controlled substances as follows:

- Schedule I: 4-Bromo-2,5-dimethoxyphenethylamine; 2,5-dimethoxy-4-(n)-propylthiopenenthylamine (2C-7); Alpha-methyltryptamine, aka AMT; and 5-methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT).
- Schedule II: Dihydroetorphine; Oripavine; Remifentanyl; Tapentadol; and Lisdexamfetamine.
- Schedule III: Embutramide, and any material, compound, mixture, or preparation containing Buprenorphine, which was previously a schedule V controlled substance.
- Schedule IV: Dichloralphenazone; Fospropofol; and Zopiclone.
- Schedule V: Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxypropionamide], and Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

The bill modifies provisions of the Controlled Substances Act (as amended by Section 1 of 2011 HB 2023) by creating a new subsection to address cannabinoids, inserting additional substances in that subsection, and adding the class of substituted cathinones (commonly known as bath salts) to subsection (f). A type of synthetic marijuana commonly referred to as K-3 is included in the new subsection on cannabinoids. The bill uses a general chemical class approach intended to prevent manufacturers from simply transitioning from scheduled compounds to uncontrolled compounds. Technical errors in enrolled 2011 HB 2023 also are corrected.

The bill also amends part of the Controlled Substances Act found in KSA 2010 Supp. 65-4105 as amended by Section 1 of 2011 HB 2023 (as approved by the Governor on March 28, 2011), by moving Tetrahydrocannabinols (commonly known as THC) and 9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c] chromen-1-ol, aka HU-210, from subsection (d) to a new subsection (h) addressing cannabinoids. In addition to K-3, the following substances are added to that subsection: Naphthoylindoles, Naphthylmethylindoles, Naphthoylpyrroles, Naphthylmethylindenes, Phenylacetylindoles, Cyclohexylphenols, Benzoylindoles, 2,3-Dihydro-5-methyl-3-(4-

morpholinylmethyl) pyrrolo [1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone, and HU-211.

Further, the bill amends KSA 21-36a05 and 21-36a06, crimes involving controlled substances, by adding the substances in new subsection (h) to the list of substances that are illegal to cultivate, distribute, possess, or possess with the intent to distribute. Cultivation, distribution, and possession with the intent to distribute is a severity level 3 drug felony for a first offense; a level 2 for a second conviction or if the offender is over 18 and distribution or possession with intent to distribute occurs on or within 1,000 feet of school property; and a level 1 for a third conviction. Possession is a class A nonperson misdemeanor for a first conviction and a severity level 4 felony for a subsequent conviction.

### **Forensic Laboratory Reports Admissible in Evidence**

**HB 2057** adds the Johnson County Sheriff's Laboratory and the Sedgwick County Regional Forensic Science Center to the list of institutions whose reports and certificates concerning forensic examination are considered admissible in evidence in any hearing or trial. Opposing parties already are able to challenge the admissibility of such reports and certificates.

### **Sexually Violent Predators, Cost of *Habeas Corpus* Petitions, Expert Testimony**

**Senate Sub. for HB 2071** amends KSA 59-29a01 to provide that when a person is committed as a sexually violent predator and files a *habeas corpus* petition, the costs incurred as part of the prosecution and defense of the petition are assessed to the "county responsible for the costs." "County responsible for the costs" is defined in the bill as the county where the person was determined to be a sexually violent predator. A county can refuse to approve payment of the costs assessed by the court if it is not the "county responsible for the costs" and may file a claim against the debtor county, which has to pay within 120 days.

The "county responsible for the costs" is reimbursed for the costs by the Attorney General from the Sexually Violent Predator Expense Fund. The statute governing this fund, KSA 59-29a04a, is amended to allow for such expenditures. If the Fund's balance is insufficient to cover the costs, the county may file a claim against the state for reimbursement.

The bill also adds a subsection to KSA 59-29a06, providing that in commitment proceedings for sexually violent predators, the parties are permitted to call expert witnesses. Consistent with KSA 60-456, which governs testimony in the form of an opinion, the facts or data upon which an expert witness bases an opinion or inference can be perceived or made known to the expert at or before the hearing. Further, the bill provides that when the facts or data are of a type reasonably relied on by experts in the particular field in forming

inferences or opinions on the subject, they do not have to be admissible in evidence for the inference or opinion to be admissible.

### **Privilege for Patients of Mental Health Treatment Facilities, Law Enforcement Exception**

**HB 2104** amends KSA 65-5603, concerning exceptions to the privilege of patients of mental health treatment facilities that prevents treatment personnel from disclosing the patient's receipt of services or any confidential communications made for the purposes of diagnosis or treatment of the patient's mental, alcoholic, drug dependency, or emotional condition. The bill adds an additional exemption to this privilege for information on whether a person is or has been a patient of any treatment facility within the last six months, allowing disclosure to law enforcement when an officer has reasonable suspicion that a person arrested suffers from mental illness and may benefit from treatment, rather than being placed in a correctional institution, jail, juvenile correctional facility, or juvenile detention facility. The bill also defines some of the key terms used in the exception.

### **Payment of Costs Associated with Conditions of Release and Sentencing**

**HB 2118** amends KSA 22-2802 by allowing magistrates to impose costs up to \$15 per week for court services supervision of a person's compliance with conditions of release and any costs in addition to the \$15 per week associated with supervision and conditions for compliance. The bill also authorizes magistrates to require that a person charged with a felony submit to an alcohol abuse examination and evaluation and to undergo treatment, if necessary, as a condition of release. Magistrates already have this authority with respect to drug abuse. As a condition of sentencing, courts could impose the full amount of costs in addition to the \$15 per week already allowed, including costs for evaluation and treatment.

The bill also amends 2010 Session Laws Ch. 136, Sec. 244, by giving courts the authority to impose the full amount of unpaid costs associated with the conditions of release of an appearance bond when a person has been found guilty of a crime. (2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code, and will go into effect July 1, 2011.)

### **Crimes, Breach of Privacy, and Blackmail**

**HB 2151** modifies the definition of the crime of "breach of privacy" to include:

- Entering with the intent to listen surreptitiously to private conversations in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;

- Installing or using a device inside a private place to hear, record, amplify, or broadcast sounds originating from such place that would not ordinarily be audible or comprehensible without the use of such device;
- Installing or using a device or equipment for the interception of wireless communication;
- Using means other than electronic means to secretly videotape, film, photograph, or record an identifiable person who is nude or in a state of undress;
- Looking into any hole or opening or otherwise viewing by means of instrumentality any person with the intent to invade the privacy of the person being viewed (“instrumentality” is defined in the bill); and
- Disseminating or permitting the dissemination of any videotape, photograph, film, or image obtained in violation of the restriction explained above on installing or using a concealed device.

Further, the bill increases the penalties for some of the acts constituting “breach of privacy.”

The bill also amends the definition for the crime of blackmail, by adding threats to disseminate materials obtained using electronic or other means to secretly videotape, film, photograph, or record an identifiable person who is nude or in a state of undress, which is a severity level 4, person felony.

### **Warrants Based on the Defendant's DNA**

**HB 2227** allows the issuance of warrants identifying a defendant by a description of the defendant's DNA, rather than by name as provided in prior law, when the defendant's name is unknown.

### **Scrap Metal Dealer Registration**

**HB 2312** requires registration of scrap metal dealers. On or after January 1, 2012, in order to purchase regulated scrap metal, a business must be registered for each place of business. The bill requires a business to submit its application for registration to the city in which the business is located, or if it is not located within the corporate limits of a city, to the board of county commissioners in the county in which it is located. Pursuant to the bill, the initial registration fee would be not less than \$100 nor more than \$400. Registration would be valid for ten years. The fee for renewing registration is not less than \$25 nor

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more than \$50. Purchasing scrap metal without being registered is a class A, nonperson misdemeanor.

Prior to granting registration to a scrap metal dealer, a board of county commissioners is required to give written notice of the filing of an application for registration to the clerk of the township where the applicant's business is located within ten days of registration or renewal. The governing body of a city and the board of county commissioners also must provide written notice of a filing to the sheriff, chief of police, or director of all law enforcement agencies in the county within ten days of registration or renewal.

The bill outlines the requirements for filing an application for registration, the factors prohibiting registration, and circumstances allowing or requiring the board of county commissioners or the city's governing board to suspend for up to thirty days or revoke registration.

"Value" is defined under the bill as the value of the property or the cost to restore the site of the theft of regulated scrap metal to its condition at the time immediately prior to the theft, whichever is greater. Further, scrap metal dealers are required to pay by check or use a system that photographs or videotapes the payment recipient. Finally, the bill modifies the list of scrap metal property for which the seller must provide proof of authority to sell.

## LOCAL GOVERNMENT

### Cereal Malt Beverages

**SB 80** allows microbreweries to raise the content of micro-brewed beer from eight to ten percent alcohol by weight. The bill also allows microbreweries to serve domestic beer, free of charge, at special events monitored and regulated by the Division of Alcoholic Beverage Control.

In addition, the bill allows the board of county commissioners or the governing body of any city to issue a temporary special event retailer's permit which allows a temporary permit holder to sell cereal malt beverages for consumption, subject to the following conditions:

- The permit would be issued for the duration of the special event;
- No more than four permits may be issued to one applicant in a calendar year;
- The permit must specify the premises for which it is issued and include the dates and hours the special event will take place; and
- The permit cannot be transferred.

The bill exempts the temporary permit holder from the Keg Registration Act requirements.

### Permanent Ban on City or County Requirements for Residential Fire Sprinklers

**House Sub. for SB 101** permanently restricts cities and counties from adopting or enforcing any ordinance, code, or other policy that requires the installation of a multi-purpose residential fire protection sprinkler system in a residential structure. (This replaces a temporary ban that was enacted in 2010.) It prohibits a city or county from requiring the installation of such a sprinkler system as a condition for the consideration or approval of a building permit or plat.

### Land Surveyors

**SB 112** addresses the appointment and duties of surveyors. The bill also modifies requirements for record keeping, replacement of certain monuments, and survey plats.

The bill permits county commissioners to appoint a land surveyor whose official title would be county surveyor. A county surveyor may be a surveyor in more than one county, and the county may appoint a deputy county surveyor who could perform the duties of the county surveyor.

When a survey is performed that requires a new legal description or creates a tract of land, the survey plat must be recorded with the register of deeds within 90 days after the completion of the survey. A survey plat must include closure calculations of the exterior boundary and interior lots and parcels, or equivalent data files, and corner references prepared by the land surveyor less than one year prior to the date reports are submitted to the county surveyor.

The board of county commissioners may designate an alternate county office for filing survey plats for archival purposes, except for subdivision plats.

The bill redefines what records a county surveyor must keep. Records of notice to landowners who would be affected by the survey must be retained for a period of one year in the office of the county surveyor.

Under the bill, if a United States land survey corner or section center monument that is located in a street or road and is at risk of fill covering the monument by more than two feet, the agency responsible for maintaining the road should employ a county surveyor to restore the monument. The cost of reestablishment will be paid by the agency responsible for maintaining the road.

## **Municipalities—City Incorporations, Annexation, and Taxes**

**SB 150** makes a number of changes related to municipalities, namely, regarding city incorporation and annexation, taxes paid for fire service, and allowing a county to make certain emergency repairs without choosing the lowest and best bid. The bill also makes technical corrections. Details of the bill follow.

### **Incorporation**

The bill:

- Reduces, from a minimum of 300 to a minimum of 250, the number of inhabitants in a territory required for such a territory to be eligible to be incorporated as a city.
- Removes outdated language regarding voter registration documents and signatures on petitions requesting incorporation of a city.

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## Annexation

The bill does the following:

### ***Homestead Exemption Continuation after Annexation***

- Requires homestead rights attributable prior to annexation (unilateral, bilateral, or in most consent-annexation circumstances) to continue after annexation until the land is sold after the annexation.

### ***Reviewing Service Provision; Possible Deannexation Proceedings***

- Requires a city proposing to annex land unilaterally or by most consent methods (*i.e.*, pursuant to KSA 12-520) to submit a copy of the city's plan, dealing with extending services to the area concerned, to the board of county commissioners at least 10 days prior to the required public hearing on the proposed annexation.
- Modifies the law dealing with the review process for both unilateral and most consent annexations (KSA 12-520) and bilateral annexations (KSA 12-521) to determine whether municipal services were provided as stated in the relevant annexation plan, by reducing the total time that must elapse before deannexation procedures might begin. In detail, the bill:
  - Reduces from five to three years the time that must elapse following the annexation of land (or related litigation) before the board of county commissioners is required to hold a hearing to consider whether the city has provided the services set forth in its annexation plan and timetable. If the board of county commissioners refuses to hold the hearing, a landowner is permitted to bring a court action. The court is required to award attorney fees and costs to the landowner if the court finds a hearing is required.
  - Reduces from two and one-half years to one and one-half years the time that must elapse following the services hearing (or following the conclusion of litigation), when the city has not provided the municipal services stated in the plan, before a landowner may petition to the board of county commissioners to deannex the land in question. If the board of county commissioners refuses to hold the required deannexation hearing, a landowner is permitted to bring a court action. The court is required to award attorney fees and costs to the landowner if the court finds a hearing is required.

***Two-Thirds Majority Vote on Bilateral Annexations***

- Requires the board of county commissioners' approval of any such petition to be by a two-thirds, rather than a simple, majority vote of its members.

***Election Required on Certain Bilateral Annexations***

- Requires an election to be held for any annexation involving 40 acres or more that is proposed to be made *via* approval by the board of county commissioners.
  - “Qualified elector” is defined as an owner of land in the area proposed to be annexed.
  - The election must be by mail ballot.
  - If the electors reject the annexation, the city is prohibited from annexing the land and no further proposal to annex the proposed area could take place for at least four years from the election date, unless the proposed annexation is authorized based on one of the following conditions specified in KSA 12-520:
    - The land is owned by or held in trust for the city;
    - The land adjoins the city and is owned by or held in trust for any governmental unit other than another city (with restrictions);  
or
    - The land adjoins the city and the landowner consents to the annexation.
- For annexations of less than 40 acres, the bill authorizes the board of county commissioners to render a judgment on a petition for annexation unless the board previously has granted three annexations of adjoining tracts within a 60-month period.

***Dual Taxation on Land within a Fire District, Annexed by a City***

The bill:

- Provides redress for individuals who are paying *ad valorem* taxes to both a city and a fire district for fire service. The bill would deem a landowner,

whose land is located in a fire district is annexed by a city while still remaining part of a fire district, to be entitled to a refund of all *ad valorem* taxes paid for fire service from either the city or the fire district, whichever entity taxes for fire service but does not provide it. The tax refund would include any tax levy for bond and interest payments.

- Requires cities and fire districts to establish procedures for landowners to obtain these refunds.

### County Bidding Exception

The bill allows a county to repair any courthouse, jail, or other county building, or repair or replace its equipment, without requiring the county to choose the lowest and best bid, when the county commission has declared an emergency based upon public health or safety. An “emergency” is defined as severe damage caused by any natural or man-made cause, including fire, flood, wind, storm, explosion, or terrorism. The bill requires that any such damage be so severe that it prevents the building or equipment from being used for its intended function. Construction of a replacement building remains subject to existing bidding requirements.

### Municipalities—Accident Response Service Fee

**HB 2119** prohibits a municipality from charging an accident response service fee to persons receiving emergency services inside or outside the municipality, except for the actual costs of providing emergency services in response to a motor vehicle accident. In the bill, the following terms are defined:

- “Accident response service fee” means any fee imposed for the response to or investigation of a motor vehicle accident, not including the usual and customary charges for providing ambulance and emergency services when immediate action is required.
- “Emergency services” includes the actual costs of police, fire, technical rescue situations, including but not limited to, vehicle extrication, trench rescue, high-angle rescue, confined-space rescue and swift-water rescue and emergency medical service personnel and equipment the municipality deems appropriate to address reasonably anticipated needs. An unknown number of injured persons and possible environmental and health threats involving hazardous material is included among these needs.
- “Municipality” means a city, county, township, fire district or any other political and taxing subdivision.

The bill also amends an existing statute requiring motor vehicles owned or leased by Kansas political subdivisions to bear the subdivision's name, by adding exemptions for county or district attorney investigators to the statute's list of exemptions.

### **Municipalities—Organized Collection Service Act**

**HB 2195**, the Organized Collection Service Act, establishes standards for transitions in service (e.g., from private to public or from multiple haulers to a single franchisee) for solid waste and recyclables collection services in municipalities that have solid waste collection authority. The requirements include a municipal resolution of intent, participation in planning meetings by those operating such collection services, a hearing on a proposed plan, and a transition period of at least 18 months. The provisions do not apply to the collection of waste tires.

The bill does the following:

- Authorizes a municipality to establish a municipal collection service by ordinance or resolution (depending upon the type of municipality). The ordinance or resolution must incorporate any franchise, license or contract involved.
- Defines “municipality” to include any county, city, township or other political or taxing subdivision which has the authority to create, regulate or otherwise affect the delivery of collection services.
- Defines “organized collection service” to mean a system for collecting solid waste, recyclables or both, and to include franchise, organized collection or a process in which a municipality goes from multiple haulers to one contracted hauler.
- Requires the municipality's governing body to pass a resolution of intent to establish the municipal collection service at least 180 days before adopting the ordinance or resolution. The resolution must:
  - Be published once in the official newspaper of the municipality.
  - Give notice of a public hearing, which must be held at least 30 days prior to the meeting in which the resolution will be considered for adoption. The notice also must invite the participation of interested persons in planning and establishing the collection service.
- Requires the municipality, during the 90 days following adoption of the resolution, to develop a plan for organized collection service. The municipality must invite and use the assistance of all those operating solid waste or recyclables collection services, and these persons must be allowed to participate in the planning meetings. The bill sets forth the plan

requirements, including (1) a description of how it will minimize displacement and economic impact to current solid waste collectors, and (2) a requirement to provide detailed justification for any tax, franchise or similar fee.

- Requires the municipality to provide 30 days' notice prior to the hearing on the proposed plan to all those operating relevant services in the municipality.
- Prohibits the municipality from beginning organized collection service for a period of at least 18 months from the adoption of the ordinance or resolution. During this time, the municipality must not displace any person licensed to operate collection services in the municipality.
- Requires the planning process be started over if a municipality fails to implement an organized collection service by passage of an ordinance or resolution under the bill within one year of the passage of a resolution of intent.
- States the Act is to be applied to all municipalities regardless of the stage of development of an organized collection system, but the Act does not apply to collection of waste tires as defined in statutes governing disposal of waste tires.

### **Cemetery Corporations; Trust Funds and Related Fees**

**HB 2240** deals with cemetery corporations, the trust funds they maintain, and a new fee fund relative to these functions.

The bill does the following:

#### ***Cemetery Merchandise Trust Fund; Preneed Merchandise Contracts***

- Adds a definition of “cemetery merchandise trust fund,” that being a special purpose trust fund required to administer payments received from the sale of preneed cemetery merchandise, preneed burial products or services.
- Establishes the primary purpose of this fund as maintaining the corpus of the trust fund, with the goal that the growth of the corpus will be at least equal to the wholesale costs of the preneed cemetery merchandise, burial products or services, at the time of delivery or need.
- Changes the defined term from “prepaid” to “preneed” merchandise contract, and revises the definition of “preneed merchandise contract” to include agreements for the sale of preneed burial products or services which requires either partial or full payment prior to delivery. The bill also requires

that preneed cemetery merchandise contracts be in writing, and it makes conforming changes to reflect the term change.

- Revises the definition of “preneed cemetery merchandise” to include any of the listed merchandise delivered to cemeteries (in addition to that sold or used in the cemeteries).
- Adds definitions for the terms “distributable earnings” and “trustee.” “Trustee” includes any federally chartered bank, savings and loan association, savings bank or credit union having a physical location within the state and the authority to provide trust services.
- Increases the amount to be placed in trust from 110 percent of the wholesale cost to 50 percent of the retail price to the cemetery corporation of the preneed cemetery merchandise.
- Modifies the statute that stipulates payment actions regarding what would be termed “preneed” (previously “prepaid”) merchandise contracts as follows: The term is limited in its application to the contracts entered into by a cemetery corporation that allow the purchaser to make installment payments. Under the bill, the cemetery corporation is entitled to retain all purchaser payments until 25 percent of the purchase price is received before it is required to deposit 100 percent of each payment into the cemetery merchandise trust fund. The bill also increases the amount of time before deposits to the cemetery merchandise trust fund must be made, from 10 business days after the money is received to 15 days following the end of each calendar month after the money is received.
- Requires the cemetery corporation to provide the trustee and the Secretary of State the following:
  - A quarterly report within 30 days following the end of each quarter. Details of the report’s contents are specified in the bill.
  - A report of all deposits to and distributions from the cemetery merchandise trust fund.
- Requires the cemetery merchandise trust fund trustee to allocate at least annually, as of December 31, the distributable earnings to all preneed cemetery merchandise, preneed burial products or services for which funds are held in the trust fund. The bill authorizes the trustee to allocate distributable earnings on a regular basis more often than annually, at the request of the cemetery, and under this circumstance it would require quarterly filing of the distributable earnings calculation.

- Authorizes the cemetery merchandise trust fund trustee to appoint one or more agents to provide administrative or investment advisory services. The bill further states that its provisions may not be used to prohibit the trustee from entering into a co-trustee relationship with another trustee who does not independently satisfy the requirements set forth for the trustee, as long as the co-trustee is authorized to do business in Kansas and submits personally to the jurisdiction of Kansas courts. In both instances, the trustee is not allowed to assign or delegate the liability and fiduciary responsibilities to another financial institution or agent.
- Establishes stipulations for the trust instrument.
- Clarifies a criminal statute regarding misuse of the cemetery merchandise trust fund by specifically defining the crime of “misuse of the cemetery merchandise trust fund or any money belonging thereto” and increasing the penalty from a class A misdemeanor to a severity level 7, nonperson felony.
- Changes the statute authorizing the auditing of cemetery merchandise trusts by clarifying that the Secretary of State is authorized to obtain trust accounting records from the trustee, and authorizing the Secretary of State to promulgate rules and regulations for the purpose of overseeing and auditing the cemetery merchandise trust fund.

#### ***Permanent Maintenance Fund***

- Establishes the primary purpose of the permanent maintenance fund as maintaining the corpus of the fund. The bill permits the income earned from the fund to be distributed to the cemetery, and it requires all capital gains to be allocated to principal.
- Requires the cemetery corporation to obtain prior written approval from the Secretary of State before the trust instrument is terminated, transferred, or amended. The cemetery corporation further is required to provide the Secretary of State copies of any amendments to the trust instrument before they become effective.
- Makes definitional changes to the statute establishing the crime of “misuse of the permanent maintenance fund or any money belonging thereto.”
- Deletes language regarding in whose custody a trust must be held and what must be done with trusts depending on whether their market value is less than \$45,000, or greater than \$45,000. These stipulations would be replaced with the following:

- Permanent maintenance fund with a value of less than \$100,000 – The bill allows the permanent maintenance fund to be held in a Kansas financial institution, in either certificates of deposit or a business savings account insured by the Federal Deposit Insurance Corporation, as long as the funds are maintained in a segregated account. The cemetery corporation is required to comply with the Act's reporting requirements in this situation.
- Permanent maintenance fund with a market value of \$100,000 or more – The bill requires the cemetery corporation to establish and maintain the permanent maintenance fund in an irrevocable trust with a trustee. Additional agents may be appointed to provide administrative or investment advisory services, as long as the trustee maintains liability and fiduciary responsibilities owed to the fund. Additional stipulations are made regarding permanent maintenance funds of this size.
- Requires the cemetery corporation to provide the trustee and the Secretary of State the following:
  - A report of all sales of burial spaces within 30 days following the end of each quarter. Details of the report's contents are specified in the bill.
  - A report of all deposits to and distributions from the permanent maintenance fund.
- Requires the permanent maintenance fund trustee to determine, at least annually, the fund's income, less reasonable costs, taxes and fees, and pay the income to the cemetery corporation. The trustee is required to report this calculation to the Secretary of State within 30 days.

#### ***Confidentiality and Disclosure of Cemetery Corporation Records***

- Deems all information involved in the Secretary of State's investigation and examination of a cemetery corporation, or reporting by the cemetery corporation or trustee, confidential. The only entities to which the information may be disclosed by the Secretary of State's Office are: (1) officers and members of the specific cemetery corporation board of directors; (2) the Attorney General if the Secretary of State determines this is necessary; and (3) the appropriate municipality official if the Secretary of State determines this is necessary. In accordance with the intent of the Kansas Open Records Act, this provision expires on July 1, 2016, unless the Legislature reviews the provision prior to that date and reauthorizes it.

- Allows the Secretary of State to disclose to anyone whether a cemetery corporation maintains a cemetery merchandise trust fund, or a permanent maintenance fund, and whether such funds are maintained in compliance with the law.

### ***Cemetery Maintenance and Merchandise Fee Fund***

The bill establishes the Cemetery and Merchandise Fee Fund in the State Treasury. Two related fees collected by the Secretary of State are authorized by the bill, and the bill requires that these fees be deposited in the Fund. The fees must be forwarded to the Secretary of State on a quarterly basis, and the Secretary of State is required to deposit any fees collected from both fee sources into the fund as of the effective date of the Act. The Secretary of State also is required to promulgate rules and regulations fixing the fees to be charged and collected. The fees are as follows:

- A fee not to exceed \$30 on each preneed merchandise contract for preneed cemetery merchandise, preneed burial products or services sold on or after January 1, 2011.
- A fee not to exceed \$30 on each interment sold as of January 1, 2011.

The bill is effective upon its publication in the statute book and January 1, 2012.

## RETIREMENT

### **KPERS Study Commission and Other KPERS Changes**

**Senate Sub. for HB 2194** modifies the Kansas Public Employees Retirement System (KPERS) plan for public employees who are current KPERS members in the state, school, and local groups, and for future public employees in the same groups. The bill also establishes a new study commission effective July 1, 2011.

In addition, the bill makes a number of modifications, with some of the changes in plan benefits and funding being contingent upon specific triggers, including certain actions that would have been taken by the 2012 Legislature, before becoming effective. Other new plan options for benefits and funding are contingent upon a favorable ruling from the Internal Revenue Service (IRS) regarding elections for KPERS Tier 1 and Tier 2 members to choose from other plan alternatives for retirement contributions and benefits.

The plan modifications and funding changes (without elections) will bring the employer contributions for KPERS state, school, and local groups into actuarial balance. Employer contributions for both the state and local groups will reach the actuarial required contribution (ARC) in 2014, specifically FY 2014 for the state and CY 2014 for local units of government. The ARC for the school group will occur in FY 2019.

The general fiscal note (without factoring an election of other options) through FY 2033 forecasts a net savings of \$2.9 billion for the employer contributions for the KPERS state and school groups, and a net savings of \$636 million for the KPERS local group. The KPERS plan modifications (without elections) will increase the employee contributions by \$932.0 million for the state and school groups, and by \$365.4 million for the local group.

A subsequent fiscal impact assessment will be prepared by the KPERS actuary for the effect of elections and will be made available to the study commission. In addition, the impact of plan changes on retirement benefits will be prepared by the KPERS actuary and will be made available to the Study Commission.

### ***Summary of Key Points***

First, the bill establishes a 13-member KPERS Study Commission to consider alternative retirement plans, including defined contribution plans, hybrid plans that could include a defined contribution component, and other possible plans. The Commission must report no later than January 6, 2012, on its recommendations, which then would be introduced as two identical bills in each chamber of the Legislature.

The KPERs Study Commission will be comprised of 13 members appointed as follows: four legislative members (one each appointed by the President of the Senate, Speaker of the House, and minority leaders of each chamber); four at-large members (one each appointed by the President of the Senate, Speaker of the House, and minority leaders of each chamber); five private sector members including at least one an attorney (appointed by the Governor); and four ex-officio non-voting members (Executive Director of KPERs, Director of the Budget, Revisor of Statutes, and Director of Legislative Research).

Second, for the other provisions in the bill to become effective, the 2012 Legislature must vote on each of the House and Senate bills containing the study commission's recommendations, with one required vote to occur in the Committee of the Whole of one chamber and another required vote to occur in a Committee of the other chamber. The dual voting is the trigger of the effective date for other provisions in the bill that implement those items noted below, which will bring KPERs into actuarial balance by FY 2019 when all KPERs groups (state, school and local) will reach the actuarial required contribution (ARC).

Third, the statutory annual state, school, and local KPERs increase in employer contribution rate caps will phase into new annual limits from the current 0.6 percent, provided that the dual vote occurs during the 2012 Legislative Session:

- 0.9 percent in FY 2014 (January 1, 2014 for local employers);
- 1.0 percent in FY 2015 (January 1, 2015 for local employers);
- 1.1 percent in FY 2016 (January 1, 2016 for local employers); and
- 1.2 percent in FY 2017 (January 1, 2017 for local employers).

Fourth, Tier 1 employee adjustments, triggered by the 2012 Session dual votes, include adding two options commencing January 1, 2014, that apply to active KPERs members:

- Tier 1 members will have as the default option an employee contribution rate increase from 4.0 to 6.0 percent and also will have for future years of service an increase in multiplier from 1.75 to 1.85 percent; or
- If an election is permitted by the IRS, then Tier 1 members may elect freezing the employee contribution rate at 4.0 percent and reducing their future service multiplier from 1.75 to 1.4 percent.

Fifth, Tier 2 employee adjustments, triggered by the 2012 Session dual votes, include adding two options commencing January 1, 2014, that apply to active KPERs members:

- Tier 2 members will have as the default option an employee contribution rate frozen at 6.0 percent and the cost-of-living adjustment (COLA) eliminated; or
- If an election is permitted by the IRS, then Tier 2 members may elect freezing the employee contribution rate at 6.0 percent and reducing their multiplier from 1.75 to 1.4 percent in order to retain their COLA.

KPERs will determine when an election will be held over a 90-day period. The election will be held only after a favorable IRS ruling that an in-service election may be held for active Tier 1 and Tier 2 members. The default options will apply if the IRS ruling does not allow an election for active members.

Sixth, inactive KPERs members, if returning to covered employment, will have an election for alternative options in their respective tier prior to July 1, 2013. After that date, or if no election is approved by the IRS, then inactive members will have the default option in their tier upon returning to active, covered KPERs employment.

Seventh, a provision directs that after the sale of surplus state real property, 80 percent of the proceeds will be transferred to KPERs for reducing the unfunded actuarial liability.

Eighth, the bill includes an appropriation of \$60,000 in FY 2012 that increases the special revenue fund expenditure authority of KPERs in order to pay for actuarial services in support of the KPERs Study Commission's work during the 2011 Interim. As the Commission is an interim study group, the Legislative Coordinating Council (LCC) will have to authorize the number of meeting days in order for the members to receive pay for the commission when it meets prior to January 6, 2012. Discussions during the conference committee assumed 18 meeting days for the commission during the 2011 Interim period.

**KPERs Employer Contributions 2011 to 2033  
(In Millions)**

<b>KPERs Participants</b>	<b>Baseline Contributions</b>	<b>New Contributions</b>	<b>Change</b>
State & School Groups	\$ 30,644.9	\$ 28,663.8	\$ (1,981.1)
Local Group	7,740.5	7,469.7	(270.8)
Totals	<u>\$ 38,385.4</u>	<u>\$ 36,133.5</u>	<u>\$ (2,251.9)</u>

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***Fiscal Note for Conference Committee Bill***

The fiscal note is a three-part report to correspond with the different provisions in the bill. The multiyear fiscal impact for the bill (excluding the options offered in an election and using the default options for Tier 1 and Tier 2) is to adjust the net KPERs employer and employee contributions by almost an estimated \$2.3 billion as a result of the changes in statutorily required contributions and retirement benefits.

First, the bill establishes a KPERs Study Commission on July 1, 2011. The administrative fiscal note for that provision is presented below under a separate heading.

Second, most other provisions in the bill become effective after dual votes during the 2012 Legislature. KPERs staff worked with the actuary to develop an estimated impact for employer and employee contributions based on the default options (no elections) for Tier 1 and Tier 2. The information for the second part of the fiscal impact is included below as the general fiscal note without elections.

Third, other options become effective if the IRS rules that elections may be held. The KPERs actuary is working to develop an estimated impact if the alternative options are elected by KPERs employees. The third part of the fiscal impact will be available to the KPERs Study Commission. In addition, the KPERs actuary is preparing an estimated impact on retirement benefits of the changes, comparing the assessment with the baseline benefits before the legislation. That assessments also will be provided to the commission.

***Administrative Fiscal Note***

KPERs estimates professional services for actuarial work and consultants to support the work of the KPERs Study Commission should not exceed \$60,000, all from fee funds. In addition, Legislative Administrative Services estimates costs of \$55,218, all from the State General Fund, for the travel, subsistence, and per diem compensation associated with the KPERs Study Commission, based on a total of 18 meeting days. The LCC must approve meeting days for 2011 Interim study groups, including the Commission.

***General Fiscal Note Without Elections***

According to the KPERs actuary, with enactment of Senate Sub. for HB 2194 and the 2012 triggers being fulfilled, the KPERs employee contribution rate for certain members will rise by 2.0 percent. In addition, the annual KPERs employer contribution rate cap will rise yearly from 0.6 percent to 1.2 percent, and the higher annual cap for increases will continue to be applied until each KPERs group reaches the ARC rate.

The employer contribution rate for the combined KPERs state and school groups will rise to an ARC rate of 15.75 percent in FY 2019. The state group will reach an ARC rate of 9.46 percent in FY 2014, but will continue rising until the combined state and school groups reach an ARC five years later. The bill reduces long-term aggregate KPERs employer contributions for the state and school groups through FY 2033 by a net of \$2.913 billion from all funding sources when compared to current law. The estimated first-year cost increase compared to current law is an additional \$14.5 million in FY 2014 for the state and school groups employer contributions from all funding sources. The estimated State General Fund cost is approximately \$12.3 million in additional FY 2014 payments.

The increasing annual cap for the KPERs local group will raise the employer contribution rate to an ARC of 8.74 percent in CY 2014 (beginning January 1, 2014). The bill reduces the long-term aggregate KPERs employer contributions for the local group through CY 2033 by a net of \$636.1 million when compared to current law. The estimated first-year cost increase compared to current law is \$3.8 million in CY 2014 for local units of government.

The bill also increases some KPERs employee contributions by 1.0 percent beginning January 1, 2014, and by another 1.0 percent the next year beginning January 1, 2015, unless an employee elects an option to freeze the contribution rate. The total KPERs employee contribution rate rises from the current 4.0 percent to 6.0 percent over this period for one Tier 1 option, while Tier 2 will remain at 6.0 percent under both options. The KPERs actuary estimates the impact on the state and school group of employees will increase their aggregate employee contributions by \$932.0 million over the period through FY 2033 based on the default options. The impact for the local group of employees will add \$366.0 million of employee contributions over the period through CY 2033 based on the default option.

### ***General Fiscal Note With Elections***

The general fiscal note for the election of options and its impact will be provided by the KPERs actuary for the KPERs Study Commission.

## STATE FINANCES

### FY 2011 and FY 2012 State Budget

**Senate Sub. for HB 2014** contains current year adjustments for FY 2011 supplemental appropriations; FY 2012 operating expenditures; and multi-year capital improvements for state agencies.

The revised FY 2011 State General Fund expenditures total \$5.675 billion, and expenditures from all funding sources total \$14.738 billion. The revised current year budget reflects State General Fund allotments made by the Governor in March 2011. These allotments, through a series of recommended expenditure reductions, were intended to increase the FY 2011 State General Fund ending balance by \$7.2 million to zero dollars.

The revised State General Fund expenditures for FY 2011 increases the amounts approved by the 2010 Legislature by \$48.7 million, reflecting social services caseload increases. All funding sources increase by \$1.026 billion, which reflects increases in the Department of Labor (\$89.8 million) for unemployment benefits; the Kansas Department of Transportation; (\$375.1 million) mainly for capital improvement projects carried forward from FY 2010; the Department of Social and Rehabilitation Services (\$71.7 million) and the Department on Aging (\$76.9 million), for additional federal funds expenditures and caseload increases; and the Board of Regents and Regents institutions (\$212.9 million) for additional special revenue fund expenditures.

For FY 2012, the approved amount is \$6.055 billion from the State General Fund and \$13.913 billion from all funding sources. The FY 2012 amount is \$11.3 million, or 0.2 percent, below the amount recommended by the Governor from the State General Fund and \$19.4 million, or 0.1 percent, below the amount recommended by the Governor from all funding sources. The approved number of full-time equivalent (FTE) positions totals 39,177.9, which is a decrease of 1,969.4 FTE positions below the revised FY 2011 number of 41,147.3 FTE positions.

It is important to note that overall expenditures decrease in FY 2012, reflecting two changes from FY 2011 – the reduction in the Department of Labor (\$428.2 million) for estimated unemployment benefits in FY 2012 and the final year of the federal American Recovery and Reinvestment Act (ARRA) funding (\$453.6 million) in FY 2011. Conversely, State General Fund expenditures increase as part of the federal ARRA funding (\$345.9 million) is replaced by state dollars.

The following table reflects the dollar and percentage change from FY 2010 actual amount to the currently approved FY 2012 amount.

**State General Fund and All Funds Expenditures**  
**FY 2010-FY 2012 (Legislative Approved)**  
**(Amounts in Thousands)**

	State General Fund	Change from Prior Year		All Funds	Change from Prior Year	
		\$	%		\$	%
FY 2010	\$ 5,268,045	(796,315)	(13.1)	\$ 14,043,949	83,604	0.6
FY 2011	\$ 5,675,333	407,288	7.7	\$ 14,737,872	693,923	4.9
FY 2012	\$ 6,054,840	379,507	6.7	\$ 13,913,150	(824,722)	(5.6)

**Major items reflected in the approved State General Fund FY 2012 budget include the following:**

State General Fund expenditures for the **Department of Education** increase by \$85.6 million, or 2.9 percent, above the FY 2011 approved amount. The increase reflects the replacement of \$54.9 million in federal American Recovery and Reinvestment Act (ARRA) funds and KPERs-school payments. Base state aid per pupil is set at \$3,780, as compared to the FY 2011 amount of \$3,937. In addition, 2011 House Sub. for Sub. for SB 111 allows school districts to expend a portion of unencumbered balances in particular funds to increase this amount to \$4,012 in FY 2012.

State General Fund expenditures increase by a total of \$681.0 million for the **Department of Social and Rehabilitation Services** (\$62.1 million), the **Department of Health and Environment - Health** (\$570.1 million), and the **Department on Aging** (\$48.9 million). This includes some increases in consensus caseloads, but it does not include the April 2011 revised estimates. Other adjustments for these agencies include the following:

- The approved FY 2012 budget reflects an increase of \$577.6 million in the **Department of Health and Environment – Health** for the transfer of the Kansas Health Policy Authority into the Department of Health and Environment. The increase is partially offset by:
  - A reduction of \$6.0 million for reduced regular medical Medicaid expenditures associated with savings achieved in the Prepaid Ambulatory Health Plan managed care contract for mental health services; and
  - A reduction of \$800,000 to capture savings in the Medicaid prescription drug program reflecting medications becoming available in generic form.
- The approved FY 2012 budget for the **Department of Social and Rehabilitation Services** is an increase of \$62.1 million, mainly due to replacement of federal economic stimulus funding and increased caseloads. Additional adjustments include:

- An increase of \$2.8 million for Home and Community Based Services for the Developmentally Disabled; and
- An increase of \$10.2 million for mental health state aid distributed to Community Mental Health Centers for the **Department of Social and Rehabilitation Services**.
- The approved budget for the **Department on Aging** for FY 2012 reflects an increase of \$48.9 million, reflecting replacement of federal economic stimulus funding and increased caseloads.

The approved State General Fund FY 2012 budget reflects State General Fund reductions of \$15.1 million, or 2.0 percent, reflecting statewide reductions in the **Board of Regents and State Universities**.

The approved State General Fund FY 2012 budget includes \$15.0 million in the **Department of Commerce** for \$5.0 million grants to Kansas State University for animal health research, the Cancer Center at the University of Kansas Medical Center, and the National Institute for Aviation Research (NIAR) at Wichita State University.

Approximately \$1.0 million was added to restore agencies recommended for closure by the Governor – the Kansas Neurological Institute (\$277,039) and the Kansas Arts Commission (\$689,000 and 6.0 FTE positions).

The **Corrections** budget systemwide increases by \$42.6 million, or 19.6 percent, above the FY 2011 approved amount. The largest portion of the increases can be attributed to the replacement of federal American Recovery and Reinvestment Act (ARRA) funds at Hutchinson Correctional Facility (\$21.8 million), Winfield Correctional Facility (\$9.9 million), and Norton Correctional Facility (\$9.9 million). Other adjustments include:

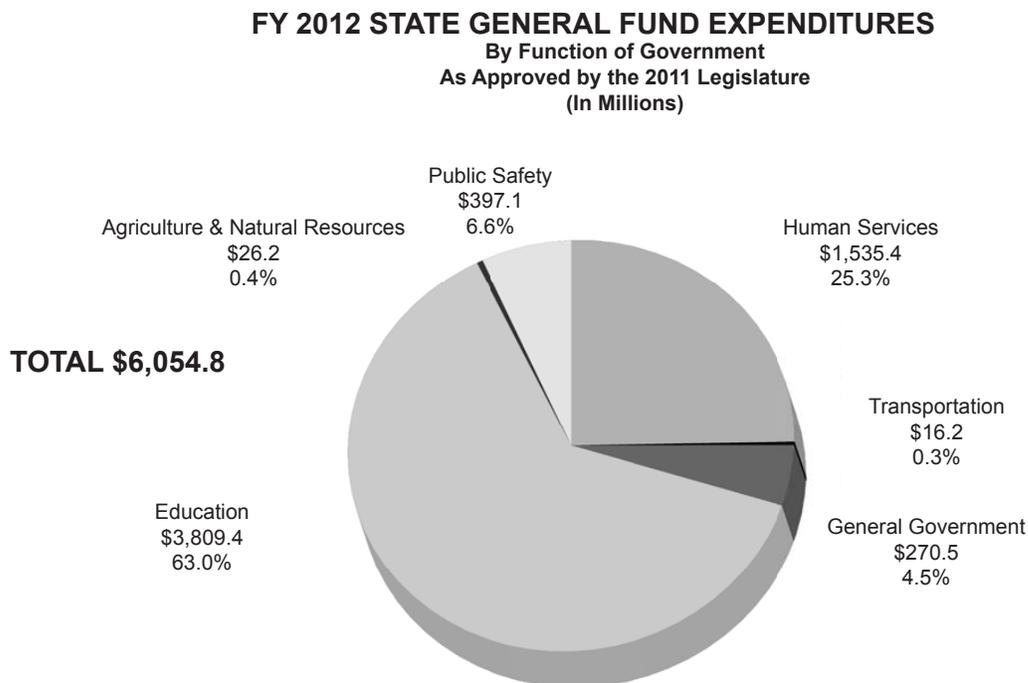
- An additional \$1.4 million to fund 40.0 existing parole officer positions; and
- An additional \$1.5 million to address increased need for community corrections officers related to the passage of House Sub. for SB 6.

Statewide adjustments totaling \$48.0 million are included in the approved budget for FY 2012 as follows:

- A reduction of \$23.0 million for a 1.193 percent **across the board reduction** excluding human services consensus caseload programs, debt service, and all K-12 state aid programs.
- A reduction of \$10.1 million to **Kansas Public Employees Retirement System** to suspend employer contributions to the KPERS death and disability program, for a three-month period beginning April 1, 2012, and ending June 30, 2012.

- A reduction of \$6.4 million reflecting savings from the requirement that state agencies **self-fund state employee longevity bonus payments**.
- A reduction of \$5.9 million for **savings to administrative activities** excluding programmatic services, human services caseloads, local school state aid programs, the Judicial Branch, Legislative Branch, Kansas Department of Transportation, and debt service.
- A reduction of \$2.1 million for a 5.0 percent reduction to **information technology** expenditures, allowing both the Legislative and the Judicial branches to retain their funds, but use them for other purposes.
- A reduction of \$277,039 for **bottled water** (\$100,000) and **office supplies** (\$177,309).
- A reduction of \$159,403 for a **20.0 percent reduction in cell phone expenditures** statewide.

**State General Fund Expenditures by Function of Government.** Of the approved FY 2012 State General Fund expenditures, 62.9 percent or \$3.809 billion, is for education (local schools, community colleges, Regents institutions), 25.4 percent or \$1.535 billion, is for the human services function of government (Department of Social and Rehabilitation Services and state hospitals, the Department of Health and Environment - Health, Department on Aging, Department of Labor, and others) and the remaining 11.7 percent or \$710.0 million, is for public safety agencies, general government agencies, agriculture and natural resources agencies, and the Kansas Department of Transportation. The following pie chart displays the FY 2012 State General Fund expenditures by function of government.



**State General Fund Profile.** The following State General Fund profile reflects legislative action on the state budget. Based on the approved budget, the projected ending balance in the State General Fund at the end of FY 2012 will equal 1.2 percent of expenditures. Provisions of KSA 75-6702 require the projected State General Fund ending balance to equal 7.5 percent of expenditure upon passage of the Omnibus reconciliation spending limit bill. Language in the appropriations bill has exempted the budget from these provisions for FY 2012.

**State General Fund Profile As Approved by the 2011 Legislature  
(In Millions)**

	Actual FY 2010	Approved FY 2011	Approved FY 2012
Beginning Balance	\$ 49.6	\$ (27.1)	\$ 77.1
Receipts (April 15, 2011 Consensus)	5,191.2	5,775.4	5,805.0
Governor's Recommended Receipt Adjustments	0.0	4.7	234.1
Less Adjustments in Gov. Rec. Requiring Legislation	0.0	0.0	0.0
Legislative Receipt Adjustments	0.0	0.0	9.4
Adjusted Receipts	<u>5,191.2</u>	<u>5,780.1</u>	<u>6,048.5</u>
Total Available	\$ 5,240.8	\$ 5,753.0	\$ 6,126.2
Expenditures	<u>5,268.0</u>	<u>5,675.3</u>	<u>6,054.8</u>
Ending Balance	<u>\$ (27.1)</u>	<u>\$ 77.7</u>	<u>\$ 71.4</u>
Ending Balance as a % of Expenditures	(0.5%)	1.3%	1.2%
Adjusted Receipts in Excess of Expenditures	\$ (76.8)	\$ 104.8	\$ (6.3)
% Change from Prior Year:			
Adjusted Revenues	(7.1%)	11.3%	4.6%
Expenditures	(13.1%)	7.7%	6.7%

### KAN-ED Study Commission

In addition, the bill creates the Legislative KAN-ED Study Commission which shall be appointed by the Legislative Coordinating Council and composed of equal members from the Senate and the House, including minority party representation. A study of KAN-ED is to be completed no later than December.

## STATE GOVERNMENT

### Organization of State Government

**Executive Reorganization Order No. 37** abolishes Kansas, Inc. The Secretary of the Department of Administration is assigned the responsibility of concluding the affairs of the abolished agency. The Department of Administration will be the custodian of Kansas, Inc.'s records, documentation, and data.

### Charitable Bingo

**SB 76** amends existing bingo statutes by making the following amendments:

- Creates a new method of conducting “instant bingo” games as a designated call game;
- Removes the \$1 charge limit for regular games of bingo;
- Raises the maximum charge for a single instant bingo ticket from \$1 to \$2;
- Increases the number of hours instant bingo tickets may be sold prior to the start of a regular session from one to two hours;
- Removes the \$1,000 prize limit for progressive games;
- Increases the starting prize for progressive games from \$250 to \$400;
- Removes the three game limit of instant bingo;
- Increases the number of mini games allowed per session from 20 to 30;
- Restricts mini bingo games to begin no less than two hours prior to the first regular game of bingo, or continue not less than one hour after the last regular game;
- Excludes food offered to volunteer duty staff from being considered remuneration if it does not exceed \$10 in value per volunteer;
- Clarifies that a licensee contracted by a beneficiary organization is included among licensees allowed to operate games; and
- Requires that at least one member of the licensee organization be on duty during a session, assist with the game, and be listed with the Office of Charitable Gaming.

## Racial and Biased-Based Policing

**SB 93** prohibits a law enforcement officer from using racial or other biased-based policing, allows community advisory boards to be established, and requires written policies and annual reports, data collection, and procedures for the investigation and disposition of a racial or other biased-based policing complaint.

Racial or other biased-based policing is defined as the unreasonable use of race, ethnicity, national origin, gender, or religion by a law enforcement officer in deciding to initiate an enforcement action. Enforcement action is defined as making a probable cause or reasonable suspicion determination in certain situations involving nonconsensual contact with an individual or individuals. The bill provides that it would not be racial or other biased-based policing if used in combination with other identifying factors as part of a specific individual's description to initiate an enforcement action. In addition, the bill makes it unlawful to use racial or other biased-based policing, among other things, in determining the existence of probable cause to conduct a search of an individual or a conveyance.

The bill requires law enforcement agencies to adopt a written policy to preempt racial or other biased-based policing and to clearly define acts constituting racial and other biased-based policing using language recommended by the Attorney General. The written policies would have to include training and distance learning training technology. The law enforcement agency may appoint an advisory board of not less than five persons representing law enforcement, as well as community and educational leaders, to recommend and review appropriate training curricula.

Under the bill, a law enforcement agency of a governing body in any city or county that established a community advisory board is required to use the board, which is composed of individuals to advise and assist in policy development, education and community outreach, and communications related to racial or other biased-based policing. Provisions for community outreach and communication efforts are required to inform the public of an individual's right to file complaints. The community advisory boards are required to receive training on fair and impartial policing by a law enforcement agency.

The governing body of a city or the sheriff of a county could develop a comprehensive plan in conjunction with a community advisory board, if one exists, that prevents racial or other biased-based policing, or may require the law enforcement agency of such city or county to collect specific traffic stop data and make the data available to the public. Data collection would allow a law enforcement agency to select specific information dealing with every traffic stop.

A law enforcement agency is required to submit by July 31 an annual report to the Attorney General's Office which would be posted on the Attorney General's website. The report would include, among other things, the number, action and disposition of complaints

filed, and whether the agency has a comprehensive plan or compiles traffic or pedestrian stop data.

The bill amends the procedure for complaints regarding racial or other biased-based policing by providing that the Office of the Attorney General reviews and, if necessary, investigates such complaints. The Attorney General can then find if there was insufficient evidence to support a complaint or forward the complaint for further review and possible action to the Commission on Peace Officers' Standards and Training (CPOST). The Attorney General is required to notify the accused officer and the head of the officer's agency within ten days of receiving the complaint.

The bill repeals KSA 22-4604, which established a system to collect and report statistics relating to race, ethnicity, gender, age, and residency of those individuals who come in contact with law enforcement activities.

### **State Employee Suggestion Program; Repealing Outdated Statutes**

**SB 115** institutes a new state employee suggestion program to replace one that expired June 30, 2006; repeals the authorizing statutes that established several committees, commissions, and task forces that either have expired or were abolished; repeals the statute establishing a scenic byway; and repeals requirements for publication of certain reports and specific subject matter for reports that are no longer required.

#### ***State Employee Award and Recognition Program and State Employee Suggestion Program***

The bill institutes a new state employee suggestion program to replace one that expired June 30, 2006. Under the new program to be established by the Secretary of Administration, employees may submit a suggestion for cost reductions by a state agency. Upon adoption of the suggestion by an agency, the employee or employees who make the suggestion will receive a monetary award in an amount not to exceed 10.0 percent of the documented cost reduction in the first year after implementation, to a maximum of \$5,000 per employee. The state agency retains 10.0 percent of the documented cost reduction, which will be placed in a separate special revenue fund, to pay for the monetary awards. All remaining cost savings will revert to the State General Fund. The bill excludes all elected and appointed state officials from being eligible for monetary awards under the program.

The bill deletes statutory provisions related to salary bonus payments under the Kansas Savings Incentive Program that ended in 2009 when the Legislature concurred with a Governor's budget recommendation to eliminate the program, and the statutory expiration date for the state employee suggestion program that ended in 2006.

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***Repealing Establishment of the Frontier Military Scenic Byway***

The bill repeals KSA 68-1038, which established the Frontier Military Scenic Byway. According to testimony, after repeal of the statutory authority, the byway can be placed under the Kansas Byways Program and the name can be changed to the Frontier Military Historic Byway. Testimony also stated that the change in name will be helpful in applications for federal aid awarded as grants for historic byway projects.

***Abolishing the State Highway Advisory Commission***

The bill repeals KSA 75-5002 and 75-5003, which authorize the State Highway Advisory Commission. Proponents, who included the chairperson of the State Highway Advisory Commission and a representative of the Kansas Department of Transportation (KDOT), said that while the Commission was created in 1975 to serve as liaison between KDOT and the citizens on highway funding issues, such a function can be better carried out in the future by entities with more holistic expertise involving multiple transportation modes. Proponents also testified that KDOT has been successful in recent years in developing a greater number of methods for communicating with the public and receiving input.

***Repealing Outdated Authorization and Report Statutes***

The 2010 Special Committee on Legislative Streamlining recommended this portion of the bill after concluding that certain statutory authority should be repealed for entities that no longer were functioning. Among the entities whose authorizing statutes are repealed are the Kansas Natural Resource Legacy Alliance, the Enhanced 911 Task Force, the SRS Transition Oversight Committee, the Task Force on Public Safety Agencies, and the Commission on Surface Water Quality Standards.

Two statutory requirements for the content of certain reports also are repealed: recommendations concerning the use of moneys from the American Recovery and Reinvestment Act of 2009 made by the Joint Committee on Energy and Environmental Policy, and the progress in obtaining goals report made by the Kansas Corporation Commission regarding the conversion of motor vehicles from conventional fuels to alternative fuels and issues related to operating a state motor fleet on alternative fuels. The former provision expired January 1, 2011, and the latter was included in a final 1996 report to the Legislature.

**Fee Revenue to the State General Fund**

**SB 229** modifies the law that provides for the deposit of 20.0 percent of certain fee revenue up to a maximum of \$200,000 to the State General Fund. In FY 2012, the 20.0 percent of fee revenue deposited in the State General Fund would be reduced to 10.0 percent and the maximum would be reduced to \$100,000. The Committee also added two provisions regarding reporting of fees assessed by the Department of Administration.

## Kansas Arts Commission

**SR 1819** disapproves the Governor's Executive Reorganization Order No. 39, which was to abolish the Kansas Arts Commission and the office of executive director of the Commission. The Executive Reorganization Order also would have transferred the powers, duties, and functions of the Commission to the State Historical Society. The resolution disapproved Executive Reorganization Order No. 39 in accordance with Section 6 of Article 1 of the *Kansas Constitution*, and the Kansas Arts Commission would have remained a state agency. (The Governor line-item vetoed the appropriation for the agency and full-time equivalent positions for the Arts Commission, thus ending the agency.)

## Repeal of Firearms Prohibitions

**HB 2013** repeals five statutes pertaining to the sale and purchase of certain firearms known as long-guns. The statutes are no longer needed in order to conform to a 1934 federal law that was changed in 1986. The statutes repealed by the bill placed restrictions on buying and selling long-gun firearms to states that were contiguous to Kansas as originally required by a 1934 federal law. The 1986 federal law allows interstate sales to any other state by following federal rules and regulations.

## Organization of Economic Development Agencies

**HB 2054** restructures the responsibilities of agencies and other state entities involved with economic development.

The bill abolishes the Kansas Technology Enterprise Corporation (KTEC) and transfers most of its duties and responsibilities to the Department of Commerce and the Secretary of Commerce. A function related to matching funds for federal research funding is transferred to the Board of Regents. The bill transfers all current policies, assets, and necessary employees to the two respective state agencies. The Governor may resolve any conflict over the disposition of property, functions, or resources.

The Department of Commerce may engage in seed-capital financing for the development and implementation of innovations or new technologies for both existing and emerging Kansas businesses. At the discretion of the Secretary, the Department of Commerce has discretion to dispose of any investment or equity that had been made previously by KTEC.

The Department of Commerce may finance research and development projects at Centers of Excellence located in the State. The Commerce Department provides technical referral services to businesses and encourages Kansas educational institutions to establish technical information databases and industrial liaison offices. The Department administers the Angel Investor Tax Credit.

The Board of Regents administers the State's matching grants that are used at Kansas universities for the federal Experimental Program to Stimulate Competitive Research (EPSCoR) Program. Part of the State's matching effort is conducted using the Strategic Technology and Research (STAR) Fund, which is transferred to the Board's control.

The bill abolishes the position that KTEC appoints to the Kansas Bioscience Authority's Board of Directors. The bill makes the Commerce Secretary an *ex officio* voting board member.

### Land Transfer—Ellsworth County

**HB 2258** gives the Secretary of Social and Rehabilitation Services the authority to convey certain property in Ellsworth County, Kansas, to the Evangelical Lutheran Good Samaritan Society *via* quitclaim deed. The bill allows the State of Kansas to retain all mineral rights to the property, as well as the right to enter and leave the property at any time for the purpose of oil, gas, or other mineral production. The bill provides that in order to protect improvements that could be made to the land by future owners, the State cannot harm the surface of the land when exercising its mineral rights.

### Kansas Employment First Initiative Act and Oversight Commission

**HB 2336** creates the Kansas Employment First Initiative Act and the Kansas Employment First Oversight Commission. The bill requires state programs and services that support employment of persons with disabilities to consider, as their first option, competitive and integrated employment for persons with disabilities. The bill does not require an employer to give preference to hiring persons with a disability.

The bill requires all state agencies to follow the policy for employment by coordinating and collaborating efforts among agencies. In addition, agencies may share data and information whenever possible across systems in order to track progress. State agencies may adopt rules and regulations to implement the Act.

The bill directs the Governor to designate a cabinet agency as the lead agency to compile data and coordinate the preparation of the annual report at the direction of the Kansas Employment First Oversight Commission.

The bill establishes the Kansas Employment First Oversight Commission as a five-member commission, with members serving three-year terms. Each of the following would have one appointment to the Commission: Speaker of the House, Minority Leader of the House, President of the Senate, Minority Leader of the Senate, and the Governor. The Commission meets at least four times per year.

By January 1, the Commission submits an annual report to the Governor and the Legislature. The report details progress made toward the goals and objectives as well as strategies and policies to help realize the Kansas Employment First Initiative Act.

## TAXATION

### **Local Sales Tax, Interest Rates, Sales Tax Refunds**

**SB 10** provides additional local sales tax authority in certain counties; makes several changes in statutes relating to interest rates charged for delinquent property taxes and interest rates paid relative to overpayments associated with clerical errors; and establishes a three-year statute of limitations for taxpayers to claim certain sales tax refunds.

#### ***Local Sales Tax Provisions***

The bill provides Edwards County with additional local sales tax authority of 0.375 percent (3/8ths of one percent) to finance economic development initiatives. The normal distribution formula for countywide sales taxes, which requires counties to share sales taxes with cities, also is amended to authorize Edwards County to retain all of the money from the economic development sales tax.

The bill further authorizes Jackson County to impose a tax of 0.4 percent, which could only be submitted to voters after a current tax has expired, for the purpose of financing public infrastructure projects. Any such tax ultimately imposed would be required to sunset after seven years.

Additionally, the bill makes several minor changes to an existing sales tax authority of Douglas County to clarify that among the purposes for which a tax of 0.25 percent could be imposed are conservation, preservation of cultural heritage, and economic development projects and activities.

#### ***Property Tax Interest Rate Provisions***

The bill also makes several changes in statutes relating to the interest rate charged for delinquent property taxes and the interest rate paid relative to overpayments attributable to certain clerical errors. The interest rate charged for delinquent or underpaid property taxes of \$10,000 or more is increased, effective January 1, 2012, from the previous federally established rate plus one percent utilized under prior law to the greater of such rate or 10 percent. The interest rate required to be paid relative to property tax overpayments associated with certain clerical errors, as defined in KSA 2010 Supp. 79-1701a, is increased from the current federally established rate to such rate plus two percent, effective July 1, 2011.

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***Sales Tax Statute of Limitations***

Finally, the bill establishes a three-year statute of limitations for taxpayers to claim sales tax exemptions. Refunds were limited to one year under prior law. The bill extends the limitation retroactively upon enactment.

**Individual Development Accounts and Confidentiality**

**SB 61** expands the individual development account tax credit and relaxes certain tax confidentiality provisions to assist with administration of the unclaimed property law.

***Individual Development Account Provisions***

The bill expands the refundable income tax credit available to individual development account program contributors from 50 percent to 75 percent of the contribution amount, beginning in tax year 2011.

***Unclaimed Property***

The bill also relaxes confidentiality provisions to authorize the Secretary of Revenue to share certain information with the State Treasurer for the sole purpose of administering the Uniform Unclaimed Property Act. The information is limited to current and prior addresses of taxpayers or associated persons, including spouses or dependents listed on income tax returns, who may have knowledge as to the location of owners of unclaimed property.

**Tax Provisions—Various**

**SB 193** makes several changes with respect to a requirement that Social Security numbers be provided in order to claim most state tax credits; provides other administrative changes relative to the food sales tax rebate program; expands the Promoting Employment Across Kansas (PEAK) program; establishes a formula for calculating property taxes due on certain land legally described in plats; makes several changes in High Performance Incentive Program (HPIP) tax credits, including extending the carry-forward period from 10 to 16 years; and enacts a new sales tax exemption for game birds.

***Social Security Number/Tax Credit Requirements***

The bill provides that most credits available for income tax purposes will no longer be allowed relative to individuals and their spouses and dependents for whom valid federal Social Security numbers have not been provided. This disallowance provision does not apply to the credit for taxes paid to other states pursuant to KSA 79-32,111.

Additional provisions clarify that the disallowance provisions apply specifically to tax credits for dependent care and for food sales tax rebates, in addition to most other tax

credits, and that food sales tax rebate claims will be required to contain clear statements as to which of the three qualifying demographic criteria claimants are seeking to utilize (age 55 and above, dependent children below age 18, or disability).

Language in the bill further provides that unless another identifying number has been assigned to an individual by the Internal Revenue Service for purposes of filing such individual's federal income tax return, Social Security numbers issued to the individual, the individual's spouse, and all dependents will be required to be used as the identifying number and included on Kansas returns.

### ***PEAK Provisions***

Additional sections of the bill expand the PEAK program in several ways. The program, which provides for a diversion of 95 percent of certain employee income taxes away from the State General Fund (SGF), is expanded from January 1, 2013 through December 31, 2014 to include "retained jobs," which generally are defined to mean jobs that would otherwise be lost but for employer participation in PEAK. The Secretary of Commerce will be required to consult with the Secretary of Revenue and the Governor prior to awarding PEAK benefits for retained jobs. The maximum amount of benefits that could be awarded for retained jobs would be limited to \$1.2 million in FY 2013; \$2.4 million in FY 2014; and \$1.2 million in FY 2015. The job retention benefits sunset altogether in tax year 2015.

Additional changes allow not-for-profit corporations to enter the program and allow qualified companies to utilize or contract with all third-party employers (as opposed to only unrelated third-party employers).

The bill also effectively provides a 95 percent individual income tax exemption (through an income tax credit mechanism) for certain Kansas source income received by Kansas resident owners of qualified companies who materially participate in the business activities.

Finally, a \$4.8 million cap for each fiscal year on the total amount of benefits granted to expanding businesses is increased to \$6.0 million in FY 2013.

### ***Property Taxes on Certain Land Described in Plats***

Additional sections of the bill provide a statutory formula for calculating and collecting extant property taxes and assessments on certain land legally described in plats filed with county registers of deeds. The new language requires that all property taxes and assessments levied against an original "parent" parcel be collected prior to the recording of the plat by a register of deeds. For situations when the amount of property tax levied by a taxing subdivision has not yet been certified, an estimated tax formula utilizing the most recent year's mill levy and the latest certified valuation will be established for purposes

of the collection prerequisite relative to having plats recorded. After the tax roll has been certified, refunds of any excess collections under the estimated tax formula subsequently will be provided, or additional liability would be assessed in the case of insufficiency.

### ***HPIP Provisions***

The current 10-year limitation on the carry-forward of HPIP credits is extended to 16 years. A requirement under the law that taxpayers continue to be re-certified annually by the state as qualifying for the program (in order to authorize unused tax credits to be carried forward) is eliminated and replaced with new language that requires taxpayers to self-certify under oath. One additional provision clarifies that all unused credits that had expired prior to tax year 2011 are not revived by this legislation.

### ***Game Birds***

The bill also provides a sales tax exemption for all sales of game birds for which the primary purpose is for hunting.

## **Income Tax—Expensing**

**House Sub. for SB 196** provides a new state income tax deduction known as “expensing” for certain qualified investments; repeals or phases out a number of existing state income tax credit and sales tax exemptions; repeals the Kansas Economic Opportunity Initiative Fund (KEOIF); and creates a new fund, the Job Creation Program Fund (JCPF). Finally, an additional provision establishes a new individual income tax checkoff for the Kansas Hometown Heroes Fund.

### ***Expensing Provisions***

One section of the bill allows taxpayers to claim an expense deduction from Kansas net income before expensing or recapture for the cost of certain machinery and equipment depreciable under Section 168 of the federal Internal Revenue Code and certain canned software, defined under Section 197, placed into service beginning in tax year 2012. The property must be located in Kansas to qualify for expensing. A member of a unitary group of corporations filing a combined report may, under certain circumstances, take the expense deduction for an investment made by another member of the group. Any amount of excess expensing deduction is to be treated as a net operating loss for state income tax purposes. Any property sold during the applicable recovery period, as defined by federal law or relocated outside the state during such period will be subject to have a portion of its expense deduction “recaptured” for Kansas income tax purposes.

Taxpayers electing to expense qualified investments are prohibited from also claiming a number of existing tax incentives that might otherwise apply to such investments, including

tax credits for the high performance incentive program (HPIP); research and development; alternative fueled vehicles; swine facility improvements; historic preservation; carbon dioxide capture equipment; film production; refineries; oil or gas pipelines; integrated coal or coke gasification nitrogen fertilizer plants; biomass-to-energy plants; integrated coal gasification power plants; renewable electric cogeneration facilities; and biofuel storage and blending equipment. Taxpayers claiming expensing also are prohibited from claiming accelerated depreciation otherwise available for the latter seven of these investment purposes.

### ***Repeal or Modification of Existing Tax Incentives***

Beginning in tax year 2012, income tax credits may no longer be earned pursuant to the Kansas Enterprise Zone Act; and the Job Expansion and Investment Credit Act. Transitional language authorizes certain extant credits earned under both programs in tax year 2011 or previous years to continue to be carried forward.

Provisions relating to HPIP income tax credits are modified such that beginning in tax year 2012, the current \$50,000 minimum investment threshold in five urban counties (Douglas, Johnson, Sedgwick, Shawnee, and Wyandotte) is increased to \$1 million. All HPIP related tax incentives also are required to be reviewed prior to January 1, 2017.

Another income tax credit relative to property taxes paid on commercial and industrial machinery and equipment is repealed beginning in tax year 2012.

A sales tax exemption relative to projects that qualify for the business and job development income tax credit program is repealed on January 1, 2012.

### ***Job Creation Program Fund***

The bill further creates the Job Creation Program Fund (JCPF), which will be administered by the Secretary of Commerce, in consultation with the Secretary of Revenue and the Governor, to promote job creation and economic development by funding projects related to: the major expansion of an existing Kansas commercial enterprise; potential relocation to Kansas of a major employer; the award of a significant grant that has a financial matching requirement; the potential departure from the state or substantial reduction of operations of an existing employer; training or retraining activities; the potential closure or substantial reduction of a major state or federal institution; projects in counties with at least a 10 percent population decline over the last decade; or other “unique” economic development opportunities.

The two percent of withholding tax receipts under prior law that was earmarked for the Investments in Major Projects and Comprehensive Training (IMPACT) program will be earmarked for the JCPF on July 1, 2012, except that transitional language generally

provides that current debt services for the IMPACT Program Repayment Fund be met, as well as administrative costs associated with the IMPACT Program Services Fund.

Additional language requires the Secretary of Revenue to estimate annually beginning on July 1, 2012, the amount of net savings realized under the provisions of the bill in anticipation of such amount being appropriated to the JCPF. The Secretary of Commerce also is required to report annually on JCPF expenditures and the cost-effectiveness of such expenditures.

### ***Income Tax Checkoff Provisions***

A new income tax checkoff program is placed on the state individual income tax form, whereby taxpayers may voluntarily contribute to the Kansas Hometown Heroes Fund. All moneys deposited in the Fund are required to be used solely for the veteran services program of the Kansas Commission on Veterans' Affairs. The expensing related provisions of the bill are expected to increase State General Fund (SGF) receipts by \$2.874 million in FY 2012 and by \$39.490 million in FY 2013; increase State Highway Fund (SHF) receipts by \$1.126 million in FY 2012 and by \$5.560 million in FY 2013; and increase revenues available to the Economic Development Initiatives Fund (EDIF) by \$1.3 million for both fiscal years as a result of the repeal of the KEOIF program. The net provisions from this part of the bill therefore will produce an additional \$5.3 million of available resources in FY 2012 and an additional \$46.350 million in available resources in FY 2013.

## **Rural Opportunity Zones—Income Tax and Student Loan Repayments**

**SB 198** designates 50 counties as Rural Opportunity Zones (ROZ), effectively providing an income tax exemption for certain out-of-state taxpayers who relocate to those counties, and authorizing the counties to participate in a state-matching program to repay student loans of up to \$15,000 for certain students who establish domicile in ROZ counties.

The counties receiving the ROZ designation are: Barber, Chautauqua, Cheyenne, Clark, Cloud, Comanche, Decatur, Edwards, Elk, Gove, Graham, Greeley, Greenwood, Hamilton, Harper, Hodgeman, Jewell, Kearny, Kingman, Kiowa, Lane, Lincoln, Logan, Marion, Mitchell, Morton, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Rawlins, Republic, Rooks, Rush, Russell, Scott, Sheridan, Sherman, Smith, Stafford, Stanton, Trego, Thomas, Wallace, Washington, Wichita, Wilson, and Woodson.

### ***Income Tax Provisions***

For tax years 2012-2016, certain taxpayers will be eligible to receive a full tax credit against their own state income tax liability, provided they have been:

- Domiciled outside the state for five or more years immediately prior to establishing residency in a ROZ;
- Earning a Kansas source income of less than \$10,000 for each of the five years immediately prior to establishing residency in a ROZ; and
- Domiciled in a ROZ during the entirety of the taxable year for which the credit is to be claimed.

Tax credits are denied relative to returns that are not timely filed, as well as for individuals who are delinquent in any tax due to the state or any political subdivision. An additional provision requires that a report be made each January to the standing tax committees relative to the number of persons applying for the tax credits.

### ***Student Loan Repayment Provisions***

ROZ counties are authorized to adopt resolutions prior to January 1, 2012, (and every subsequent year through January 1, 2016) irrevocably obligating the counties to pay half of certain extant student loan costs, up to a maximum of \$15,000, in equal increments over a five-year period. A state matching program, subject to appropriations, will provide for matching payments. (If the maximum \$15,000 amount were to be adopted in a ROZ county resolution, the state and the county would each repay \$7,500 in equal increments over a five-year period, or \$1,500 per year per governmental entity.)

Resident individuals are entitled to apply for the loan repayments relative to payments made to attend institutions of higher learning where they obtained an associate, bachelor or post-graduate degree, provided they have established domicile in a ROZ county on or after the date such county commenced participation in the program, and prior to July 1, 2016. Eligibility for the loan repayment program for individuals terminates upon relocation outside of the ROZ county from which initial eligibility was obtained.

### **Tax Abatement Records—Annual Reports**

**SB 212** amends language concerning the public availability of tax abatement records. Under prior law, the Secretary of Revenue was required to keep a record of each abatement that reduces tax liability by \$5,000 or more and make the record available for public inspection, as well as an annual report. The bill replaces the term “record of any abatement” with “annual report” where the law states which documents are available to the public.

## **Setoff Agreements—State and Federal Payments**

**HB 2392** allows the Director of Accounts and Reports to enter into agreements with the U.S. Treasury Department that provide for offsetting various federal and state payments authorized by law. Previously authorized setoffs pursuant to KSA 75-63201 *et seq.* will continue to occur prior to any new setoffs authorized under such agreements. Both the U.S. Treasury Department and the Director are authorized to deduct fees relative to the offset payments collected. Additional language clarifies that certain disclosure prohibitions and confidentiality statutes do not affect the ability of the U.S. Treasury Department, the Kansas Department of Administration, and debtors to accomplish and effectuate the provisions of the bill.

## TRANSPORTATION AND MOTOR VEHICLES

### Rail Service Improvement Fund

**SB 119** authorizes cities and counties, in coordination with railroads providing service, to enter into loan agreements with the Secretary of Transportation to obtain Rail Service Improvement Funds by pledging Special City and County Highway Fund (SCCHF) receipts as collateral. The bill gives the Secretary the authority to order diversion of SCCHF distributions from any local unit failing to meet repayment terms and conditions set forth in the agreements. The amount of any such loan obtained by a city or county is excluded from its bonded indebtedness limits.

### “Flying Cars”: Defining Lightweight Roadable Vehicles

**House Sub. for SB 213** defines a “lightweight roadable vehicle” as a vehicle that may be driven on public roadways and also is required to be registered with, and flown under the direction of, the Federal Aviation Administration. The bill excludes this type of vehicle from the definition of “aircraft” in the statute (KSA 2010 Supp. 79-201k) that exempts business aircraft from property taxes.

(According to testimony, the vehicle, known as the “Transition,” will meet National Highway Traffic Safety Administration safety standards for highway vehicles, and it also will qualify as a light sport aircraft that must be registered with the Federal Aviation Administration. The vehicles were expected to be delivered to the first buyers late in 2011 or early in 2012.)

### Medal of Honor Recipient Donald K. Ross Memorial Highway

**HB 2003** designates a portion of K-18 highway, from US-81 to the western boundary of Lincoln County, as the Medal of Honor Recipient Donald K. Ross Memorial Highway. According to testimony, Donald Ross was born in Beverly in 1910. He received his Medal of Honor – the first of World War II – for his actions on the battleship USS Nevada on December 7, 1941, at Pearl Harbor, Hawaii. He retired in July 1956 after 27 years of Navy service and died in 1992. 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 Secretary for 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 \$2,160.

## Fleet Registration of Certain Commercial Motor Vehicles

**HB 2033** extends vehicle registration as a fleet, rather than registration of individual vehicles, to commercial fleets of 250 or more vehicles on which personal property taxes are paid. Fleet registration had been allowed only for fleets of 250 or more vehicles that are exempt from personal property tax or are assessed under tax laws for motor carriers. Only commercial fleets that stay within Kansas are eligible, and each vehicle must be registered for a gross weight of at least 12,000 pounds. The fleet owner is required to prove that appropriate property tax on any fleet vehicle has been paid.

## “Families of the Fallen” License Plates

**HB 2132** authorizes “Families of the Fallen” license plates for passenger vehicles and small trucks, to be issued on and after January 1, 2012. The bill authorizes issuance of such a plate to “Department of Defense-recognized next of kin of deceased military personnel,” defined as any person entitled to receive the Department of Defense Gold Star lapel button or the lapel button for next of kin of deceased active duty personnel. The bill exempts this license plate, like other license plates honoring military service, from the \$40 distinctive license plate fee required for some distinctive license plates upon receipt of the metal plate.

## Representative Margaret Long Interchange; Truman/Eisenhower Presidential Highway

**HB 2172** designates the junction of US 24 and K-7 highways in Wyandotte County as the Representative Margaret Long Interchange.

The bill also designates a portion of I-70 as the Truman/Eisenhower Presidential Highway: from the Missouri state line west to the junction with K-15, at Abilene. (The bill allows the name of the highway to be modified from, but be substantially similar to, the name given above.) The designation is contingent on the State of Missouri designating a portion of I-70 similarly.

The bill modifies the designation of the Blue Star Memorial Highway, currently US-40 from the Missouri state line to the Colorado state line, to exclude the portion from the west city limits of Topeka (where US-40 joins with I-70) to the junction of I-70/US-40 and K-15. This modification also is contingent on the State of Missouri designating a portion of I-70 as the Truman/Eisenhower Presidential Highway.

The bill requires that the Secretary of Transportation receive amounts from donations to cover costs of placing and maintaining the signs before the Department of Transportation installs any signs indicating the designations. According to the fiscal notes, those

amounts were \$11,400 for the Representative Margaret Long Interchange and \$9,780 for the Truman/Eisenhower Presidential Highway.

### **Seat Belt Law; 75 mph Speed Limit; VIN Inspection Fees; Motorcycle Through a “Dead Red” Light; Passing Bicycles; Signature at Registration Renewal**

**HB 2192** combines various provisions regulating traffic.

**Seat belt law into the Uniform Act Regulating Traffic.** The bill expands the Uniform Act Regulating Traffic to include the Safety Belt Use Act, thus making penalty provisions for seat belt violations uniform throughout Kansas. The bill clarifies that no court costs are to be applied to seat belt violations and removes outdated language. The bill also removes language redundant to the Child Passenger Safety Act.

**Speed limit to 75 miles per hour (mph).** The bill increases the maximum lawful speed limit from 70 miles per hour to 75 miles per hour on any separated multilane highway, as designated by the Secretary of Transportation. The bill increases 70 mph to 75 mph in two additional statutes: a violation of a speed limit of 55 mph up to 75 mph (increased from 70 mph) by not more than 10 mph cannot be construed as a moving violation, nor could it be reported by the Division of Vehicles to an insurance company or considered by any insurance company in determining the rate to be charged for an automobile liability insurance policy.

**Vehicle identification number (VIN) inspection fees.** The bill increases the fee per hour and the minimum fee paid for inspection of a VIN from \$10 to \$15 in FY 2012 and to \$20 beginning in FY 2013. It allows the Kansas Highway Patrol to receive 10 percent (changed from \$1) of the fees for each inspection conducted by a program designee (a city or county law enforcement agency) or new vehicle dealer.

**“Dead red.”** The bill allows the driver of a motorcycle or the rider of a bicycle to proceed through a steady red signal, subject to other traffic rules governing right of way, if the red light has failed to change to green within a reasonable period of time because the signal has malfunctioned or has failed to detect the vehicle. The driver or rider must yield the right of way to any vehicle in the intersection or approaching so as to constitute an immediate hazard, to any pedestrian lawfully within an adjacent crosswalk, and to any other traffic lawfully using the intersection.

**Passing bicycles.** The bill requires the driver of a vehicle overtaking a bicycle to pass that bicycle on the left no less than three feet away from the bicycle. It allows the vehicle to pass a bicycle in a no-passing zone when it is safe to do so.

**Signature at registration renewal.** The bill removes a requirement that an applicant for renewal of a vehicle's registration sign a certification that the applicant has and will maintain financial security (insurance) on the vehicle. A signature on such a certification statement continues to be required at a vehicle's initial registration.

## VETERANS AND MILITARY

### Disposition of Military Decedent's Remains

**HB 2060** adds a new provision that, under certain defined conditions, would supercede the existing statutory listing of priorities that control the final disposition of a military decedent's remains. The provision applies to all active duty military personnel and gives priority to the federal Department of Defense Form 93 in controlling the disposition of the decedent's remains for periods when members of the U.S. armed forces, reserve forces, or national guard are on active duty.

## APPROPRIATIONS BILLS

**Senate  
Sub. for  
HB 2014** This bill contains appropriations for FY 2011 supplemental appropriations, FY 2012 operating expenditures, multi-year capital improvements for state agencies, and claims against the State.

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**TECHNICAL BILLS**

- SB 247** This bill is a technical measure that reconciles conflicting statutes and corrects bill drafting errors that have been discovered in 2011 legislation.
- HB 2339** The bill reconciles all the changes made to the Kansas Criminal Code since the passage of 2010 HB 2668, which recodified the Code and will go into effect July 1, 2011. It also fixes errors and omissions in 2010 HB 2668. The bill makes no substantive changes.

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**BILLS VETOED BY THE GOVERNOR**

**Senate** (Line Item) Section 26 would have appropriated \$71,426 for FY 2011  
**Sub. for** from the State Economic Development Initiatives Fund to the Kansas  
**HB 2014** Technology Enterprise Corporation (KTEC).

(Line Item) Section 108(e) would have prohibited the Kansas Health Policy Authority and Department of Health and Environment from expending FY 2012 funds to implement, maintain, or require use of a preferred drug list for mental health purposes.

(Line Item) Section 108(f) would have imposed a surcharge of 2.5% of the existing premium for state employee health care benefits for the plan year beginning January 1, 2012, for the purpose of reimbursing the State General Fund for the operation and maintenance of the state health care benefits program.

(Line Item) A proviso in Section 111(a) would have required the Department of Social and Rehabilitation Services (SRS) to make reports at least quarterly during FY 2012 to the Legislative Budget Committee concerning the budget and financial status of SRS and any other matter as requested by the Committee.

(Line Item) Section 115(a) would have appropriated to the Kansas Arts Commission, for FY 2012, \$217,084 for operating expenses and \$470,915 for arts programming grants and challenge grants.

(Line Item) A portion of Section 143(a) would have set the position limitation for the Kansas Arts Commission for FY 2012 at the equivalent of 6.00 full-time positions.

(Line Item) A proviso in Section 175 would have required a reduction of \$5.9 million to be applied to state agencies on a *pro rata* basis depending on the proportion of the amounts budgeted to each agency from the State General Fund in the *Governor's Budget Report for FY 2012*. While the direction to distribute the \$5.9 million reduction *pro rata* was vetoed, the underlying \$5.9 million reduction was left intact.

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