

2009 Summary of Legislation



Errata
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Senate Sub. for HB 2126

Senate Sub. for HB 2126 was repealed by SB 336 at the end of the 2009 Session. The Kelsey Smith Act was enacted by SB 336.

SB 336 is a technical measure that reconciles conflicting statutes and corrects bill drafting errors that have been discovered in 2009 legislation.

The bill also repeals Senate Sub. for HB 2126 which was enacted earlier in the 2009 session and enacts the Kelsey Smith Act, which requires wireless telecommunications carriers to provide information about the location of the telecommunications device of a user of the carriers' services, if requested by a law enforcement agency in order to respond to a call for emergency services or to respond in an emergency situation that involves risk of death or serious physical harm. Wireless carriers are authorized, but not required, to establish protocols for voluntary disclosure of call location information. The provision of information as required by the bill does not create a cause of action against a telecommunications carrier acting in good faith and in accordance with the provisions of the Act.

To facilitate requests from law enforcement for call location information, the Kansas Bureau of Investigation is required to obtain the contact information for all wireless telecommunications carriers doing business in Kansas, and to distribute that information to public safety answering points quarterly or any time a change in the information occurred. The Bureau is required to adopt rules and regulations to implement the Kelsey Smith Act no later than July 1, 2010.

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INTRODUCTION

This publication includes summaries of the legislation enacted by the 2009 Legislature. Not summarized are most appropriations bills; bills of a limited, local, technical, clarifying, or repealing nature; and bills that were vetoed (sustained). However, these bills are listed beginning on page 151.

During the 2009 Session, 746 bills were introduced: 339 in the Senate and 407 in the House. Of these 746 bills, 144 (19.3 percent) became law: 76 Senate bills and 68 House bills. Further, of the 144 bills becoming law, 136 (94.4 percent) were introduced by committees and 8 (5.6 percent) were introduced by individual legislators.

The Governor vetoed six bills and 12 line items. All vetoes were sustained.

A total of 567 bills will be carried over to the 2010 Session of the Legislature.

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ABORTION

Woman's Right to Know Act—Amendments

House Sub. for SB 238 makes several changes to the Woman's Right to Know Act, which requires certain information to be provided to a woman in order for a physician to obtain voluntary and informed consent prior to the performance of an abortion. The bill adds language that:

- Any physician performing an abortion must inform the woman if a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman. Documentation of the physician's certification for an abortion would be required to be retained for at least 10 years. Physicians are required to provide written contact information for free counseling assistance for medically challenging pregnancies and for free perinatal hospice services. Physicians are required to meet with each woman at least 30 minutes prior to an abortion to answer questions and provide information about the abortion.
- Any physician performing an abortion, who uses ultrasound equipment in preparation for abortions, must at least 30 minutes before the procedure inform the woman that she has the right to view the ultrasound and receive a picture of the ultrasound at no additional expense to her; offer the woman the opportunity to view the ultrasound and receive a picture; certify in writing that the woman was offered the opportunity to view the ultrasound and receive a picture 30 minutes before the abortion; and obtain the woman's signed acceptance or rejection of the opportunity to view the ultrasound or receive a picture. Also, any physician who uses heart monitoring equipment in preparation for abortions is required at least 30 minutes before the procedure to inform the woman that she has the right to listen to the unborn child's heartbeat at no additional expense to her; to offer the woman the opportunity to listen to the heartbeat; to certify in writing that the woman was offered the opportunity to listen to the heartbeat 30 minutes before the abortion; and to obtain the woman's acceptance or rejection of the opportunity to listen to the heartbeat.
- Facilities in which abortions are performed must conspicuously post signs stating the rights of women regarding abortions, except the provision would not apply to facilities which perform abortions only when necessary to prevent the death of a pregnant woman.

- KDHE must produce a standardized video that includes all information that is available to women under the Woman's Right To Know Act. The video is required to be available in digital video disk (DVD) format. Additionally, all information, including printed and video materials, are required to be available in both English and Spanish versions and to be available on-line on KDHE's website.

AGRICULTURE AND NATURAL RESOURCES

Kansas Water Appropriation Act—Amendments

SB 64 modifies several provisions of the Kansas Water Appropriation Act.

The first modification amends the definition of “water right” by striking the word “voluntary” in order to make it clear that a water right passes as an appurtenance with a conveyance of land in either voluntary or involuntary situations.

The second modification clarifies that no person can acquire a “new” water appropriation right without obtaining a water right through the Chief Engineer. Prior law spoke to the acquisition of a water right, not a “new” water right. Since existing water rights pass with the conveyance of land when sold or transferred, the only time a right is granted by the Chief Engineer is for a “new” water appropriation right.

The third modification amends a section dealing with a person seeking to acquire a new water appropriation right and requires, in addition to the other information required in law, that the person provide to the Chief Engineer a sworn statement or evidence of legal access to or control of the point of diversion and place of use from the landowner, or his or her authorized representative.

The last modification restates and clarifies current law by stating that the date of priority of every water right and not the purpose determines the right to divert and use water when the supply is not sufficient to satisfy all water rights. The bill also clarifies that when the lawful uses of water have the same date of priority, the order of preference is domestic, municipal, irrigation, industrial, recreational, and water power uses. The only water rights with the same date of priority are vested rights since all other appropriation rights have a date of priority.

Food Service and Lodging Act—Amendments; Additional Food Safety Laws

SB 203 adds and clarifies authority of the Secretary of Agriculture to administer and enforce provisions of laws relating to the Food Service and Lodging Act and to other food safety laws.

The bill gives new authority to the Secretary to inspect every lodging establishment at any reasonable time in the state. The Secretary may suspend or revoke the license of the establishment for failure to comply with the standards after written notice and with at least 10 days to comply. In addition, the Secretary is authorized to receive lodging and inspection reports from qualified individuals, private entities, or public entities to

determine compliance. The Secretary also is given authority to promulgate rules and regulations necessary to receive these inspection reports. The bill requires the Secretary to promulgate the new rules and regulations on or before July 1, 2010.

In addition, the bill gives the Secretary authority to order that a licensed entity cease and desist, after notice and opportunity for a hearing, when any person allegedly has engaged in or is engaging in any act or practice constituting a violation of the Food Service and Lodging Act. The hearing will be conducted in accordance with the Kansas Administrative Procedure Act. This same authority is given to the Secretary for all other food safety programs for which the Secretary is responsible.

With respect to food processing plants or retail food stores, the Secretary is given specific authority to temporarily suspend licenses of these entities if it is found that they endanger the public health or safety. Temporary license suspension could not last for more than 90 days. After such time, the license would need to be reinstated unless the Secretary has permanently suspended or revoked the license after notice and opportunity for a hearing.

The bill exempts food service establishments from Kansas Department of Agriculture licensure if they are licensed, permitted, or registered by the Kansas Department of Health and Environment pursuant to any other law. In addition, persons who prepare, serve, or sell food for the sole purpose of soliciting funds to be used for community projects, educational and youth activities, or humanitarian purposes are not required to obtain a food service establishment license regardless of the frequency or number of times food service is offered.

The law is clarified to allow the Secretary to deny, suspend, revoke, refuse to renew or modify the license to operate a food service establishment, a lodging establishment or food vending machines, after notice and opportunity for a hearing in accordance with the provisions of the Kansas Administrative Procedure Act, if the licensee has failed to comply with the applicable standards or has failed to comply with any provision or requirement of the Kansas Food Service and Lodging Act or any rule or regulation adopted under that Act.

Finally, the bill corrects an error to set the fee for a duplicate license at \$5, when a food service establishment license is lost or destroyed.

Kansas Surface Owner Notice Act

Senate Sub. for HB 2032 enacts the Kansas Surface Owner Notice Act and amends existing law relating to oil and gas operations.

In addition to defining various terms used in the Act, the bill authorizes the Kansas Corporation Commission (KCC) to develop the necessary rules and regulations for carrying out the Act.

In addition, the bill requires all applications for an intent to drill permit sent to the KCC to include information containing the name and address of the surface owner and the non-binding preliminary estimates of the locations of roads of ingress and egress, any tank battery, and any pipeline or electrical line. The KCC, upon the receipt of an application of an intent to drill, will send a copy of the application to the named surface owner, as well as the contact information of the applicant or the applicant’s designee. Specifically, the contact information provided to the surface owner will include the applicant’s name, address, phone number, and fax or email address. The KCC is not be required to provide the information if the operator verifies that the application filed with the KCC has been delivered to the surface owner.

The same contact information is required to be sent to the surface owner when a notice of transfer of operator for wells, gas gathering systems, and underground porosity storage is filed with the KCC and when an oil or gas operator files a notice to plug and abandon a well (unless the operator verifies that the notice filed with the KCC has been delivered to the surface owner for either change in operator or notice to plug and abandon). A landowner also may file a request with the KCC to be notified when a well is abandoned.

Division of Water Resources—Fees for Various Applications and Issuances

Sub. for HB 2050 addresses fees for various applications and issuances of the Division of Water Resources of the Kansas Department of Agriculture. In addition, the bill addresses the issue of refunds of application fees and the fees for applications of multiple issuances of the Division of Water Resources. The following describes the provisions of the bill.

Term Permit Fees

The bill requires the Chief Engineer to promulgate the necessary rules and regulations to administer term permit fees.

Until June 30, 2015, the fees for a term permit to appropriate water will be:

- 0 to 100 acre feet..... \$200
- 101 to 320 acre feet..... \$300
- More than 320 acre feet \$300 plus \$20 for each additional 100 acre feet

Also until June 30, 2015, the fees for a term permit to appropriate water for storage will be:

- 0 to 250 acre feet.....\$200
- More than 250 acre feet.....\$200 plus \$20 for each additional 250 acre feet

After June 30, 2015, and if not addressed by the Legislature, the fees for term permits revert to the following.

For a term permit to appropriate water:

- 0 to 100 acre feet..... \$100
- 101 to 320 acre feet..... \$150
- More than 320 acre feet..... \$150 plus \$10 for each additional 100 acre feet

For a term permit to appropriate water for storage:

- 0 to 250 acre feet..... \$100
- More than 250 acre feet \$100 plus 10 for each additional 250 acre feet

Permits to Appropriate Water for Beneficial Use Fees

Until June 30, 2015, the fees for the application for a permit to appropriate water to a beneficial use will be:

- 0 to 100 acre feet..... \$200
- 101 to 320 acre feet..... \$300
- More than 320 acre feet \$300 plus \$20 for each additional 100 acre feet

Also until June 30, 2015, the fees for a permit to appropriate water for storage will be:

- 0 to 250 acre feet..... \$200
- More than 250 acre feet \$200 plus \$20 for each additional 250 acre feet

After June 30, 2015, and if not addressed by the Legislature, the fees for permits to appropriate water to a beneficial use reverts to the following.

For a permit to appropriate water:

- 0 to 100 acre feet..... \$100
- 101 to 320 acre feet..... \$150
- More than 320 acre feet \$150 plus \$10 for each additional 100 acre feet

For a permit to appropriate water for storage:

- 0 to 250 acre feet.....\$100
- More than 250 acre fee\$100 plus 10 for each additional 250 acre feet

Change in Place of Use, Point of Diversion, or Use of Water Fees

Until June 30, 2015, the fees for a change in the point of diversion, place of use, or use of water application will be as follows:

- Change a point of diversion 300 feet or less \$100
- Change a point of diversion more than 300 feet..... \$200
- Change the place of use..... \$200
- Change the use made of water..... \$300

After June 30, 2015, and if not addressed by the Legislature, the fees for a change in the point of diversion, place of use, or use of water application will be as follows:

- Change a point of diversion 300 feet or less \$50
- Change a point of diversion more than 300 feet..... \$100
- Change the place of use..... \$100
- Change the use made of water \$150

Field Inspection Fees

Until June 30, 2015, the field inspection fee will be \$400, except for works constructed for sediment control use and for evaporation from a groundwater pit for industrial use which will be \$200.

After June 30, 2015, and if not addressed by the Legislature, all field inspection fees would revert to \$200.

Request for Extension of Time Fees

Until June 30, 2015, the fee for a request for an extension of time to complete a diversion work or perfect a water right would be \$100.

After June 30, 2015, and if not addressed by the Legislature, the fee for an extension of time to complete a diversion work or perfect a water right reverts to \$50.

Reinstatement Fees

Until June 30, 2015, the fee for a reinstatement of a water right will be \$200.

After June 30, 2015, and if not addressed by the Legislature, the fee for a reinstatement of a water right reverts to \$100.

Temporary Permit Fees

Until June 30, 2015, the fee for a temporary permit or an extension thereof will be \$200.

After June 30, 2015, and if not addressed by the Legislature, the fee for a temporary permit or an extension thereof will be \$100.

Application Fee Refund

The bill allows for a refund of an application fee to be modified from the current 150 days to 180 days.

Sliding Scale for Multiple Applications

The bill also deletes language which currently provides a sliding scale of fees when there are multiple applications for change of use, change in point of diversion, or change in the place of use.

Waste Tire Management Program and Solid Waste Management Planning

Senate Sub. for HB 2085 deals with the Waste Tire Management Program and solid waste management planning.

The bill amends the law relating to grants awarded under the Kansas Department of Health and Environment's Waste Tire Management Program. The bill adds clarifying language stating that both public and private schools, in addition to local units of government, are eligible for grants to be used for the purpose of purchasing products made from recycled tires. The bill also revokes the sunset clause on the grant program. The program was set to expire on June 30, 2009.

The bill also gives city and county governments the authority to implement an approved solid waste management plan using the existing authority of levying fees and charges upon residents receiving solid waste management services.

In addition, the bill authorizes counties and cities to adopt regulations necessary to conduct the operations of an approved solid waste management plan and to contract with outside parties to assist in carrying out the provisions of a plan. The plan could include provisions for handling "recyclables" in addition to all other solid wastes.

Pesticide and Fertilizer Law Amendments; Extension and Modification of Fees; and Transfer of Swine Nutrient Utilization Plans

Agency Fees and Regulations

Senate Sub. for HB 2295 enacts modifications and additions to statutes relating to pesticides and fertilizers; makes adjustments to the fees dealing with pesticides and fertilizers; extends the current fees imposed to administer the dairy inspection program; and shifts responsibility for review of swine nutrient utilization plans from the Kansas Department of Agriculture to the Kansas Department of Health and Environment.

Modifications to Pesticide and Fertilizer Law

The bill changes substantive law in the regulation of pesticide and fertilizer. Specifically, the bill would:

- Delete the requirement that a portion of the fertilizer tonnage fee be credited to the Fertilizer and Pesticide Compliance and Administration Fund;
- Clarify that the terms “agricultural chemical” and “pesticide” are synonymous;
- Clarify that references in labeling requirements may be made to publications of various agencies of the federal government and of state and federal experimental stations and extension services;
- Clarify that a pesticide may be considered to be mislabeled if it does not bear a hazard or cautionary statement sufficient to prevent harm to the environment, especially the waters of the state, or does not bear an Environmental Protection Agency (EPA) registration number, unless exempted;
- Add definitions for “emergency exemption,” “restricted use,” “special local need registration,” “suspended pesticide,” “distribute,” “EPA,” and “FIFRA” (the Federal Insecticide, Fungicide and Rodenticide Act);
- Delete requirements to color or discolor certain pesticides listed in current statute;
- Give specific authority to the Secretary of Agriculture, through the promulgation of rules and regulations, to classify or designate any pesticide registered for sale or use in the state as a restricted use pesticide;

- Delete the ability of a pesticide registrant to submit only a statement of different information than was originally submitted when a pesticide was first registered in the state (the registrant would need to submit a full statement);
- Allow the Secretary to require a pesticide registrant to submit a copy of the product label registered by the EPA under the provisions of FIFRA;
- Require a modified label to be submitted to the Secretary for review and approval;
- Permit the Secretary to require the submission of data in support of the registration of a pesticide including trade secrets which would be considered as confidential;
- Allow the Secretary to deny registration of a product if the applicant does not make appropriate changes in labeling or product information within 30 days;
- Cancel or suspend product registration under Kansas law if the registration is suspended or cancelled under FIFRA;
- Suspend or revoke registration if the product fails to meet claims made on the label or the product or its labeling does not comply with the Act or rules and regulations;
- Permit information required to be filed to be submitted electronically;
- Permit the Secretary to issue a stop sale or use if the label is altered or defaced or if the package or container has pesticide residue on the container or if the pesticide dealer has failed to register as a pesticide dealer;
- Permit agency personnel to enter premises during reasonable business hours to conduct inspections, obtain samples, obtain records, and document compliance;
- Allow the Secretary, through the promulgation of rules and regulations, to issue a permit for the experimental use of a pesticide in lieu of registration;
- Provide that during an emergency exemption such pesticides need not be registered;
- Exempt from the registration fee pesticide products used for the first year under the provisions for “special local need” registration;

- Allow the Secretary to have the authority to apply for a permit for pesticide use in emergency situations;
- Delete a portion of the definition of the term “certified private applicator” which had permitted a person controlling ornamental shrubbery or turf pests to use restricted use pesticides at his or her own private residence;
- Add to the definition of the term “registered pest control technician” those who apply pesticides for interior landscape pest control and recognizes this practice in other provisions of the law;
- Subject pesticide dealers to some of the same requirements as pesticide business licensees;
- Clarify that a fee is to be charged for each examination taken, including each category, subcategory, and general core examination;
- Delete language that addressed fees to be charged to out-of-state certified applicators if the requirements in the other state were the full equivalent of Kansas requirements;
- Allow a certified commercial applicator to recertify by training after the certification period under certain conditions;
- Clarify that if a pesticide business fails to employ one or more commercial applicators certified in each category and subcategory in which applications are made, then the Secretary will suspend, without hearing, the pesticide business’s license in that category until the business employs an applicator with the appropriate certification;
- Make it unlawful to distribute, sell, or make available any restricted use pesticide other than by a certified applicator or under a certified applicator’s supervision;
- Make it unlawful to distribute, sell, or make available for use any pesticide unless it is in the unbroken container with an intact label;
- Make it unlawful to distribute, sell, or offer for sale any pesticide with altered, defaced or detached labeling;
- Make it unlawful to distribute, sell, or offer for sale any pesticide product with pesticide residue on the container or packaging;
- Delete a provision which requires that rules and regulations be adopted within 60 days after the effective date of the Act; and

- Require all rules and regulations to be promulgated on or before July 1, 2010.

Modifications to Pesticide and Fertilizer Fees

The bill clarifies that the registration fee for an agricultural chemical will be an amount not to exceed \$150 per year, rather than not to exceed \$150 multiplied by the number of years registered, as is the case under prior law.

A new provision requires an applicant for a commercial applicator's certificate to pay \$75 per category, unless a fee less than the \$75 is established through rules and regulations of the Secretary.

In addition, the bill makes the following adjustments to Department of Agriculture fees dealing with pesticides and fertilizers. The chart below illustrates the adjustments. The bill extends most current fee amounts until July 1, 2015, when the fees would revert to 2002 levels.

Program	Service	Amount to Which the Current Fee Would Revert on July 1, 2015	Fee Under the Bill	Sec. No
Pesticide & Fertilizer	Failure to file affidavit and pay inspection fees	\$5 per day	\$10 per day	1
Pesticide & Fertilizer	Business License Application	\$112 per category	\$140 per category	11
Pesticide & Fertilizer	Uncertified Applicator Registration	\$10	\$15	11
Pesticide & Fertilizer	Government Agency Registration	\$35	\$50	11
Pesticide & Fertilizer	Technician Registration	\$25 maximum	\$40 maximum	13
Pesticide & Fertilizer	Commercial Certification Examination per category and re-exam per category	\$35 maximum	\$45 maximum	17
Pesticide & Fertilizer	Agricultural Liming Material Registration	\$25	\$30	27
Pesticide & Fertilizer	Agricultural Liming Material Inspection Fee	\$0.05/ton	\$0.07/ton	28
Pesticide & Fertilizer	Chemigation User Permit	\$55	\$75	29
Pesticide & Fertilizer	Chemigation User Permit for additional points of diversion	\$10	\$15	29
Pesticide & Fertilizer	Chemigation Equipment Operator Certification or renewal	\$10	\$25	30

The fee for a certificate for a certified private applicator is made permanent in an amount not to exceed \$25.

Dairy Inspection Fees

The bill extends the end date on various increased dairy inspection and dairy-related fees from the current June 30, 2010, date to June 30, 2015. After the 2015 date, the fees would revert to prior amounts.

Transfer of Nutrient Utilization Plan Review for Swine

The bill amends prior law by transferring the requirement to review swine nutrient utilization plans from the Kansas Department of Agriculture to the Kansas Department of Health and Environment.

BUSINESS, COMMERCE, AND LABOR

Board of Technical Professions

SB 29 amends statutes of the Board of Technical Professions.

The bill expands the issuance of a certificate of authorization to any business entity which includes corporations, limited liability companies and partnerships, corporate partnerships, or any other legal entities created by law.

The bill allows for the issuance by the Board of an intern certificate for geologists, engineers, and land surveyors.

The bill clarifies the definition of the practice of land surveying to include planning; mapping; and locating or laying out of alignments, positions, or elevations for the construction of engineering or architectural works.

The bill alters to a two-year cycle the issuance of renewal of a certificate of authorization for a business entity under the following conditions:

- The certificate of authorization is scheduled for renewal on or after December 31, 2010;
- The name of the business entity begins with a letter in the last half of the alphabet;
- The fee will be one-half of the new biennial renewal fee;
- Any certificate which has been renewed for a period of one year shall be renewed subsequently on a biennial basis; and
- No certificate shall be renewed for a period of one year on or after January 1, 2012.

The bill allows the Board of Technical Professions to develop rules and regulations exempting persons from continuing education requirements for license renewal or reinstatement. In addition, the bill allows the Board to use other disciplinary options that are less severe than suspension or revocation of a license of a business entity.

State Minimum Wage

SB 160 increases the state's minimum wage from \$2.65 an hour to \$7.25. The wage increase takes effect on January 1, 2010. The bill exempts employees and employers covered under the federal Fair Labor Standards Act.

Real Estate Brokers and Salespersons

HB 2068 amends the Kansas Real Estate Brokers' and Salespersons' License Act to do the following:

- Revise the definition of "office" to include any permanent location where one or more licensee regularly conducts real estate business;
- Authorize the Kansas Real Estate Commission to designate a course of study to fulfill any specific education requirements;
- Allow the Commission to pursue disciplinary action for violations of the Kansas Real Estate Brokers' and Salespersons' License Act even if a licensee is not engaged in a real estate transaction;
- Authorize the Commission to expand the list of persons who could be subject to threats or are the victims of physical abuse or harassment from a licensee to include:
 - Commissioner or staff from the Commission;
 - Staff from the Office of Administrative Hearings;
 - Staff from any real estate trade association or multiple listing service;
or
 - Any person from another business or industry whose services are requested or required as part of a real estate transaction; and
- Allow another broker to act as a supervising broker or branch broker when the license of an existing supervising broker or branch broker is either voluntarily or involuntarily deactivated. If another broker is not authorized to act as a supervising broker or branch broker, then all licensees supervised by the deactivated supervising broker or branch broker must be returned to the Commission within five days.

Trades and Crafts—Continuing Education

HB 2142 deals with the county or city licensure and continuing education requirements of certain trades and crafts, such as plumbers, electricians, and mechanical heating, ventilation and air conditioning contractors.

Prior law required not less than 12 hours biennially of continuing education. The bill provides the hours could be taken on the basis of six hours annually.

Further, continuing education will consist of not less than six hours biennially or three hours annually of code education. Such education could be provided by an expanded list of educational providers to include community colleges, technical schools, technical colleges, or any other approved provider. Cities and counties will not be able to impose restrictions on the number of providers of continuing education.

New licenses will be required to exhibit a distinctive notation identifying the testing agency and the name of the test. License renewals will require a distinctive notation to verify completion of continuing education hours.

Certified Public Accountants and the Board of Accountancy

Sub. for HB 2339 deals with certified public accountants (CPAs) regarding two main issues, namely (1) powers of the Board of Accountancy, and (2) the mobility of practice privilege for CPAs which would allow out-of-state CPAs to practice in Kansas without having to be individually licensed.

New powers of the Board are outlined in the bill to do the following:

- Clarify the Board's ability to investigate violations of accountancy statutes and rules and regulations of the Board;
- Allow the Board subpoena powers and the ability to compel the attendance of witnesses and the production of all necessary papers, books, records, documentary evidence, and necessary materials;
- Allow a subpoenaed person the ability to petition the Board to revoke, limit, or modify the subpoena within five days after service of the subpoena;
- Allow the Board to recoup reasonable costs in any proceeding conducted under the Kansas Administrative Procedure Act in which the Board prevails;

- Allow the Board to charge increased fees. These fees may be assessed against the parties;
- Increase the administrative fine cap from \$2,000 to \$5,000;
- Permit CPAs to practice in this state and the practice privilege of other states; and
- Provide cleanup, clarifying, and technical amendments.

Unemployment Insurance Compensation

HB 2374 draws down an additional \$69.0 million dollars in American Recovery and Reinvestment Act (ARRA) funds for the Kansas Employment Security Trust Fund through the modification of three provisions of Kansas Unemployment Insurance Compensation law.

The first modification will allow unemployment insurance compensation applicants to use an alternative wage base period when calculating benefits. Under current law, claimants must use the first four of the last five completed calendar quarters, ignoring the last completed quarter or lag quarter, in determining benefits. The modified provision will allow claimants to use the last four completed quarters including the most recent quarter, eliminating the lag quarter provision. Claimants can calculate benefits using either methodology and choose the option which provides the greater benefit. The original wage base period calculation was a holdover from when unemployment compensation applications were processed by hand; modern techniques eliminate the need for delays and lag quarters according to the Department of Labor. This modification allows the State to access the first \$23.0 million in ARRA funding for the Trust Fund.

The second modification codifies the practice of allowing traditional part-time workers to claim part-time unemployment insurance compensation benefits, assuming they would be otherwise qualified to receive benefits. The modification has no fiscal impact but moves current Department of Labor practice into statute.

The third modification provides an additional 26 weeks of unemployment insurance coverage for persons who are otherwise qualified to receive unemployment compensation and are enrolled in a state-approved training program, a shared work program, or a job training program authorized under the Workforce Investment Act of 1998. The job training programs will be managed by the Department of Commerce. Kansas currently provides a maximum of 26 weeks of coverage for individuals enrolled in approved training programs.

The second and third modifications qualify Kansas to access an additional \$46.0 million dollars in ARRA funding for the Kansas Employment Security Trust Fund. The Department of Labor projects that the alternative wage base period and expanded coverage for workforce training provisions will exhaust the additional funding by 2023.

CHILDREN AND YOUTH

Kansas Council for Interstate Juvenile Supervision

SB 14 creates the Kansas Council for Interstate Juvenile Supervision to oversee and administer the state's participation in the Interstate Compact for Juveniles, and to develop policies concerning the operations and procedures of the Compact within the state. The Council consists of seven members with the terms as follows:

- The Interstate Compact for Juveniles Compact Administrator or the designee who serves for a term of two years;
- The Chief Justice of the Kansas Supreme Court or the designee who serves for a term of four years;
- The Attorney General or the designee who serves for a term of four years;
- An advocate of crime victims groups appointed by the Attorney General who serves for a term of four years;
- The Commissioner of the Juvenile Justice Authority (JJA) or the designee who serves for a term of two years;
- A member of the Senate appointed by the President of the Senate for a term of two years; and
- A member of the House appointed by the Speaker of the House for a term of two years.

The appointments to the Council are required to be made within 30 days after the effective date of the bill. The members are required to elect a chairperson and may elect any additional officers from its membership it deems necessary to discharge the duties of the Council. Additionally, Council members are entitled to receive compensation, subsistence allowances, mileage, and other expenses authorized by law for a member of a board.

Child Support—Professional License Holders

HB 2201 requires restrictions on a professional license holder when the person owes past due child support equal or greater than three months of child support. Notice of the person's arrearage must be given to the licensing body. Under the bill, the debtor must

have failed to comply with a payment plan previously established by the court or agreed upon by the parties before notice can be served on the licensing body.

Any notice to the licensing body is required to have a copy of the court order finding the licensee in contempt of court in a child support proceeding. A showing of compliance from the court by the licensee results in an immediate termination of proceedings against the licensee. If a licensee has been suspended or not renewed, and the notice of compliance has been provided, or the licensee otherwise qualifies for the license, the licensing body is required to reinstate the license or issue the renewal license

CONSTITUTIONAL AMENDMENTS

Right to Keep and Bear Arms

SCR 1611 authorizes the submission of a state constitutional amendment to section 4 of the Kansas Bill of Rights that would be considered at the general election in November 2010. The proposed amendment would insert new language that states:

“A person has the right to keep and bear arms for the defense of self, family, home and state, for lawful hunting and recreational use, and for any other lawful purpose.”

CONSUMER AFFAIRS

Requirements for Sale of Cigarettes Act

SB 154 amends the Requirements for Sale of Cigarettes Act to provide enhanced enforcement of the Master Settlement Agreement (MSA) escrow statutes to ensure continued receipt of MSA payouts.

Among other changes, the bill:

- Changes the resident agent requirements for Non-participating Tobacco Manufacturers (NPMs) and requires the NPMs to provide irrevocable written consent that actions brought under this Act may be commenced against the NPM in the Third Judicial District (Shawnee County) by service of process on the resident agent;
- Requires a new NPM or a “high risk” for noncompliance NPM as reasonably determined by the Attorney General in accord with the factors provided in the bill, to post a bond of at least \$50,000;
- Requires a stamping agent to provide written assurance of compliance with the Act under penalty of perjury;
- Authorizes the Kansas Department of Revenue (KDOR) to suspend or revoke the license of any stamping agent violating this Act. Additionally, the KDOR is authorized to impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000;
- Authorizes the Attorney General to file an injunction to restrain a stamping agent from a threatened or actual violation of the Act and to compel the stamping agent to comply with the Act;
- Creates a new class B misdemeanor crime, to sell, distribute, or possess cigarettes in violation of this Act;
- Creates a new class A misdemeanor for NPMs to submit false information:
 - About a brand family listed on the directory;

- That it is a Participating Manufacturer;
- That it has made all required escrow payments;
- That it has satisfied any other requirements imposed by this Act;
- Makes violations of this Act involving the sale or attempted sale of cigarettes by a stamping agent to a retail dealer or consumer, or by a retail dealer to a consumer, a deceptive trade practice under the Kansas Consumer Protection Act;
- Makes it illegal to affix or cause to be affixed tax stamps to tobacco products of Tobacco Product Manufacturers (TPMs) not listed on the directory;
- Updates the statutory language requiring the Attorney General to develop a directory of all TPMs that have provided current and accurate certifications; and
- Requires each TPM to annually certify that it is either a participating manufacturer to the MSA or a non-participating manufacturer that is in compliance with the Kansas escrow laws and all of the relevant rules and regulations.

Consumer Protection—Mortgage Trigger Leads

SB 163 amends the Kansas Consumer Protection Act (KCPA) to establish definitions for the terms “lender” and “mortgage trigger lead” and to establish a deceptive act or practice under the Act. A “mortgage trigger lead” means a consumer report obtained under the federal Fair Credit Reporting Act where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit.

The bill also requires that in oral and written solicitations for products or services based on a mortgage trigger lead, the solicitation must clearly and conspicuously state that the solicitor is not affiliated with the lender or broker with which the customer initially applied, and that the solicitation is based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied. Further requirements for written solicitations define “clear and conspicuous” to include legible type in contrast by typography, layout, or color with other printing on the first page of correspondence. Additionally, any solicitor making either an oral or written solicitation will be required to be in compliance with the provisions of the Kansas Mortgage Business Act, unless otherwise exempted from the Act, and any other law or regulation. Failure

to comply with this requirement will be considered a deceptive act or practice under the KCPA.

The bill also specifies that any consumer report on an applicant obtained by a lender with whom the applicant has initially applied for credit or who holds or services an existing extension of credit of the applicant who is the subject of the report is not considered a mortgage trigger lead.

Kansas Home Inspectors Professional Competence and Financial Responsibility Act

Senate Sub. for HB 2260 revises certain provisions of the Kansas Home Inspectors Professional Competence and Financial Responsibility Act to do the following:

- Delete the provision of the pre-inspection notice that identifies the national home inspection organizations the home inspector is a member of at the time of the inspection;
- Delete the definition of “dismantling;”
- Redefine “material defect;”
- Require the Chairperson and Vice-Chairperson of the Kansas Home Inspectors Board (Board) to be a registered home inspector;
- Delete the provision which makes the Secretary of State the custodian of all permanent records of the Board;
- Add to the Board’s duties the adoption of a single standard of practice and a code of ethics;
- Add to the Board’s duties and powers the ability to investigate allegations of misconduct against an applicant and registrant. The Board has access to and the right to examine and copy any document, report, record, or other physical evidence of any inspector who is being investigated, as well as access to any document, report, record, or other evidence maintained by and in the possession of any registered home inspector. In addition, the Board is able to require the attendance and testimony of any registered home inspector;
- Authorize the Board to approve courses of study, educational providers, and providers of continuing education through rules and regulations. In addition,

Kansas Home Inspectors Professional Competence and Financial Responsibility Act—Senate Sub. for HB 2260

the Board could contract with agencies or consultants to assist the Board in obtaining information about educational providers;

- Allow the Board to deny, suspend, or revoke a registration to anyone convicted of a misdemeanor involving dishonesty. Denial also could be based on the following:
 - Inspecting for a fee any property in which the home inspector has a personal or financial interest, unless the interest is disclosed in writing;
 - Offering a kickback or referral fee;
 - Accepting work to perform an inspection where the fee is contingent upon the report's findings;
 - Disclaiming liability for any errors and omissions which may arise during an inspection or to limit the amount of damages for any errors or omissions to less than \$10,000 in the aggregate for each home inspection;
 - Failing to substantially follow the approved standards of practice and code of ethics regarding home inspections;
 - Failing to provide a pre-inspection notice;
 - Failing to follow approved standards of practice and code of ethics regarding home inspections;
 - Failing to respond to the Board when summoned or to produce documents during an investigation;
- Require the Board to refuse to issue a registration if the applicant or registrant has pled guilty to or has been convicted of a felony. However, the Board has the discretion to grant a registration if sufficient time had passed since the completion of a criminal sentence or conviction. For most felony convictions, it could be after five years. For those convictions that requires a person to register pursuant to the Kansas Offender Registration Act, a person could apply for a home inspector registration after fifteen years. If the Board chooses to exercise this discretion, the bill provides the Board with several factors to consider, including the nature of the past criminal activity, the age of the person at the time that the crime was committed, and the

Kansas Home Inspectors Professional Competence and Financial Responsibility Act—Senate Sub. for HB 2260

recent history of the applicant. This discretion also applies to misdemeanor offenses;

- Provide that the denial, suspension, or revocation of registration would be in accordance with the Kansas Administrative Procedure Act;
- Allow the Board to set fees which are expanded to include a late renewal fee up to \$50, a fee for reinstatement of an expired or revoked registration up to \$300, and a fee for a duplicate registration certificate up to \$25. Charges up to \$500 to review an application packet submitted for approval by an education provider for pre-registration courses and a fee up to \$50 to review an application packet for a provider of continuing education classes are included;
- Change the deadline for all home inspectors to register by the same date of January 1, 2010. Existing law specifies that home inspectors working in counties with a population greater than 60,000 have to register by July 1, 2009, and those home inspectors working in counties with a population less than 60,000 are required to register by January 1, 2011;
- Revise the surety bond method of showing proof to the Board of financial responsibility. The bill requires a registered home inspector to file a surety bond with the Board in the amount of not less than \$10,000 per year;
- Delete the provision that a registered home inspector must show the Board proof of membership in a national home inspector organization;
- Clarify provisions relating to the successful completion of exams approved by the Board along with exemptions to taking the exams;
- Require registered home inspectors to retain copies of certain documents relating to the performance of home inspections for a period of 24 months after a home inspection occurs;
- Establish a date for registration renewal, and provide for non-renewal 30 days following an expiration date. Registrants could be granted inactive status. The inactive status fee could be up to \$50. Home inspections could not be conducted when a registrant is in inactive status. The Board may reinstate a registration upon application and a payment of a reinstatement fee established by the Board. Guidelines for determining whether an applicant should be reinstated will be established by the Board;

- Provide that a person who is not registered as a home inspector may assist a registered home inspector with an inspection provided the person is supervised by a registered home inspector and the inspection report is reviewed and signed by the registered home inspector;
- Change the provision regarding the Executive Secretary of the Board's salary which would be approved by the Governor and not the State Finance Council, as it is in existing law; and
- Establish that employees of the Board are in the classified service under the Kansas Civil Service Act.

The bill will sunset the provisions of the Kansas Home Inspectors Professional Competence and Financial Responsibility Act on July 1, 2013.

Fair Credit Reporting Act—Amendments

HB 2292 amends security freeze provisions in the state Fair Credit Reporting Act. Among the amendments to the Fair Credit Reporting Act, the bill deletes a requirement in existing law that the consumer placing a security freeze on his or her consumer report must be a "victim of identity theft" and the related requirement for having a police report. The bill adds the following to the list of methods a consumer may utilize to contact a consumer reporting agency to request a security freeze:

- Regular mail;
- Through a secure website; or
- By telephone (if the consumer reporting agency does not have a secure website).

Additionally, the bill changes a requirement in existing law to be permissive, allowing a third party to treat the application as incomplete. The bill adjusts the compliance by consumer reporting agencies with a request to lift a temporary freeze to include a provision for postal requests (no later than three business days) and electronic contact (15 minutes, if received during a certain time frame). Exceptions are specified for those occurrences which could prevent the lifting of the freeze within the 15-minute time frame.

The bill also allows a fee to be charged, not to exceed \$5, for placing, temporarily lifting, or removing each freeze or for replacing a previously requested personal identification number. The consumer reporting agency will not be allowed to charge a fee for the replacement of a previously requested personal identification number nor to a documented victim of identity theft.

The bill allows persons who suspect they are victims of identity theft to contact local law enforcement; local law enforcement will be required to receive complaints and take a police report of the matter, even if the jurisdiction for investigation is elsewhere. The report could then be provided to a law enforcement agency in another jurisdiction. Finally, the bill provides that violations of the provision governing the temporary freeze (15-minute reporting requirement) are to be the exclusive authority of the Attorney General.

Under the bill, a “security freeze” is defined to mean a notice placed on a consumer report, at the request of the consumer and subject to certain exceptions, that prohibits a reporting agency from releasing the consumer’s report or credit score.

ECONOMIC DEVELOPMENT

Revisions to Economic Revitalization and Reinvestment Act

SB 108 revises the Economic Revitalization and Reinvestment Act by expanding the definition of an eligible aviation business and by allowing wind or solar energy manufacturing businesses to qualify for benefits.

Eligible Aviation Business

The bill expands the meaning of an eligible aviation business so that it may include an entity that has an average annual gross Kansas compensation that is at least \$150.0 million. Prior law mentioned an eligible aviation business having paid an average annual gross Kansas compensation of \$300.0 million.

Eligible Wind or Solar Energy Business

The bill defines an eligible wind or solar energy business as a person or entity that is engaged in the wind or solar energy manufacturing industry in Kansas and that satisfies other conditions stipulated by the Secretary of the Department of Commerce which may include:

- Paying a minimum of \$32,500 of average annual compensation per Kansas employee; and
- Classified by the North American Industrial Classification System as being in the manufacturing sector.

The bill defines an eligible wind or solar energy project as a project relating to the research, development, engineering, or manufacturing of a business component or product for either the wind or solar energy industries. An eligible project requires a minimum of \$30.0 million of project costs proposed to be invested in Kansas. The project also has to employ a minimum of 200 full-time employees within five years.

Once a project's application is approved, the bill requires the Secretary of Commerce to request the Kansas Development Finance Authority (KDFA) to issue bonds not to exceed \$5.0 million for a single eligible wind or solar energy project. No new project could be approved after July 1, 2013, which is the current statutory deadline for the approval of other projects.

Investment in Major Projects and Comprehensive Training (IMPACT) Program

SB 120 allows program costs under the Investment in Major Projects and Comprehensive Training (IMPACT) Program to include wages for new or retained employees during education or retraining. The bill continues to exclude the following items from receiving IMPACT financial assistance:

- Any costs that exceed 50.0 percent of the total program costs that are spent for the purchase or lease of training equipment;
- Any costs that exceed 10.0 percent of the total program costs that are spent for administrative expenses; and
- Any costs that exceed 10.0 percent of the total program costs that are spent for the direct institutional benefit of an educational and related workforce development institution.

EDUCATION

Higher Education Construction

SB 9 establishes the State Educational Institution Project Delivery Construction Procurement Act. The bill exempts certain construction projects and construction project services at state universities from many of the requirements imposed on other state agencies when obtaining the services of architects, engineers, and contractors for construction projects. The bill applies to construction projects and construction project services financed totally with non-state moneys. (Non-state moneys include funds received from any source other than the State of Kansas or any state agency, and could include funding sources such as tuition, fees, or federal funds.)

The bill allows state universities to use an alternative project delivery process. “Alternative project delivery” is defined as an integrated comprehensive building design and construction process. This alternative process would use a “construction management at-risk procurement process” (defined as a construction manager or general contractor hired by the university to manage a project).

The bill requires that all contracts for construction projects and construction services be let by the university to the lowest responsible bidder based upon plans and specifications prepared for the project after receiving approval by the State Board of Regents and the Secretary of the Department of Administration, unless the use of the alternative project delivery process is determined appropriate as provided in the bill. The bill requires that a competitive bid process be used. The bill allows the State Board of Regents to adopt rules and regulations necessary for implementation and administration of the bill’s provisions. The provisions of the bill expire on June 30, 2012.

Expanded Investment Authority

SB 39 amends a statute governing the investment of public moneys by certain counties and municipalities to allow school districts the same expanded investment authority currently allowed for cities and counties. Expanded investment authority would allow investments in United States government and agency securities, interest-bearing time deposits, and repurchase agreements with maximum maturities of four years.

The bill further provides that, in approving the investment policy of any city, county or school district, the Pooled Money Investment Board (PMIB) must require that the policy addresses liquidity, diversification, safety of principal, yield, maturity, and quality and capability of investment management staff. In addition, the bill provides procedures for compliance with KSA 12-1675(c) (a requirement that municipalities must first offer their idle

funds to local financial institutions) and a certification from the investment management staff that those procedures have been followed.

The bill also creates a second condition for the approval of the investment policy for the PMIB. The investment policy is required to contain a certification from the investment management staff that those procedures (compliance with KSA 12-1675(c) as outlined above) have been followed, and a listing of the banks, savings and loan associations, and savings banks from which the city, county, or school district requested bids in the preceding year.

Without the expanded investment authority, cities and counties are permitted to invest only in temporary notes or no-fund warrants, time deposits, open accounts, certificates of deposit (CDs), repurchase agreements, and U.S. Treasury bills or notes with maximum maturities of two years. Expanded investment authority currently is allowed only if the municipality or county has a written investment policy that is approved annually by the PMIB.

Repeal Outdated Statute

SB 40 repeals KSA 2008 Supp. 72-9910 and 72-9911 which established the At-Risk Education Council which fulfilled its statutory duty in October of 2006.

School District Consolidation and Disorganization; Personal Financial Literacy; and Disability History and Awareness

SB 41 amends state law dealing with school district consolidation and disorganization. In situations where a school district disorganizes and the territory of the disorganized district is attached to more than one district, the state financial aid of the disorganized district is allocated to the districts to which the territory of the former district is attached. The state financial aid is allocated on the same proportional basis that the assessed valuation of the territory attached to each district bears to the assessed valuation of the entire disorganized district.

The bill requires the State Board of Education to designate a period of time each school year as a time for disability history and awareness. The State Board will develop objectives and guidelines for disability history and awareness, for all grade levels, within existing curriculum. The bill lists a variety of goals of disability history and awareness instruction, including encouraging better treatment of individuals with disabilities. The bill requires each school district to include disability history and awareness with the district's curriculum, as deemed appropriate by the district. The bill also encourages postsecondary educational institutions to conduct and promote activities that provide education, understanding and awareness of individuals with disabilities, disability history, and the disability rights movement.

The bill requires the State Board of Education to develop state curriculum standards for personal financial literacy for all grade levels within the existing mathematics or other appropriate subject matter curriculum. The bill also requires the State Board to encourage school districts, when selecting textbooks for mathematics, economics, family and consumer science, accounting, or other appropriate courses, to select textbooks containing substantive provisions on personal finance. In addition, the bill requires the State Board of Education to include questions relating to personal financial literacy in the statewide assessments for mathematics or social studies when the statewide assessments for mathematics or social studies are reviewed or rewritten. The State Board is required to examine the questions relating to personal financial literacy and rewrite such questions in order to determine if programs on personal financial literacy are equipping students with the knowledge and skills needed to become self-supporting and to enable students to make critical decisions regarding personal finances.

The bill also repeals several statutes which authorized multiple school district transfers and fund transfers between 1965 and 1980.

School Districts and the Cash Basis Law and Local Option Budgets

SB 84 amends the current cash-basis law to create an exception for school districts when expenditures exceed current revenues due to the late payment of general or supplemental general state aid. The bill allows the state to make the balance of its fiscal year 2008-2009 state aid payments to a school district after June 30 without the school districts violating current cash-basis law. Under current law, school districts would be out of compliance with the state's cash-basis law, requiring financial reports to note the violation. The provision does not identify a school year in which it would sunset, allowing it to be on-going.

The bill also provides an alternative formula for the calculation of the local option budget of a school district. The bill authorizes a school district to calculate its local option budget using a base state aid per pupil (BSAPP) of \$4,433 (the amount of BSAPP for the current school year) in any school year in which the BSAPP is less than that amount. The bill also authorizes a school district to calculate its local option budget using an amount equal to the amount appropriated for state aid for special education and related services in school year 2008-2009. (A school district may enact a local option budget up to a maximum of 31 percent of the district's state financial aid, which includes the BSAPP multiplied by a district's adjusted enrollment, and state aid for special education.) This provision expires on June 30, 2012.

Recreation Commission Petty Cash Fund and School District Contingency Reserve Fund

SB 161 amends the law to permit recreation commissions to establish petty cash funds. The amount of money in a petty cash fund would not exceed \$1,000 at any one time.

The bill also limits to 10.0 percent the balance maintained in a school district's contingency reserve fund until school year 2012-2013, when the amount returns to current law, which requires that the amount in a district's contingency reserve fund cannot exceed 6.0 percent of a district's general fund. However, the provisions of SB 161 will not be imposed on any school district whose state financial aid is computed under current law (KSA 72-6445a) related to districts formed by consolidation or disorganization or districts with decreasing enrollments. Any such district may maintain the excess amount in the contingency fund until the amount in the fund is depleted.

Community Foundations

SB 175 allows local boards of education to transfer funds to a community foundation. Funds are required to be deposited into a restricted fund and remain subject to any restrictions imposed by the original donor. Moneys distributed from the fund are required to be made for the benefit of the school district or for a specific purpose as directed by the original donor.

Schools for the Deaf and Blind

SB 290 amends the professional contract negotiations law to include the Kansas State School for the Blind and the Kansas School for the Deaf. The professional contract negotiations law governs how school boards in local districts negotiate contracts with teachers.

Atchison School District and the Former Atchison Juvenile Correctional Facility

HB 2001 allows a student in the custody of the Secretary of Social and Rehabilitation Services or the Commissioner of the Juvenile Justice Authority and who is enrolled in the Atchison School District (USD 409) to be counted as two pupils. The affected students must be housed and receiving educational services at the youth residential center located on the grounds of the former Atchison Juvenile Correctional Facility for the district to qualify at the higher rate. In school year 2009-2010, the bill authorizes a student enrollment of two times the licensed capacity of the youth residential center; for school years thereafter, student enrollment would be two times the actual number of students at the center.

Second Count Date for Military Students

HB 2002 allows a school district to recompute its general fund budget based on a second count of military students on February 20. To be eligible for a second count, a school district is required to have at least 25 military pupils or military students equal to one percent or more of the district's enrollment on February 20 who were not enrolled on September 20. Districts eligible for the second count then add the number of additional military students enrolled on February 20 to the September 20 student count to determine a district's general fund budget.

Epinephrine Administration in Schools

Sub. for HB 2008 authorizes any person to administer epinephrine in an emergency situation to a student or a member of a school staff when (1) the person administering the epinephrine reasonably believes that the student or staff member is exhibiting the signs and symptoms of an anaphylactic reaction; (2) a physician has authorized, in writing, the school to maintain a stock supply of epinephrine; and (3) the epinephrine is administered at school, on school property, or at a school-sponsored event. The bill exempts from liability for civil damages and exempts from the practice of the healing arts any person who gratuitously and in good faith renders emergency care or treatment through the administration of epinephrine to a student or a member of a school staff at school, on school property, or at a school-sponsored event if the person acts as an ordinary and reasonably prudent person would have acted under the same or similar circumstances.

In addition, the bill authorizes any accredited school to maintain an epinephrine kit, if the school chooses to do so. An epinephrine kit may consist of one or more doses of epinephrine. Epinephrine from an epinephrine kit shall be used only in emergency situations when the person administering the epinephrine reasonably believes that the signs and symptoms of an anaphylactic reaction are occurring and if administered at school, on school property, or at a school-sponsored event. A school would not maintain an epinephrine kit unless the school has consulted with a pharmacist licensed by the State Board of Pharmacy. The consultant pharmacist has supervisory responsibility of maintaining the epinephrine kit and responsibility for developing procedures, proper control and accountability for the epinephrine kit. The bill further states that the State Board of Pharmacy may adopt any rules and regulations as necessary regarding the maintenance of epinephrine kits.

Dyslexia

HCR 5015 directs the State Board of Education to take certain actions in relation to children with reading problems, including dyslexia. The resolution directs the State Board to do the following:

- Endeavor to ensure that early screening or testing would identify children with a reading disability, including dyslexia;
- Endeavor to review partnerships with early childhood educators so that reading diagnostic assessments would be used in pre-kindergarten through second grade;
- Endeavor to review the level and pace of implementation of best practices of instruction including, but not limited to, the multi-tier system of support;
- Endeavor to review teacher preparation courses to ensure knowledge of best practices of instruction including, but not limited to, the multi-tier system of support and scientifically-based reading instructional components used to instruct children with disabilities including dyslexia, is addressed;
- Endeavor to ensure that parents have easy access to information, including contact information for school district, school, and Department of Education officials; and
- Submit a report of the activities of the State Board in relation to this resolution to the Legislature on or before December 31, 2009.

Postsecondary Education

University of Kansas Medical Students and the Kansas Tort Claims Act

SB 8 amends KSA 75-6102 to include medical students enrolled at the University of Kansas Medical Center who are in clinical training at the University of Kansas Medical Center or other health care institutions in the definition of “employee” under the Kansas Tort Claims Act. This change would mean that the State of Kansas could be held liable for the student’s action or failure to act, if doing so within the scope of his or her employment. The State of Kansas would provide a defense and indemnification for any claims arising out of these students’ clinical training. The provisions of the bill are retroactive to July 1, 2008.

Community College Land Acquisition

SB 11 allows community colleges to acquire land and improvements not only within the community college district but also within the service area of the community college. The bill defines service areas as designated geographic areas of the state established by agreement of community college presidents and adopted by the Kansas Board of

Regents. Finally, the bill allows the governing body of a technical college to change the name of the college by adopting a resolution.

Regents Campus Inspections

SB 187 allows the State Fire Marshal to appoint certain qualified employees of the State Board of Regents' institutions who may inspect campus buildings in conjunction with the State Fire Marshal's Office.

Postsecondary Education Savings Program

SB 225 extends the Kansas Postsecondary Education Savings Program indefinitely and makes several changes to the administration of the Program. The bill clarifies that the qualifying household income would be from the tax year prior to the submission of an application for a matching grant rather than the income at the time of the application.

The bill allows the State Treasurer to approve no more than 300 applications from a single congressional district for a total of 1,200 applications. If fewer than 300 applications in a single district are approved, then additional applications from the remaining districts may be approved by the State Treasurer. Applications are approved on a first-come, first-served basis. The bill authorizes the state to match, on a dollar-for-dollar basis, participant contributions during the calendar year for which the participant is approved, providing the participant contributes at least \$100 and no more than \$600 in any calendar year.

The bill directs the State Treasurer to transfer matching funds from the State General Fund to the Kansas Postsecondary Education Savings Program Trust Fund not exceeding the maximum amount specified by appropriation act for that state fiscal year. The State Treasurer's annual report on the program is due by January 31.

Technical Education Statute Update

HB 2003 makes a variety of technical amendments to statutes governing postsecondary technical education. Specifically, the bill codifies provisions that have been included in appropriations bills *provisos* regarding development of a funding model for postsecondary technical education, updates references to federal law, and replaces outdated or unnecessary terminology.

Retirement Plan for State Board of Regents

HB 2004 amends existing law to prohibit a participant in the retirement plan of the State Board of Regents from filing a one-time, irrevocable written election to continue participation in the retirement plan if the participant takes a leave of absence and accepts a position in the executive branch of State government.

Fees and Tuition

HB 2007 amends existing law to permit the State Board of Regents to authorize the awarding of fellowships, scholarships, and tuition and fee waivers to both undergraduate and graduate students. The bill removes obsolete language from the existing statute.

Qualified Admissions

HB 2197 amends existing law to authorize the Kansas Board of Regents to adopt rules and regulations setting standards that deviate from those established in the statute for admission of students to state educational institutions. Any such rules and regulations that are more rigorous than those set out in the statute, as amended by the bill, could not go into effect prior to the first day of the fourth academic year following the year in which the rules and regulations are adopted.

The bill provides that Kansas residents and nonresidents graduating from non-accredited private secondary schools could be admitted to a state educational institution if the student has a composite ACT score of not less than 21 points. In addition, a resident who graduated from a non-accredited school would qualify for admission if the applicant is 21 years of age or older.

The bill allows each state educational institution to admit not more than 10 percent of the total number of transfer students who do not meet minimum admission standards. The bill authorizes institutions to admit not more than 10 percent of the total number of non-resident transfer students who do not meet the minimum admission standards. The Board of Regents is required to adopt rules and regulations prescribing systemwide criteria and guidelines for admission to transfer students as exceptions to the minimum standards. The bill requires the Board of Regents to report by January 31 each year to the Legislature the number and percentage of transfer student admissions permitted as exceptions during the preceding academic year.

The bill amends the law by removing the requirement for one unit of computer technology in the prescribed pre-college curriculum. Finally, the bill permits the Board of Regents to submit compiled reports to the Legislature.

ELECTIONS AND ETHICS

KS Highway Patrol Service on Governing Bodies; Corrupt Political Advertising; Sherman County Board of County Commissioners; Substantial Interest Statements of Certain Faculty Members; E-filing of Certain Campaign Finance Reports

HB 2158 addresses the elections and ethics issues of Kansas Highway Patrol members' service on governing bodies of municipalities, corrupt political advertising, electronic filing of certain campaign finance reports, the election method for the Sherman County Board of County Commissioners, and substantial interests statements of certain faculty members. Details of the bill follow.

Kansas Highway Patrol Member Service on Governing Bodies

The bill allows a member of the Kansas Highway Patrol to serve on the governing body of a municipality if the position is appointed or elected on a nonpartisan basis. It also allows a member of the Patrol to serve on an appointed task force the Patrol superintendent deems necessary as part of the member's duties.

It forbids any member of the Patrol from accepting any reward or gift pertaining to the performance of the member's duties.

This portion of the bill became effective upon publication in the *Kansas Register*.

Additions to "Corrupt Political Advertising" Statute

The bill makes additions to the statute relating to the crime of corrupt political advertising of a state or local office, as follows:

- It prohibits the making of any website, e-mail, or other internet communication expressly advocating the nomination, election, or defeat of a clearly identified candidate for state or local office, which is disseminated to 25 or more individuals by a candidate, candidate committee, party committee, or political committee, unless the information disseminated is followed by a statement which indicates who paid for or sponsored the communication.
- It blends two versions of the prior statute, which resulted from the statute being amended twice in 2007. The new language shown in subsection (b) (1)(C) was enacted by the Legislature in one of the 2007 amendments to that statute.

E-Filing of Campaign Finance Reports by Statewide Candidates

The bill requires the electronic filing of regular campaign finance reports by candidates for offices elected on a statewide basis.

Election of Sherman County Board of County Commissioners

Effective upon publication in the *Kansas Register*, this portion of the bill allows the Board of County Commissioners of Sherman County (Board) to provide for the at-large election of its members if the voters of Sherman County approve the proposal.

The Board is required to adopt a resolution that provides for the following:

- Each county commissioner would run at large, and each candidate is permitted to reside anywhere in Sherman County;
- All qualified electors residing in Sherman County are permitted to vote in both the primary and general election for each county commissioner being elected;
- Primary elections are to be conducted on a partisan basis. Primary election voters are permitted to vote for the same number of candidates as the number of commissioners being elected. The candidate receiving the highest number of votes will appear on the general election ballot, for each county commissioner being elected. No person is permitted to cast more than one vote for any specific candidate;
- General election voters are allowed to vote for the same number of candidates as the number of county commissioners being elected. The candidate receiving the highest number of votes for each commissioner office being elected will be deemed to have been elected;
- Unless the Sherman County voters elect to adopt this at-large election method, the statute allowing it expires on December 31, 2010; and
- The bill makes conforming changes to other sections of law.

Substantial Interests Statements of Certain Faculty Members

At the option of the employing educational institution, the bill creates the following temporary alternative to the currently required statement of substantial interests (SSI), which expires on July 1, 2010:

- The alternative form is permitted in lieu of the SSI required by law to be sent by each faculty member who receives an annual salary of \$50,000 or more, other than an adjunct faculty member, who is employed by a state education institution governed by the Kansas Board of Regents (KBOR) to the Secretary of State (and maintained by the Kansas Governmental Ethics Commission [KGEC]);
- The alternative form must contain the same information required in the SSI that is filed with the Office of Secretary of State, it will be considered an open public record, and it must be filed annually as part of the educational institution's appointment or salary notification process. Any additional conflict of interest information required by the KBOR or the employing institution may be placed in the faculty member's personnel file and may be considered confidential; and
- The executive officer of any KBOR institution must notify the KGEC in writing if that institution's faculty will be using the alternative form in lieu of the regular SSI.

ENERGY AND UTILITIES

Sale or Relinquishment of Certain Utilities

SB 80 relates to the sale or relinquishment of certain public utilities. Details of the bill follow.

Sale of Utilities by Cities of the Third Class

A portion of the bill relates to the sale of electric light or waterworks plants; electric transmission lines; or water, gas or electric distribution systems by cities of the third class. The bill reduces the number of favorable votes needed to approve the sale, from a majority of the qualified electors to a majority of qualified electors who vote in the election.

Relinquishment of Natural Gas Utilities to Kansas Corporation Commission

The bill adds natural gas public utilities to a statute allowing a city to relinquish its regulatory powers over a privately owned utility. Under current law a city may relinquish to the Kansas Corporation Commission (KCC) its regulatory authority over only a privately owned water public utility; the bill allows cities also to relinquish regulatory oversight of natural gas utilities. The statute requires the KCC to assume jurisdiction and control upon receipt of an ordinance relinquishing jurisdiction of the utility.

Kelsey Smith Act

Senate Sub. for HB 2126 enacts the Kelsey Smith Act, which requires wireless telecommunications carriers to provide information about the location of the telecommunications device of a user of the carriers' services, if requested by a law enforcement agency in order to respond to a call for emergency services or to respond in an emergency situation that involves risk of death or serious physical harm. Wireless carriers are authorized, but not required, to establish protocols for voluntary disclosure of call location information. The provision of information as required by the bill does not create a cause of action against a telecommunications carrier acting in good faith and in accordance with the provisions of the Act.

To facilitate requests from law enforcement for call location information, the Kansas Bureau of Investigation is required to obtain the contact information for all wireless telecommunications carriers doing business in Kansas, and to distribute that information to public safety answering points quarterly or any time a change in the information occurred. The Bureau is required to adopt rules and regulations to implement the Act by July 1, 2010.

**Renewable Energy Standards Act, Net Metering and Easy Connection Act,
Compressed Air Energy Storage Act, and Various Other Energy-
Related Provisions**

Senate Sub. for HB 2369 enacts new law and amends existing law related to energy.
The bill:

- Enacts the Renewable Energy Standards Act;
- Enacts the Net Metering and Easy Connection Act;
- Enacts new law regarding fuel efficiency for state-owned motor vehicles and energy efficiency of state-owned and leased space and equipment;
- Amends the parallel generation statute;
- Amends the Kansas Air Quality Act in regard to its relationship to federal law and in regard to emergency authority;
- Amends existing law to authorize large electric cooperatives to be deregulated under certain circumstances;
- Directs the Joint Committee on Energy and Environmental Policy to study the use of federal stimulus funds allocated for energy issues;
- Amends the Kansas Electric Transmission Authority Act authorizing collection of fees for certain activities and clarifying other Authority powers;
- Amends existing law regarding entities that store hydrocarbons underground;
- Enacts the Compressed Air Energy Storage Act;
- Requires the purchase of Kansas coal by any new coal-fired electricity generating plant in Kansas, under certain circumstances; and
- Requires the Secretary of Health and Environment to comply with the settlement reached between Sunflower Electric Power Corporation and the State.

Elements of the bill are described below.

Renewable Energy Standards Act

The bill enacts the Renewable Energy Standards Act that requires electric public utilities, except municipally owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources. The Kansas Corporation Commission (KCC) is given broad authority to adopt rules and regulations implementing the standards and establishing enforcement mechanisms including administrative fines.

Renewable energy may be generated by wind; solar thermal sources; photovoltaic cells and panels; dedicated crops grown for energy production; cellulosic agricultural residues; plant residues; methane from landfills or from wastewater treatment; clean and untreated wood products such as pallets; existing hydropower; new hydropower, not including pumped storage, that has a nameplate rating of 10 megawatts or less; fuel cells using hydrogen produced by one of the other renewable energy resources; and other sources of energy, not including nuclear power, that become available after enactment of the bill and that are certified as renewable under rules and regulations of the KCC.

The renewable portfolio requirement requires utilities to obtain net renewable generation capacity constituting at least the following portions of each affected utility's peak demand based on the average of the three prior years:

- 10 percent for calendar years 2011 through 2015;
- 15 percent for calendar years 2016 through 2019; and
- 20 percent for each calendar year beginning in 2020.

Renewable energy credits may only be used to meet a portion of the requirement in 2011, 2016, and 2020, unless otherwise authorized by the Commission.

Each megawatt of eligible renewable capacity installed in Kansas after January 1, 2000, will count as 1.10 megawatts for purposes of compliance with the renewable energy requirement. The capacity of any systems interconnected with the affected utilities under the Net Metering and Easy Connection Act (also part of the bill) or the parallel generation statute will count toward compliance with the renewable energy requirement.

The KCC is required to allow affected utilities to recover reasonable costs incurred by the utilities to meet the requirements of the Act.

Net Metering and Easy Connection Act

The bill enacts the Net Metering and Easy Connection Act and amends the parallel generation statute. The Net Metering Act requires any investor-owned electric utility to make net metering available to customer-generators under certain circumstances. Renewable energy resources that may be used to generate electricity under the Net Metering Act would be the same as those defined in the Renewable Energy Standards Act. The KCC is authorized to approve net metering tariffs requested by electric utilities for methods of renewable generation not described in the Net Metering Act.

The KCC is required to adopt rules and regulations to implement the Net Metering Act. Electric companies are able to recover costs incurred in connection with compliance with the Net Metering Act.

Customer-generators may utilize either the parallel generation statute or the Net Metering Act. The choice must be made in writing and filed with the company serving the customer-generator. The maximum capacity of generating equipment allowed for use by customer-generators under the Act is 25 kilowatts for residential customers and 200 kilowatts for other customers.

The Act requires that retail electric companies measure the net power produced and consumed by the customer-generator during a billing period by using a bidirectional meter provided at no cost to the customer-generator by the electric company. If the company provides the customer-generator with more power during a billing period than the customer generates, the customer will be billed for the net amount of electricity provided by the company. If the amount of electricity generated by the customer exceeds the amount provided by the company, the net excess electricity generated by the customer will be carried forward from month to month and credited at a ratio of 1:1 against the customer's energy consumption. Credits remaining at the end of the calendar year will expire. Reasonable costs incurred by a utility under the Net Metering Act will be recoverable in the utility's rate structure.

Customers' generating equipment must meet specifications established by the Act including being appropriately sized to the customer-generator's electrical load and complying with specified safety, performance, interconnection and reliability standards. The utility may not require a customer-generator to purchase additional insurance if the net metering facility meets the safety and performance standards in the Act. A utility will not be liable, directly or indirectly, for permitting or continuing to allow an attachment of a net metered facility or for the acts or omissions of a customer-generator that cause loss or injury, including death, to any third party.

An electric company is required to accept on its system only total customer-generator capacity equal to a maximum of one percent of the company's net generation capacity. The KCC is authorized to increase the limit after a hearing.

Energy Efficiency

The bill requires the Secretary of Administration to adopt rules and regulations within 18 months of the effective date of the Act:

- Requiring the average fuel efficiency for state-owned vehicles purchased during 2011 to be at least 10 percent higher than the fuel efficiency of state-owned vehicles purchased in 2008 if such purchases would be life-cycle cost-effective;
- Establishing energy efficiency guidelines for state agencies for the purchase of products and equipment such as appliances, lighting fixtures and bulbs, and computers, that are at least as energy efficient as similar products that qualify for the Energy Star® program if the avoided energy cost over the life of the product is equal to or greater than the additional cost paid for the more efficient product;
- Establishing energy efficiency performance standards for state-owned and leased real property, and requiring state agencies to conduct an energy audit at least every five years on all state-owned real property. The Secretary is prohibited from approving, renewing or extending any building lease unless the lessor has submitted an energy audit for the building. Lessors are required to address the performance standards based on the energy audit. On an annual basis, the Secretary must submit a report to the Legislature, the Joint Committee on State Building Construction, the House Committee on Energy and Utilities, and the Senate Committee on Utilities, identifying properties where an excessive amount of energy is being used;
- Prescribing energy efficiency performance standards for construction of state buildings. All new and, to the extent possible, renovated, state-owned buildings must be designed and constructed to achieve energy consumption levels that are at least the levels specified by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1-2007 or the 2006 International Energy Conservation Code (IECC). Regulations adopted under these provisions apply only if they are life-cycle cost-effective.

The Energy Office of the Kansas Corporation Commission (KCC) must develop and increase participation of school districts and local governments in the Facility Conservation Improvement Program (FCIP) to the extent that funds are appropriated for that purpose.

Deregulation of Large Electric Cooperatives

The bill amends the law to allow large electric cooperatives to remove themselves from the regulatory jurisdiction of the KCC regarding rates. Under the bill, the option to deregulate is expanded to cover the following entities:

- Electric cooperatives with more than 15,000 members that primarily sell power at retail;
- Limited liability companies or corporations that provide wholesale electric service and are owned by four or more electric cooperatives that provide retail service in Kansas; and
- Any member-owned corporation formed prior to 2004.

Those entities and other cooperatives are under the jurisdiction of the KCC for purposes of the Renewable Energy Standards Act.

The bill amends the law to require that, in the case of a generation and transmission cooperative that elected to be deregulated, a petition signed by at least 20 percent of that cooperative's members or by five percent of the aggregate retail customers of such members would trigger a KCC review of a rate change. In addition, the bill requires cooperatives that deregulate to notify customers of their right to request KCC review of a rate change. The bill also clarifies the statute regarding the portion of members of a retail distribution cooperative who must sign a rate review petition.

Kansas Air Quality Act Amendments

The bill amends the Kansas Air Quality Act to prohibit the Secretary of Health and Environment from promulgating rules and regulations that are more stringent than required by the federal Clean Air Act or rules and regulations authorized by that Act unless authorized by the Legislature to do so. The restriction in the bill does not apply to a plan for a nonattainment area under the federal Clean Air Act. The bill also prohibits rules and regulations under the State Act from being enforced in any area of the State prior to the time required under the federal Act. Counties are prohibited from utilizing home rule authority to create exemptions from, or to change the application of, the Kansas Air Quality Act.

The Secretary is prohibited from denying or delaying issuance of a permit required under the State Act if the requirements of that Act have been met by the applicant.

KSA 65-3012 is amended to establish a procedure for addressing air pollution emissions that pose an imminent and substantial danger to public health or welfare or to the environment. The new provision authorizes the Secretary of Health and Environment to issue a temporary order directing the owner or operator of the pollution source to take steps necessary to prevent the offending act or to eliminate the offending practice. The order may not exceed seven days in duration.

When the temporary order is issued, the Secretary may file an action in district court to enjoin the offending activity. Alternatively, the Secretary may request the Attorney General or the appropriate county or district attorney to file for the injunction. In addition, the Secretary may bring suit in any court of competent jurisdiction to immediately restrain the offending acts or practices. The court may issue a temporary or permanent injunction if the Secretary shows that the offending condition or situation exists.

Persons aggrieved by an order of the Secretary issued under the new procedure are entitled to review the Secretary's action under the Act for Judicial Review and Civil Enforcement of Agency Actions. The aggrieved party is not required to exhaust other or additional administrative remedies available within the agency. A petition for review under the new provision has precedence over other cases in regard to order of trial.

Joint Committee on Energy and Environmental Policy

The bill requires the Joint Committee on Energy and Environmental Policy to study and make recommendations regarding the use of moneys received under the American Recovery and Reinvestment Act of 2009 for energy efficiency, weatherization, energy conservation, alternative fuel vehicles and state energy programs. The results of these studies will be submitted to the Legislature in 2010 and 2011 as part of the Committee's annual report.

Kansas Electric Transmission Authority

The bill authorizes the Kansas Electric Transmission Authority (KETA) to establish and charge reasonable fees, rates, tariffs or other charges for use of facilities owned, financed or administered by KETA and for services rendered by KETA, provided that such costs are not recoverable through tariffs authorized by the Southwest Power Pool or the Kansas Corporation Commission. Such fees may be charged only to the entity or entities that request services from KETA.

The amendment also clarifies that KETA's statutory rights and powers extend to electric transmission lines that have been deemed compatible with plans adopted by the Southwest Power Pool, as well as to transmission lines with an operating voltage of 60 kilovolts or more that have been approved by the Southwest Power Pool.

Underground Hydrocarbon Storage Wells

The bill amends the law regarding underground hydrocarbon storage wells by adding a definition for “company or operator.” The term is defined as any form of legal entity, including a corporation, limited liability company, and limited or general partnerships.

Compressed Air Energy Storage Act

The bill establishes a system of regulation for the injection of compressed air into storage wells and the maintenance of underground storage of compressed air. The KCC is required to adopt rules and regulations addressing issues such as site selection, design and operation criteria, and requirements for monitoring, safety and closure.

The KCC also is authorized to establish rules and regulations establishing fees for permitting, monitoring and inspecting compressed air storage facility operators. Moneys received under the Act will be deposited in the Compressed Air Energy Storage Fund, created by the Act, and used to pay the costs of regulation.

The Kansas Department of Health and Environment (KDHE) is required to adopt rules and regulations related to air emissions from compressed air energy storage wells and storage facilities to ensure compliance with the Kansas Air Quality Act. The KCC and KDHE are authorized to enter into a memorandum of understanding concerning implementation of the Act.

The bill creates financial penalties for violations of the Act.

All rules and regulations issued pursuant to the Act must be adopted within 18 months of enactment of the new law.

Kansas Coal Requirement

Any new coal-fired electricity generation facility in Kansas constructed after the effective date of the Act must purchase at least five percent of its coal from Kansas coal mines only if the Kansas coal is cost-competitive to out-of-state coal, is sold on comparable terms and specifications, and is of an acceptable quality for use in the facility. In addition, the requirement does not apply if it would cause the facility to violate its air permit or a contractual obligation.

Settlement Agreement

The bill adds a new provision in the Kansas Air Quality Act to require the Secretary of Health and Environment to approve the air quality permit for Sunflower Electric Power

Corporation's proposed new facility at Holcomb consistent with the settlement agreement executed May 4, 2009, between Sunflower and the State of Kansas. The settlement will resolve actions pending before various courts and administrative agencies.

Energy Storage

HR 6011 requests the Kansas Corporation Commission study and report to the Legislature on several issues related to energy storage. Specifically, the Commission is requested to do the following:

- Convene a group of stakeholders to study energy storage as a cost-effective way to stabilize renewable energy generation, address transmission congestion costs, increase system reliability, and increase the potential for distributive generation. The Commission is requested to submit a report and recommendations based on that study to the Legislature by January 1, 2010;
- Establish a method of cost recovery and earnings on investments in energy storage devices by electric utilities, and submit a report and recommendations on this method to the Legislature by January 1, 2010; and
- Address cost recovery if energy storage is used in conjunction with generation, including asking the Southwest Power Pool to determine how cost recovery in these circumstances should be treated, and report to the Legislature on such cost recovery by January 1, 2011.

Construction of Electricity Transmission Lines

HR 6018 expresses the Legislature's support for the efforts of the Kansas Electric Transmission Authority (KETA) to facilitate the construction of electricity transmission lines in the State. The resolution also expresses the Legislature's encouragement for KETA to continue participating in proceedings of the Kansas Corporation Commission and the Southwest Power Pool regarding transmission of electricity in Kansas.

FEDERAL AND STATE AFFAIRS

William Inge Theatre Festival

SB 1 designates the William Inge Theatre Festival in Independence, Kansas, as the official state theatre festival.

Cereal Malt Beverage Act

SB 53 makes changes in the Cereal Malt Beverage Act by allowing a county or a city certain discretion on whether to issue, revoke, or suspend a retail cereal malt beverage license to any person, partnership, or corporation if any member or stockholder of such entity owns or has owned a 25 percent aggregate of stock of such corporation.

Firefighters Authority

SB 115 allows firefighters to temporarily blockade any public highway while in the discharge of their official duties. The bill also replaces the term “firemen” with “firefighters.”

Kansas Open Meetings Act

SB 135 makes a technical amendment to the Kansas Open Meetings Act (KOMA). The bill substitutes the phrase “interactive communications” in a series for “meetings in a series” to clarify that serial meetings, except for legislative meetings as provided by Section 22 of Article 2 of the Constitution of Kansas, are required to be open under KOMA.

Amusement Rides

SB 178 exempts home-owned amusement rides from the Kansas Amusement Ride Act. The bill defines home-owned amusement rides as rides owned by a not-for-profit entity, operated solely within a single county by volunteers for 12 days or less per year.

The bill authorizes the Secretary of the Department of Labor to adopt and promulgate rules and regulations on or before July 1, 2010, to deal with the inspections of amusement rides regulated by the Kansas Amusement Ride Act. Home-owned amusement rides are exempt from the rules and regulations.

Liquor Control Act and Club and Drinking Establishment Act

SB 212 amends the Liquor Control Act and the Club and Drinking Establishment Act.

The bill permits in-state and out-of-state wineries to directly ship wine to consumers in the State of Kansas upon obtaining a special order shipping license and payment of a \$50 fee to the Department of Revenue. Under the bill, the purchaser is required to pay the purchase price, the liquor enforcement tax, and all shipping costs. The liquor enforcement tax has to be paid on the purchase price and not the shipping costs. The bill requires the permit holder to collect the gallonage taxes and enforcement tax.

The bill repeals KSA 2008 Supp 41-348 and 41-349 which authorized the shipment of wine by in-state and out-of-state wineries.

The bill prohibits a holder of a special order shipping license from shipping more than 12 cases of wine to any consumer or address per calendar year. The holder of the license is required to have the purchaser affirm that such purchaser is 21 years of age or older. The permit holder has to verify the age of the purchaser by the physical examination of an approved, government-issued form of identification or by utilizing an Internet-based age and identification service that is authorized by the Director of the Division of Alcoholic Beverage Control (ABC) or the Director's designee.

In addition, the bill requires every shipment of wine to be clearly marked "Alcoholic Beverages, Signature Required." The carrier delivering the wine is responsible for obtaining a signature of a person who was at least 21 years of age or older.

The bill allows a wine licensee to sell wine produced and bottled by a wine licensee at a *bona fide* farmer's market located at a site approved by the Director of ABC. The licensee is required to have an annual *bona fide* farmer's market sales permit. The licensee is restricted to selling wine one day per week in the original unopened container.

Under the bill, "*bona fide* farmer's market" means any location of a farmer's market that is subject to inspection by the Department of Agriculture. The bill authorizes the Secretary of Revenue to adopt rules and regulations to implement the provisions of the Act.

The bill allows licensed farm wineries to hold a manufacturer's license provided that no alcoholic liquor or cereal malt beverage manufactured by such licensee would be sold at such licensee's premise or at any such licensee's winery outlet.

The bill allows a winery outlet licensee to manufacture and store domestic table wine and domestic fortified wine such that the aggregate quantity of wine produced, including all winery outlets, does not exceed 100,000 gallons per year.

The bill requires an applicant for a special shipping order license to file a joint and several bond in the amount of \$750.

The bill allows a drinking establishment to store wine on the premise which had been sold to a customer for future consumption. The bill requires the wine to be stored in its unopened condition and prohibits the wine being removed from the licensed premises in its unopened condition.

The bill allows the consumption of alcoholic liquor at a special event held on public streets, alleys, roads, sidewalks, or highways closed to motor vehicle traffic when a temporary liquor permit has been issued for such event. Temporary permits are issued by the Director of ABC, and these permits are issued for the special events authorized by the bill.

The bill defines “special event “ as a picnic, bazaar, festival, or other similar community gathering which has been approved by ordinance or resolution of a city, county, or township where the event is being held.

Under the bill, the boundaries of such special event have to be clearly marked by signs, a posted map, or other means which identifies the area in which alcoholic liquor may be consumed.

The bill allows drinking establishments that are adjacent to, or within the licensed premises of, a special event to request that the drinking establishment’s licensed premises be extended to, and made part of, the licensed premises of the special event.

The bill holds each licensee selling alcoholic liquor for consumption on the premises of a special event liable for violating the laws governing the sale and consumption of alcoholic liquors.

The bill prohibits a person from:

- Removing any alcoholic liquor from inside the boundaries of the special event area; and
- Possessing or consuming alcoholic liquor inside the special event area that was not sold by the licensee holding the temporary permit.

The bill amends the Club and Drinking Establishment Act by allowing the governing body of any city or county to request, at any time, the Director of ABC to hold a hearing to determine if a club or drinking establishment license should be revoked or suspended.

Under the bill, the governing body has to provide reasonable cause to the Director of ABC to determine if a hearing is necessary based upon factors to be included in rules and regulations issued by the Secretary of the Department of Revenue. The Director of ABC

may refuse the governing body's request if reasonable cause is not provided and may refuse to grant a renewal or may revoke or suspend a license based upon the evidence.

The bill has a severability provision whereby if any provision of the Kansas Liquor Control Act is found to be unconstitutional, it will be repealed and the remaining provisions would still have effect and be construed to limit commerce in alcoholic liquor and enhance strict regulatory control by the state.

Concealed Carry Licenses: Military

HB 2308 allows a member of the active duty military to obtain a concealed carry license number if he or she does not have a Kansas driver's license or a Kansas nondriver's license identification card. The Attorney General has to assign a unique concealed carry license number to a military applicant. Upon completing all other requirements for a concealed carry permit, a member of the armed forces would be granted a license under the Personal and Family Protection Act.

Under the bill, the Attorney General is not required to issue a concealed carry license if any applicant has:

- Attempted to commit suicide in the five years immediately preceding the application; or
- Has been adjudicated as a mental defective or committed to a mental institution.

The bill defines "adjudicated as a mental defective" to mean a determination of the court, board or commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease:

- Is a danger to one's self or others; or
- Lacks the mental capacity to contract or manage such person's own affairs.

"Adjudicated as a mental defective" includes a finding of insanity by a court in a criminal case, and those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the United States Uniform Code of Military Justice.

The bill also defines "committed to a mental institution" to mean a formal commitment of a person to a mental institution by a court, board or commission, or other lawful authority.

“Committed to a mental institution” also includes a commitment to a mental institution involuntarily, commitment for mental defectiveness or mental illness, and commitments for other reasons such as drug use. “Committed to a mental institution” does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

FINANCIAL INSTITUTIONS

State Chartered Credit Unions; Field of Membership, Branches

SB 72 amends provisions pertaining to the field of membership in Kansas-chartered credit unions to specify that a person who is a member of a credit union remains a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. The bill also expands upon the list of who may be a member of a credit union to include:

- Spouses of persons who died while such person was within the field of membership of the credit union;
- Employees of the credit union;
- Persons who retired from any qualified employment group within the field of membership;
- Persons from a volunteer group recognized by the management of the association(s) or employee group(s) within the field of membership who have completed a specified training program, serve on the board of the volunteer group, or serve as an officer of the group;
- Members of the credit union member's immediate family or household;
- Organizations whose membership consists of persons within the field of membership; and
- Corporate or other legal entities within the field of membership identified in the charter, articles of incorporation, or the bylaws of the credit union.

The bill defines the term "immediate family or household" to mean spouse, parent, stepparent, grandparent, child, stepchild, sibling, grandchild or former spouse and persons living in the same residence maintaining a single economic unit with persons within the credit union's field of membership. The bill also allows credit unions, whose bylaws adopted a definition of "immediate family" prior to June 30, 2008, to use that previously adopted definition. A credit union is permitted to adopt a more restrictive definition of "immediate family or household."

The bill also creates an allowance for a credit union to establish a replacement branch (for branches grandfathered under the 2008 law) if the branch is unable to continue operations as a result of a condition outside of its control. The conditions specified in the

bill include natural disaster, eminent domain proceedings, loss of lease, loss of sponsor space, or any other condition outside of the control of the credit union.

Mortgages and Mortgage Loan Originators—Regulation

SB 240 enacts new law and amends the Uniform Consumer Credit Code (UCCC) and the Kansas Mortgage Business Act (KMBA) to amend and establish standards for the regulation of mortgages and mortgage loan originators. Among the amendments in the bill, are the following:

- **Computation of Time (UCCC).** Specifies that any period of time included in provisions of the UCCC will be calculated in calendar days.
- **Mortgage Loan Originators, Powers of the Administrator and Prohibited Practices (UCCC).** Allows the Administrator of the Code to deny, revoke, or suspend the registration of a residential mortgage loan originator under certain findings, including if the applicant or registrant has been convicted of any crime involving fraud, dishonesty or deceit, or the applicant or registrant has not completed all requirements for registration or renewal.
- The Act also specifies prohibited practices for licensees and registrants including: delaying the closing of a loan for the purpose of increasing interest, costs, fees or charges payable by the borrower and engaging in any fraudulent lending or underwriting practices.
- **Definitions (KMBA).** Amends the definition of “loan originator” and adds definitions for “loan processor or underwriter”, “clerical or support duties” as it applies to loan processors and underwriters, “Nationwide Mortgage Licensing System and Registry”, and “unique identifier.”
- **Participation Requirements, Nationwide Mortgage Licensing System and Registry (KMBA).** Requires mortgage business involving loan origination, in addition to registration, to maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (if operational at the time of registration).
- **Licensure, Mortgage Business (KMBA).** Amends required licensure from biennial to annual.
- **Criteria for Denial of Applicant for Registration (KMBA and UCCC).** Specifies criteria in which the Banking Commissioner is not allowed to grant a registration to loan originators (includes felony convictions, license

or registration revocation in other jurisdictions). Similar amendments are made to the UCCC to specify application criteria for the Administrator.

- **Regulation By the Commissioner—Rules and Regulations; Fees; Education; and Fingerprinting (KMBA).** Permits the Commissioner to adopt rules and regulations to implement the requirements of the federal S.A.F.E. Act (Secure and Fair Enforcement for Mortgage Licensing Act of 2008). Enhances investigative authority to include controlling access to documents and records of the licensee or registrant under examination or investigation. The Commissioner is required to establish fees associated with administration of the Act with the charges to be based on the licensee's loan volume. For education – specifies preclicensing education hours (applicants) and completion of continuing education (CE) hours on an annual basis (previously biannual for CE). For fingerprinting – Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agency.

Additional provisions are added to allow the Commissioner to use the Registry for requesting and distributing information regarding loan originators and, additionally, the bill makes similar amendments to the UCCC to include prohibited acts and define the practices and registration of mortgage loan originators mortgage companies, for collecting and transacting fees, for reporting violations of the law and enforcement activities, and for filing reports.

- **Surety Requirements (KMBA).** Amends surety standards and permits the Commissioner to establish an amount (not less than \$50,000 for *bona fide* office; \$100,000 for applicant or licensee who does not maintain a *bona fide* office) in rules and regulations; specifies terms of the bond.
- **Prohibited Practices, Amendments (KMBA).** Specifies additional prohibited practices in the Act to include the solicitation, advertisement or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of the solicitation, advertisement, or contract.
- **Recordkeeping (KMBA).** Allows the Commissioner to adopt rules and regulations to specify a records retention period. Requires licensees to establish security procedures for records and arrange for preservation of those records.
- **Mortgage Transactions, Journal Entries (KMBA).** Requires inclusion of the name of the loan originator and recording of any compensation or other fees.

- **Definitions (UCCC).** Adds definitions for “residential mortgage loan originator,” “loan processor or underwriter,” “Nationwide Mortgage Licensing System and Registry,” “residential mortgage loan,” “registrant,” and “unique identifier.”

Additionally, the bill makes similar amendments to the UCCC to include prohibited acts and define the practices and registration of mortgage loan originators (as outlined above for requirements applied to the Kansas Mortgage Business Act).

Kansas Manufactured Housing Act—Exemption

HB 2091 amends existing law to clarify that the provisions of the Kansas Manufactured Housing Act would not apply to modular homes.

A “modular home” is defined elsewhere in the Act (KSA 58-4202) to mean “a structure which is: (1) Transportable in one or more sections; (2) designed to be used as a dwelling on a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; and (3) certified by its manufacturer as being constructed in accordance with a nationally recognized building code.”

Reciprocal Deposits of Public Moneys

HB 2185 amends laws governing the reciprocal deposits of invested local and state funds. Specifically, the bill amends a provision in the banking code governing the deposit of public moneys, a provision in the law governing the idle investments of counties, cities, school districts, and other entities specified, and a law governing the deposit of state moneys by the director of investments (the Pooled Money Investment Board) to provide that public moneys or funds deposited through a selected bank, savings and loan association or savings bank which participates in a reciprocal deposit program would not be treated as securities and would not need to be secured. Such participating bank would receive reciprocal deposits from other participating institutions located in the U.S. in an amount equal to the amount of funds deposited by the municipal corporation or quasi-municipal corporation and the total cumulative amount of each deposit could not exceed the maximum deposit insurance amount for one depositor at one financial institution, as determined by the FDIC (Federal Deposit Insurance Corporation).

The law governing the deposit of public moneys at the investment rate (established in KSA 12-1675a) or a rate exceeding the investment rate is amended by the bill to specify that, if no local financial institution qualifies for deposit for the local unit (unable to make a deposit at a rate equal to or greater than the investment rate), the unit may select one or more eligible banks, savings and loan associations, and savings banks which have offices in all or a part of the investing unit’s county (or counties) which will make

the deposit at or greater than the investment rate. Under the existing law, the investing governmental unit must select one or more of the eligible institutions in its representative county or counties.

Additionally, the reciprocal deposits, the bill provides, are not to be treated as securities and would not need to be secured as provided in this Act or any other act, except when the deposits are secured as provided in KSA 75-4218, when they are held by a designated financial institution prior to placement with reciprocal institutions, or upon maturity.

HEALTH

Prescription Drug Donation and Distribution Programs

SB 16 amends existing law to clarify that the donation, acceptance, transfer, distribution or dispensing of any drug in compliance with the provisions of the Cancer Drug Repository Program and the Utilization of Unused Medications Act do not constitute a violation of the Pharmacy Act of the State of Kansas.

Board of Pharmacy—Methamphetamine Precursor Act; Pharmacy Act Amendments; Fingerprinting Authority; Board Membership

SB 33 enacts new law and amends the Pharmacy Act and the laws governing the State Board of Pharmacy as follows:

- Establishes the Statewide Electronic Logging System for Sale of Methamphetamine Precursor Act;
- Repeals duplicative statutory language concerning the sale of durable medical equipment;
- Provides the Board of Pharmacy with new authority to require fingerprinting;
- Amends existing law concerning regulation of pharmacy technicians; and
- Amends the Board of Pharmacy membership.

Methamphetamine Precursor Act. The bill enacts new law to be cited as the Statewide Electronic Logging System for Sale of Methamphetamine Precursor Act and amends existing law concerning the sale of methamphetamine precursors. The bill defines a “methamphetamine precursor” to be any compound, mixture or preparation containing pseudoephedrine, ephedrine or phenylpropanolamine. The sale of methamphetamine precursors which are prescribed are excluded from the requirements of any logging system.

The bill requires the Board of Pharmacy to establish and maintain a statewide electronic logging system documenting the sale of methamphetamine precursors. The Board is required to promulgate rules and regulations that specify a standardized format for the electronic log and the information each pharmacy will be required to submit to the Board. Information required to be submitted includes:

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- The name and address of the person purchasing, receiving or otherwise acquiring the methamphetamine precursor;
 - The name of the product and quantity purchased;
 - The date and time of the purchase; and
 - The name, or initials, of the licensed pharmacist, registered pharmacy technician or pharmacy intern or clerk supervised by a licensed pharmacist who sold the product.

Each pharmacy is required to maintain the purchaser's signature as set out in current law (KSA 65-1643(k)) which requires that any person purchasing, receiving or otherwise acquiring a controlled substance must produce a photo identification that shows the date of birth of the person and the person must sign a log.

The bill requires each pharmacy, if capable, to submit the information from the electronic log in real time in accordance with transmission methods specified by rules and regulations. The Board will be allowed to issue a waiver exempting a pharmacy from compliance with the requirement to submit the methamphetamine precursor sales log electronically if the pharmacy can show good cause. The definition of "good cause" will include, but not be limited to, a mechanical or electronic failure or a financial, technological or other undue burden on the pharmacy. If granted a waiver, a pharmacy is permitted to submit the required log information in paper form or by other means.

Additionally, the bill includes the following provisions:

- That no pharmacy, or pharmacy employee, be liable to any person in a civil action for damages or other relief arising from a sale of a methamphetamine precursor that occurs at another pharmacy;
- That the cost of establishing and maintaining the statewide electronic logging system is borne by the state, other non-state units of government, private entities, or others;
- That the Board is authorized to receive and expend or supervise the expenditure of any donation, gift, grant or bequest made to the Board for any phase of the statewide electronic logging system;
- That pharmacies are not required to bear any costs, including additional charges, associated with establishing and maintaining the electronic logging

system or for transmitting data to the electronic logging system database or receiving information from the database;

- That, in the event funding for a statewide program is not available, the Board is allowed to implement the program on a regional, countywide or other basis. Any non-statewide programs are required to comply with the requirements applicable to a statewide program and are not allowed to utilize different vendors;
- That the Board is allowed to contract with another state agency or private vendor to ensure the effective implementation and operation of the electronic logging system. The state agency or vendor is required to have the technological capability to receive electronic log data and to send, in real time, notification to law enforcement officials and to bridge with existing and future operational systems used by pharmacies;
- That all information collected for the program database and any records maintained by the Board, or any entity contracting with the Board, be retained for five years unless a written request has been submitted by a law enforcement entity; and
- That the Board is required to review the effectiveness of the program for recording the sale of methamphetamine precursors and submit an annual report to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services.

Further, the electronic log information submitted to the Board is not subject to the Kansas Open Records Act. The Board is authorized to provide data in the electronic log to specified persons, including:

- Any person authorized to prescribe or dispense products containing pseudoephedrine, ephedrine, or phenylpropanolamine, for the purpose of complying with the provisions of this Act; and
- Local, state and federal law enforcement or prosecutorial officials.

The Board is allowed to provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients or persons.

Any pharmacy or person who knowingly violates provisions of the bill is guilty of a severity level 10, nonperson felony. The Board of Pharmacy is required to adopt rules

and regulations necessary to carry out the provisions of the Act within six months of the effective date of the bill.

Durable Medical Equipment. The bill repeals duplicative law (KSA 2008 Supp. 65-1643b) concerning the unlawful sale, lease or offer for sale or lease of durable medical equipment without first obtaining a registration from the Board of Pharmacy, and inserts the amended provisions into KSA 2008 Supp. 65-1643. The amendment results from a section of law being amended twice during the 2007 Legislative Session.

Fingerprinting Authority. The bill allows the Board of Pharmacy to require a person to be fingerprinted and submit to a state and national criminal history record check as part of an original application for, or reinstatement of, any license, registration, permit or certificate. The Board also is allowed, in connection with any investigation, to require a holder of a license, registration, permit or certificate to be fingerprinted and submit to a state and national criminal history record check.

Additionally, the bill authorizes the Board to:

- Submit the fingerprints and the criminal history record check to both the Kansas Bureau of Investigation and the Federal Bureau of Investigation;
- Use the obtained information in the verification of the identity of a person and in the official determination of qualifications and fitness of a person; and
- Fix and collect a fee in an amount equal to the cost of the fingerprinting and criminal history record check.

The bill establishes funds in the State Treasury to be used by the Board for the remittance of fees and for paying for the cost of fingerprinting and criminal history record checks.

The bill requires local and state law enforcement officers and agencies to assist the Board in taking and processing fingerprints, and to release all records of adult convictions and nonconvictions and adult convictions or adjudications of another state or country.

Pharmacy Technicians. The bill amends existing law concerning the Board of Pharmacy by requiring all pharmacy technicians to display a registration card in that part of the place of business in which they engage in pharmacy technician activities. The pharmacy is no longer required to post the names of the pharmacy technicians who are currently on duty.

Board Membership. The bill increases the number of members for the Board of Pharmacy from six to seven, of which six will be licensed pharmacists. Also, effective July 1, 2009, the term of office of each Board member is extended by one year and Board members appointed on and after July 1, 2009, will serve for terms of four years.

Residential Childhood Lead Poisoning Prevention Act

SB 82 repeals the sunset provision for the Residential Childhood Lead Poisoning Prevention Act. Under the prior law, the Act would have been repealed effective July 1, 2010.

Automated External Defibrillator

SB 102 deletes the definition and requirement that only a “qualified person” may use an automated external defibrillator. Any person using an automated external defibrillator in good faith to render emergency care or treatment will be held harmless from any civil damages as a result of such care or treatment. Removal of the “qualified person” definition also permits a person or entity that provides an automated external defibrillator for use by others, to allow any person to use the defibrillator. The bill further removes the word “gratuitously” as one of the conditions under which a person can provide emergency medical care or treatment and be held harmless from any civil damages as a result of such care or treatment.

Maintenance and Availability of Health Information

SR 1851 urges the review, modification, and reorganization of laws pertaining to the maintenance and availability of health information. The resolution cites concerns that Kansas has an outdated and decentralized statutory and regulatory scheme which creates confusion and is a significant barrier to the efficient and secure collection, use, maintenance and exchange of health information. The resolution encourages the following actions:

- That the laws of Kansas be reviewed, modified as necessary and construed so as to protect the interests of individuals in the confidentiality, security, integrity and availability of their health information;
- That the use of modern technology be promoted in the collection, use, maintenance and exchange of health information;
- That uniformity in policy is promoted;
- That all standards be codified in a cohesive and comprehensive statutory structure; and

- That the Secretary of the Senate be directed to provide an enrolled copy of this resolution to the E-Health Advisory Committee, Kansas Health Policy Authority.

Medical Records Maintenance Trust Fund; Clarify the Delegation of Health Care Tasks of Competent Subordinates

HB 2010 provides funding for the Board of Healing Arts for the storage, maintenance, and transfer of abandoned medical records. The bill creates the Medical Records Maintenance Trust Fund which is an interest-earning fund. The Fund receives an allocation set by the Board that may be no greater than \$10 of each fee for the issuance or renewal of a license. If the balance of the Medical Records Maintenance Trust Fund falls below \$100,000, the Board shall certify an amount, no greater than \$10 of each fee, to be deposited in the Fund.

The bill also gives the Board the power to order a licensee to reimburse the Board for expenses incurred for the storage, maintenance, and transfer of medical records when a licensee fails to provide for the safekeeping of medical records when the licensee becomes inactive. The Board is required to adopt rules and regulations establishing procedures and standards necessary to implement the requirements of the bill.

The bill requires a district court to expedite an action brought by the Board in matters relating to the safekeeping of medical records.

The bill also adds clarifying language that a person licensed to practice medicine and surgery or chiropractic medicine is allowed to delegate acts which constitute the practice of the healing arts to other persons the licensee knows or believes can competently perform such acts. The delegation of authority must not result in a violation of any other statute or regulation.

Behavioral Sciences Regulatory Board—Marriage and Family Therapist; Psychologists

HB 2162 amends the licensing requirements for marriage and family therapists in Kansas by deleting the requirement of completing a program of study with standards consistent with those of the state universities in Kansas. The bill also increases the statutory maximum the Behavioral Sciences Regulatory Board is permitted to charge for the application fee for the licensure of a psychologist from \$150 to \$225 and reduces the statutory maximum of the original license fee from \$200 to \$150.

Medical Student Loan Programs

HB 2297 amends existing law to allow fellowship training in geriatric medicine to be included in the list of approved postgraduate residency training programs required for participation in the Medical Student Loan Program or Osteopathic Medical Service Scholarship Program. Both programs require one year of service for each year of assistance provided through the programs in a rural or medically underserved area as defined by the enacting statutes.

Board of Nursing—Application for Licensure

HB 2343 amends the qualifications for licensed practical nurses (LPNs) and registered professional nurses (RNs) in the Nurse Practice Act. The bill deletes the requirement that applicants for licensure as either an LPN or RN be high school graduates.

As provided in existing law, the Board may, if it determines an applicant's qualifications are deficient in terms of educational experience, require those applicants to fulfill remedial or other requirements prior to being licensed.

Board of Cosmetology—Renewal Requirements

HB 2359 amends requirements for the renewal of the Board of Cosmetology licensees. The bill deletes a statutory requirement for the development of a written booklet that must be transmitted with the written renewal examination. The written renewal examination tests the applicant's understanding of infection control matters (health and sanitation, in current law). The Board is required to provide notice of the date of expiration of the license, at least 30 days prior to the license expiration.

Program for All-Inclusive Care for the Elderly (PACE)

HB 2366 amends existing law concerning home health services by exempting Program for All-Inclusive Care for the Elderly (PACE) programs from the provisions of the Home Health Agency Licensing Act. PACE programs are federally certified to participate in the Medicare or Medicaid Program and may provide services only to PACE participants.

INSURANCE

Risk-Based Capital Requirements—Trend Test Calculation

SB 50 amends the law governing risk-based capital (RBC) requirements to establish a RBC trend test calculation for property and casualty insurance companies. The trend test is a calculation that will take into account total adjusted capital, company action level RBC, and the authorized control level RBC (an assessment of losses, loss adjustment expenses, and general expenses compared to premiums earned). If a certain ratio is not met, it would trigger a “company action level event” by the Insurance Commissioner.

Under existing law, if the company action level event is triggered, the insurer would then be required to submit an RBC plan to the Insurance Commissioner.

Viatical Settlements Act of 2002—Technical Amendment

SB 137 amends the Viatical Settlements Act of 2002 to specify that the Act would not preempt, supersede, or limit any provision of any state securities law (the Kansas Uniform Securities Act) or any rule, order, or notice issued under the Act.

Insurance Code Amendments; Public Adjusters; Kansas Open Records Act; Continuation of Coverage—ARRA

HB 2052 enacts new law governing the regulation of public adjusters, makes several amendments to Kansas insurance law, adds an exemption for the disclosure of certain insurance information in the Kansas Open Records Act, and enacts new law to implement continuation of coverage requirements associated with the American Recovery and Reinvestment Act of 2009 (ARRA).

Public Adjusters Licensing Act

The bill enacts the Public Adjusters Licensing Act, an act governing the qualifications and procedures for the licensing of public adjusters. The Act specifies the duties of and restrictions on public adjusters, which includes limiting their licensure to assisting insureds in first party claims under commercial insurance contracts.

The bill further specifies the qualifications for licensure and those parties that would not require licensure, including a person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract. The bill requires the Insurance Commissioner to license public adjusters through an application process outlined in the bill. The Commissioner, in order to determine eligibility for licensure, is required to obtain criminal history record checks on applicants who are not exempt from the pre-licensing

examination. The criminal history record check is to be conducted by the Kansas Bureau of Investigation.

Prior to issuing the license, the Commissioner is to make a number of findings, including financial responsibility and the proof thereof, that the applicant has successfully passed the public adjuster examination, and that the applicant has paid an application fee of \$100. The renewal fee also is \$100. The Commissioner is given the authority to suspend, revoke or refuse to issue or renew the license for causes specified in the bill. Additionally, the Commissioner may take disciplinary action, including censure and the issuance of fines for violations. Any administrative fines collected by the Commissioner are required by the bill to be deposited in the State General Fund.

The bill also specifies continuing education requirements for licensees, including twelve hours of coursework (eleven hours in Property & Casualty or general continuing education and one hour in ethics) on a biennial basis. Additionally, public adjusters are prohibited from charging, agreeing to or accepting as compensation any payment, commission, fee, or other item of value equal to more than 10 percent of any insurance settlement or proceeds. The Act also specifies requirements for contracts issued by public adjusters and recordkeeping. Finally, the Insurance Commissioner is required to promulgate rules and regulations as are necessary, by July 1, 2010, to carry out the provisions of the Act.

Risk-Based Capital Requirements

Specifically, the bill enacts new law to permit the Insurance Commissioner to adopt by rules and regulations any later version of the Risk-Based Capital (RBC) instructions promulgated by the National Association of Insurance Commissioners (NAIC). The bill requires that prior to such adoption, the Commissioner must prepare an impact statement indicating the projected impact upon domestic insurers and then notify any affected insurers of this projected impact. If the projected impact is likely to cause the amount of a domestic insurer's total adjusted capital or its RBC report from the previous year to change by more than 2.5 percent, or would cause the insurer's control level to change upon application of the later version of the RBC instructions, then the Insurance Commissioner is not allowed to adopt the latest version in rules and regulations until the latest version is approved by legislative action.

The bill also amends existing law to specify the date of promulgation for "RBC instructions" to December 31, 2008, and to specify any later version as promulgated by the NAIC, as may be adopted by the Insurance Commissioner.

Deposits and Securities, Insurance Companies

The bill amends a statute in the Insurance Code governing the deposits of cash, securities, real estate deeds, and other assets with the Insurance Commissioner that are to be deposited with any Kansas financial institution acceptable to the Commissioner. The

bill amends the definition of “financial institution” to include a federal home loan bank. The bill makes changes to a capital requirement for establishing the standards for and assessing the solvency of an institution to include a regulator under the federal Home Loan Bank Act.

The bill also amends the laws governing property and casualty companies and life insurance companies to add federal home loan banks to those financial institutions which may be designated as the trust for a securities arrangement and allow federal home loan banks to obtain a “nominee name” for an insurance company in which the securities of the company may be registered. Federal home loan banks also will be permitted to arrange for securities to be held in a clearing corporation.

Long-Term Care Partnership Program, Exchange of Policies

The bill amends existing law concerning the Long-Term Care Partnership Program. The bill requires issuers of qualified long-term care partnership program policies to offer to all existing policyholders of long-term care policies the option to exchange the existing long-term care coverage for coverage that is intended to qualify under the Kansas Long-Term Care Partnership Program.

The following conditions need to be met for long-term care policies to qualify for the exchange option:

- The insurer of the existing long-term care coverage will be required to certify the type of long-term care policy and also would be required to certify that the long-term care coverage was issued by the insurer on or after February 8, 2006;
- The insurer will be required to provide the offer for exchange on a one-time basis and in writing;
- The offer will be required to remain open for a minimum of 45 days from the date of mailing by the insurer;
- The offer will be required to be made on a nondiscriminatory basis without regard to the age or health status of the insured; and
- The issued policies will be considered exchanges and not replacement policies.

Additionally, if no material change in risk exists, exchanged policies will not be subject to any medical underwriting. The bill does not require an insurer to offer an exchange to an individual who is eligible for benefits within an elimination period; who is or has

been in a claim status; or who would not be eligible to apply for coverage due to the policy issue age or plan design limitations under the new policy. A policy received in an exchange will be treated as newly issued and, thus, eligible for partnership policy status. Also, for purposes of applying Medicaid rules to the Kansas Long-Term Care Partnership Program, the addition of a rider, endorsement or change in the schedule page of a policy will be treated as an exchange.

Life and Health Insurance Guaranty Association Act

The bill amends a statute in the Kansas Life and Health Insurance Guaranty Association Act to increase the maximum annuity benefit, including the net cash surrender and net cash withdrawal values, from \$100,000 to \$250,000. The bill also allows that the Guaranty Association's limits of liability with respect to the obligations of any impaired or insolvent insurer are the limits of liability in effect under this Act on the date the association became liable for that insurer (on or after January 1, 2010).

The bill also excludes policies and contracts providing Medicare Part C and Part D health care benefits from coverage under the Act.

The amendments to the Act will become effective on January 1, 2010.

Under the prior law, \$100,000 was the allowed value of annuity benefits for which the Guaranty Association would be liable in the event of insurer insolvency.

Open Records Act, Exemption from Disclosure

The bill amends the list of provisions in the Kansas Open Records Act that are not required to be disclosed to include policy information provided by an insurance carrier pursuant to a filing requirement in KSA 44-532 (applicable to insurance carriers writing workers compensation insurance). This exemption to disclosure is not to be construed to preclude access to the records of an individual employer for the purpose of verification of coverage or to the Department of Labor for its business purposes.

Continuation of Health Insurance Coverage—ARRA

The bill amends the state continuation of coverage law to incorporate certain provisions and requirements of the American Recovery and Reinvestment Act of 2009. The bill's provisions include that employers of eligible terminated employees will be required to provide the additional notice of the right to elect coverage under the ARRA requirements. The bill also includes premium subsidy requirements under ARRA including a requirement that premiums for the special assistance continuation of coverage be paid by eligible individuals to insurance carriers. Additionally, insurance companies will be required to pay the subsidy and will have the right to reimbursement under ARRA.

The continuation of coverage provisions expire on January 1, 2011.

Effective Dates

The amendments to the Life and Health Insurance Guaranty Association Act will become effective on January 1, 2010. The continuation of coverage provision will become effective upon publication in the *Kansas Register*. All other provisions will become effective on and after July 1, 2009.

Title Insurance—Audits

HB 2054 amends requirements for title insurance agents to require each title insurance agent to submit an annual audit within 30 days of the calendar year close and deletes a provision regarding when an audit is considered “current.”

Under the existing law, title insurance agents submit an audit of their escrow, settlement, and closing deposit accounts to the Insurance Commissioner within 160 days of the close of the calendar year when the audit is required on either an annual, biennial, or triennial basis.

Controlled Insurance Programs Act; Mental Health Parity; Continuation of Coverage

HB 2214 enacts the Controlled Insurance Programs Act, amends the Kansas Fairness in Private Construction Contract Act, makes amendments to the Kansas Mental Health Parity Act, and amends the continuation of health insurance coverage requirements.

Controlled Insurance Programs Act

The bill establishes the Controlled Insurance Programs Act, an act that will create requirements for programs of liability insurance coverage that are established by an owner or contractor who contractually requires participation by contractors or subcontractors who are engaged in work required by a construction contract, and authorizes the Insurance Commissioner to adopt rules and regulations required under the Act.

“Controlled insurance program” means a program of liability or workers compensation insurance coverage, or both, established by an owner or contractor and includes coverage programs that are for a fixed term of coverage on a single construction site, or project or multiple projects, and a consolidated or wrap-up insurance program. A controlled insurance program does not include surety or builder’s risk.

The bill provides that the Insurance Commissioner, by rules and regulations, shall require controlled insurance programs to:

- Establish a method for quarterly reporting of the participant's claims details and loss information to that participant;
- Provide that cancellation of any or all of the coverage provided to a participant prior to completion of work on the applicable project shall require the owner or contractor who establishes a controlled insurance program to either replace the insurance or pay the subcontractor's cost to do so;
- Not charge enrolled participants, who are not the sponsoring participants, a deductible in excess of \$2,500 per occurrence or a per claim assessment by the sponsor;
- Keep self-insured retentions fully funded or collateralized by the owner or contractor establishing the controlled insurance program (does not apply to deductible programs);
- Disclose specific requirements for safety or equipment prior to accepting bids from contractors and subcontractors on a construction project; and
- Allow monetary fines for alleged safety violations to be assessed only by government agencies.

The bill establishes requirements for a controlled insurance program that includes either general liability coverage or workers compensation liability coverage for the participants. Further, the bill provides that for a controlled insurance program that includes general liability coverage for its participants, coverage for completed operating liability cannot, after substantial completion of the project, be cancelled, lapse, or expire before the statutory limitation on actions has expired [KSA 60-513(b)], but in no case greater than ten years. If another carrier takes responsibility for completed operations coverage, any and all prior carriers will be released from completed operations liability unless specified otherwise in subsequent policies. Among the requirements for general liability coverage under the controlled insurance program is a requirement that participants be given the same shared limits of liability coverage as applies to the sponsoring participants. Additionally, participants cannot be required, under the Act, to waive rights of recovery for claims covered by the controlled insurance program against another participant in the controlled insurance program covered by general liability insurance provided by the controlled insurance program.

Among the requirements for workers compensation coverage under the controlled insurance program is a provision stating that participants are not required to provide

employment to a worker who has been injured on the job unless certain conditions have been met. The bill also states that nothing in the provisions relating to workers compensation or any rules and regulations adopted pursuant to the Controlled Insurance Program Act shall affect any rights, remedies or duties under the Workers Compensation Act or any other state or federal law.

The Insurance Commissioner, in addition to the other rules and regulations adopted as required by the Act, is permitted to adopt rules and regulations relating to the controlled insurance programs, as necessary, to carry out provisions of the Act. The Commissioner is required to adopt all rules and regulations required by the Act by January 1, 2010.

The bill also amends a subrogation waiver provision in the Kansas Fairness in Private Construction Contract Act to specify an exception for the waiver of rights to recovery (covered by the general liability insurance under the controlled insurance program) provision in the Controlled Insurance Program Act.

Kansas Mental Health Parity Act Amendments

The bill amends three statutes in the Kansas Mental Health Parity Act to require health insurance policies, on and after November 1, 2009, to provide the same benefits for the treatment of mental illness, alcoholism, drug abuse or other substance use disorder as are provided for mental illness. The mental illness, alcoholism, drug abuse, or other substance use disorder benefits are to include the same deductibles, copayments, coinsurance, out-of-pocket expenses, treatment limitations, and other limitations as they apply to other covered services. Additionally, an increased lifetime benefit for out-patient services will apply to small group plans and treatment limitations will be applicable to large group plans.

Small Group Plans (KSA 40-2,105)

The bill specifies the statute applies to small employer group policies (groups of 2-50) and individual policies of accident and sickness insurance. The coverage, as specified in the existing law and updated by an amendment in the bill, includes coverage for not less than 45 days of in-patient care for mental illness and not less than 30 days per year for in-patient treatment of alcoholism, drug abuse or substance use disorders. The bill deletes requirements that limited reimbursement for costs of treatment to specified percentages and amounts and instead provide that mental illness, alcoholism, drug abuse, or other substance use disorder benefits include the same deductibles, copayments, coinsurance, out-of-pocket expenses, treatment limitations, and other limitations as they apply to other covered services. The bill also increases the lifetime benefit for outpatient treatment from \$7,500 (applied to cost of treatment for alcoholism, drug abuse, and nervous or mental condition) to \$15,000, and further specifies there will be no annual limits to the costs of treatment.

The bill also deletes a provision that applied to the State Employee Health Care Benefits Program. The bill deletes a provision stating that High Deductible Health Plans purchased in connection with medical or health savings accounts would not be subject to outpatient coverage provisions.

Under the bill, “treatment limitations” includes limits on the frequency of treatment, number of visits, days of coverage or other similar limits on the scope or duration of treatment. The bill also provides that utilization review for mental illness must be consistent with the existing law applying to utilization review for other illnesses.

Large Group Plans (KSA 40-2,105a)

The bill also makes amendments to the statute governing group health insurance (large groups) which provides medical, surgical, or hospital expense coverage. Coverage must be provided for the diagnosis and treatment of mental illnesses and alcoholism, drug abuse, or other substance use disorders. This coverage must include treatment for in-patient and out-patient care. Reimbursement or indemnity is provided for treatment in certain facilities and hospitals named in the bill or by a physician or psychologist licensed to practice in the state. Additionally, the bill provides that mental illness, alcoholism, drug abuse, or other substance use disorder benefits include the same deductibles, copayments, coinsurance, out-of-pocket expenses, treatment limitations, and other limitations as they apply to other covered services. “Mental illness, alcoholism, drug abuse or substance use” also is defined (identical to amendments to KSA 40-2,105). Further, the bill specifies the provisions under the statute do not apply to small employer group policies or to any Medicare supplement policy.

The bill includes provisions for treatment limitations and utilization review identical to those discussed previously in KSA 40-2,105a. The bill specifies further that no coverage is required to be provided for assessments provided as required by a diversion agreement or by court order (alcohol and drug safety action program) or for evaluations and diagnostic tests ordered or requested in connection with criminal actions, divorce, child custody, or child visitation proceedings.

Group Policies (Large), Health and Mental Health Benefits, Parity (KSA 40-2258)

The bill updates references to the term “mental health benefits” as it applies to group policies or certificates of coverage providing hospital, medical or surgical expense benefits which include mental illness or alcoholism, drug abuse or other substance use disorder. The bill also specifies that the required coverage provisions do not apply to group policies if there is an increase in the cost under the plan of at least 2.0 percent in the first plan year and 1.0 percent each subsequent plan year. (The limitation for application of group policies and cost increases had been an increase of 1.0 percent under existing law.)

Finally, the bill deletes the sunset date that had been previously updated on an annual basis by the Legislature.

Continuation of Health Insurance Coverage (state COBRA)

The bill amends provisions in existing law governing the continuation of coverage requirements for sickness and accident health insurance plans and HMO (health maintenance organization) plans to provide that a terminated employee pay his or her premiums to the insurance carrier instead of the employer.

JUDICIARY

Prosecutors—Concealed Carry

SB 19 authorizes, under certain circumstances, prosecutors, while engaged in the duties of their employment or any activities incidental to such duties, to carry concealed firearms and to exempt those prosecutors from the crime of discharge of a firearm.

The prosecutors authorized by this bill include:

- The United States Attorney for the District of Kansas or any Assistant United States Attorney for the District of Kansas if authorized by the United States Attorney for the District of Kansas;
- The Kansas Attorney General or any Kansas Assistant Attorney General if authorized by the Kansas Attorney General; and
- Any district attorney or county attorney, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed.

The bill clarifies that the chief judge of any judicial district may determine any restrictions or prohibitions concerning firearms in the courthouse or court-related facility of that judicial district.

The bill also authorizes the county commission to opt out of the provisions of this bill by passage of a resolution if the courthouse and court-related facilities:

- Have adequate security measures to ensure no weapons are permitted to be carried into such facilities;
- Have adequate measures for storing and securing lawfully carried weapons;
- Are covered by such county's policy or regulation requiring all law enforcement officers to secure and store such officer's firearm upon entering the courthouse or court-related facility. Such policy or regulation may exclude court security or sheriff's personnel for such county; and
- Have a sign conspicuously posted at each entrance that concealed firearms are not permitted in a courthouse or in court-related facilities.

All costs related to obtaining and maintaining licensure as required by the Personal and Family Protection Act, KSA 75-7c01 *et seq.*, is at the prosecutor's own expense. Additionally, the prosecutor is required to complete a firearms training course as determined by the Director of the Law Enforcement Training Center and to be licensed as required by the Personal and Family Protection Act.

Finally, technical amendments were made to the concealed carry law to make it clear prosecutors are authorized to carry a concealed firearm in a courthouse or court-related facility.

Civil Asset Forfeiture

Sub. for SB 28 adds the following crimes to the list of criminal offenses that could lead to civil forfeiture of assets:

- Unlawful conduct of dog fighting;
- Unlawful possession of dog-fighting paraphernalia;
- Unlawful conduct of cockfighting;
- Unlawful possession of cockfighting paraphernalia;
- Prostitution;
- Promoting prostitution; and
- Patronizing a prostitute.

Kansas Open Records Act

SB 34 extends the existence of 30 statutory exceptions to the Kansas Open Records Act (KORA) until July 1, 2014.

The exceptions include the following:

- **KSA 8-240.** On applications for drivers' licenses and instruction permits, each applicant is required to list his or her social security number (SSN). The statute provides that the SSN will remain confidential, except as provided in KSA 74-2012, which allows disclosure under proper judicial order;

- **KSA 8-247.** In regard to the expiration or renewal of a driver's license, the Division of Motor Vehicles is required to notify each person of the ability to make an anatomical gift. If an applicant indicates a willingness to have such applicant's name placed on the organ donor registry, the Division forwards the applicant's name to the organ procurement organization. Information obtained by the Division concerning an applicant's indication of willingness to have such applicant's name placed on the organ donor registry is confidential;
- **KSA 8-1324.** Nondriver identification card, SSN. Same as KSA 8-240;
- **KSA 8-1325.** Nondriver identification card, anatomical gift. Same as KSA 8-247;
- **KSA 12-17,150.** In regard to a redevelopment project area or a transportation development district where tax revenues are pledged or used to pay bonds, the Secretary of Revenue is required to provide reports to the bond trustee/escrow agent/paying agent identifying each retailer having a place of business in such district setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month. The bond trustee/escrow agent/paying agent shall keep such retailers' tax returns confidential, but may use such information for purposes of allocating and depositing such tax revenues in connection with the bonds used to finance redevelopment project costs or used to finance the costs of a project;
- **KSA 12-2001.** The governing body of a city may grant a franchise to a telecommunications local exchange service provider. The statute states that the information provided to the municipalities under this section shall be governed by confidentiality procedures in compliance with KSA 45-215 (KORA) and 66-1220a *et seq.* (confidentiality of trade secrets);
- **KSA 40-5006.** This section of law is a part of the Viatical Settlements Act of 2002. A viatical settlement provider/broker, insurance company, insurance producer, information bureau, rating agency/company, or any other person with actual knowledge of an insured's identity shall not disclose that identity as an insured, or the insured's financial or medical information to any other person. Exceptions for disclosure include when it is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent for the disclosure or provided consent in response to an investigation or examination by the insurance commissioner or any other governmental officer or agency. Other disclosure reasons are listed in the statute;

- **KSA 40-5108.** Insurance score models or other insurance scoring processes are considered to be a trade secret and to be kept confidential. There is an exception: if the insurer has taken an adverse action based on credit information, the reason for such action must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take such adverse action;
- **KSA 41-2905.** This statute requires beer retailers who sell kegs to record the purchaser's name, address, and driver's license/identification card number. The records required to be kept shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or KSA 21-3610 (furnishing alcoholic liquor or cereal malt beverage to a minor) or KSA 41-727 (purchase or consumption of alcoholic beverage by a minor). Except as specifically provided by this subsection, records required to be kept by this section shall not be sold, distributed, or otherwise released to any person other than an agent of the retailer or to a law enforcement agency;
- **KSA 41-2906.** Cereal malt beverage retailers. Same as KSA 41-2905;
- **KSA 44-706.** Pursuant to the employment security law, a person is not disqualified from receiving benefits if she or he left work voluntarily due to circumstances resulting from domestic violence. No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the Department of Labor unless consent for disclosure is given by the individual;
- **KSA 44-1518.** Under the Uniform Athletic Agents Act, the Secretary of State may issue subpoenas for any material that is relevant to the administration of the Act. Any such information or material received by the Secretary shall be treated as confidential by the Secretary and shall not be open to public inspection except by court order;
- **KSA 65-3239.** Regarding the statewide organ and tissue donor registry, no organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund raising. Organ and tissue donor registry information shall not be further disseminated unless authorized in this section or by federal law;
- **KSA 66-1233.** Pursuant to this law, the State Corporation Commission shall authorize electric public utilities and natural gas public utilities to adjust the utility customers' bills to recover the utility's prudent expenditures for security

measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets. The application and request shall be confidential and subject to protective order of the Commission.

- **KSA 8-255c.** Pursuant to KSA 8-255b, the Medical Advisory Board gives advisory opinions to the Director of Vehicles in the case of any person whose license to operate a motor vehicle has been suspended, revoked, or reviewed by the Director of Vehicles and for good cause shown that the operation of a motor vehicle on a highway by such person would be harmful to public safety and welfare because of an existing or suspected mental or physical disability. In regard to this process, all reports made to, and all medical records reviewed and maintained by the Division shall be kept confidential and shall not be disclosed except upon the order of a court, pursuant to the request of the Division or Medical Advisory Board and shall not be subject to subpoena or discovery in any administrative/criminal/civil matter;
- **KSA 12-5332.** Pursuant to the Wireless Enhanced 911 Act, the Secretary of Administration may require an audit of any wireless carrier's books and records concerning the collection and remittance of fees. Information provided by wireless carriers to the Secretary or the advisory board pursuant to the Wireless Enhanced 911 Act will be treated as proprietary records which will be withheld from the public upon request of the party submitting such records;
- **KSA 17-12a607.** Under the Uniform Securities Act, records are presumed to be public, subject to the following exceptions:
 - A record obtained by the administrator in connection with an audit or inspection under KSA 17-12a411(d) [records of persons issuing or guaranteeing any securities subject to the provisions of this Act and of every broker-dealer, agent, investment adviser or investment adviser representative registered or required to be registered under the Act] or an investigation under KSA 17-12a602 [general authority of the Administrator (Securities Commissioner) to investigate violations of the Act];
 - A part of a record filed in connection with a registration statement under KSA 17-12a301 and 17-12a303 through 17-12a305, or a record under KSA 17-12a411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

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- A record that is not required to be provided to the Administrator or filed under the Act and is provided to the Administrator only on the condition that the record will not be subject to public examination or disclosure;
 - A nonpublic record received from a person specified in KSA 17-12a608(a) [records shared by other state administrators, the federal government or a foreign government]; and
 - Any social security number or residential address unless used as a business address, and residential telephone number contained in a record that is filed.
- **KSA 38-1008.** The Interstate Commission for Juveniles, pursuant to the Interstate Compact for Juveniles, allows the Commission to exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;
 - **KSA 38-2209.** Child in need of care records are confidential except as is necessary for the exchange of information between interested parties to provide necessary services to the child and the child's family. The records are divided into the following categories: court records (official file and social file), agency records, and law enforcement records. In regard to each category, specified parties are allowed access;
 - **KSA 45-221 (a) (44).** The amount of franchise tax paid to the Secretary of Revenue or the Secretary of State by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnerships, foreign limited partnerships, domestic limited liability partnerships and foreign limited liability partnerships shall not be required to be disclosed;
 - **KSA 45-221 (a)(45).** Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities, or equipment used in the production, transmission, or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities, or equipment; or (C) private property or persons, if the records are submitted to the agency, shall not be required to be disclosed;
 - **KSA 45-221 (a) (46).** Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214) shall not be required to be disclosed. Such papers shall be disclosed to the military
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dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the Commissioner of Veterans Affairs, to a person conducting research;

- **KSA 45-221 (a)(47)**. Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse shall not be required to be disclosed;
- **KSA 56-1a610**. Limited partnership income tax filing extension applications filed with the Secretary of State shall be confidential and disclosed only to partners in the limited partnership, pursuant to a proper judicial order or pursuant to the general powers of the Secretary of Revenue regarding tax records;
- **KSA 56a-1204**. Limited liability partnership income tax filing extension. Same as KSA 56-1a610;
- **KSA 65-1,243**. Records received and information assembled by the birth defects information system are confidential medical records. All medical records reviewed and maintained by the Department of Health and Environment shall be kept confidential and shall not be disclosed except upon the order of a court of competent jurisdiction and shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil matter. The Secretary may use information assembled by the system to notify parents, guardians, and custodians of children with congenital anomalies or abnormal conditions of medical care and other services available for the child and family;
- **KSA 74-50,184**. Pursuant to the Kansas Professional Regulated Sports Act, the Athletic Commission may receive criminal and juvenile proceedings background information to determine the qualifications of a person for appointment to be the Boxing Commissioner. Such information, other than conviction data, is to be kept confidential;
- **KSA 74-8134**. Pursuant to the Kansas Angel Investor Tax Credit Act, portions of documents and other materials submitted to the Kansas Technology Enterprise Corporation that contain trade secrets shall be kept confidential. Portions of documents and other materials means any customer lists; any

formula, compound, production data or compilation of information certain individuals within a commercial concern using such portions of documents and other material means to fabricate, produce or compound an article of trade; or any service having commercial value, which gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service;

- **KSA 74-99b06.** The following records of the Kansas Bioscience Authority shall not be subject to the provisions of the Kansas Open Records Act when, in the opinion of the Board, the disclosure of the information in the records would be harmful to the competitive position of the Authority:
 - Proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality;
 - Contract cost estimates prepared for confidential use in awarding contracts for research development, construction, renovation, commercialization or the purchase of goods or services; and
 - Data, records or information of a proprietary nature produced or collected by or for the Authority; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.

- **KSA 82a-2210.** Horsethief reservoir benefit district sales tax. Same as KSA 12-17,150.

Another amendment to the KORA pertains to surveys conducted by the Director of Personnel Services regarding wage and salary information about jobs in other public or private employment which would be confidential and not subject to disclosure. Such information is not subject to subpoena, or other demand in any administrative, criminal, or civil action. This confidentiality provision is not subject to expiration. Survey information could be disclosed, upon written request, if no person or entity could be identified in the information to be disclosed as determined by the Director of Personnel Services.

Kansas False Claims Act; Admission of Prior Acts or Offenses

SB 44 creates a civil cause of action for perpetrating a specified fraudulent claim on the state government or affected political subdivision under the newly created Kansas False Claims Act; amends current law on summary proceedings in a *habeas corpus* action; and amends the rules of evidence regarding the admission of prior acts or offenses in cases where a defendant is accused of a sex offense or another criminal offense.

Kansas False Claims Act

The bill creates a civil cause of action for perpetrating a specified fraudulent claim on the state government or affected political subdivision under the newly created Kansas False Claims Act. The following actions, if intentional, are defined as fraudulent claims under the Act:

- Making a false claim for payment or approval;
- Using false records or submitting a false statement for payment;
- Using false records or submitting a false statement to conceal, avoid, or decrease an obligation to pay;
- Delivering less property or money than commissioned;
- Falsely certifying the receipt of property;
- Buying or accepting an obligation for public property from a person not authorized to sell or pledge the property;
- Benefitting from a fraudulent claim and failing to disclose the false claim;
or
- Conspiring to commit any of the above violations.

Any person who makes a fraudulent claim to the state government or affected political subdivision is liable for three times the amount of actual damages, a civil penalty between \$1,000 to \$11,000 for each violation, and reasonable costs and attorney fees associated with the civil litigation. The bill allows a court to assess not more than two times the amount of actual damages and no civil penalty if the court finds the person committing the violation furnishes all known information within 30 days of the violation, fully cooperates with the investigation, and no legal action has commenced.

The bill excludes claims, records, or statements made under the State Revenue and Taxation Code.

The Attorney General investigates and pursues civil action for violations of this Act. The Attorney General may utilize city attorneys, county attorneys, and private attorneys for violations at the local level when needed. A civil action may be pursued up to six years after the violation was committed; or up to three years after the date when material facts are known, or reasonably should have been known to the state; but in no event more than 10 years after the date the crime was committed, whichever occurs last. Also, civil action may be sought for activities committed prior to the effective date of this Act, if the limitation period has not lapsed.

Any employee who is retaliated against, in the terms and conditions of employment, by an employer because of participating in a civil action under this Act is entitled to all relief necessary to make the employee “whole.”

Of the moneys recovered, amounts representing the fraudulent payment and any associated federal penalties are to be remitted to the affected state agency or local government. Recoveries beyond these amounts are to be deposited into the newly created False Claims Litigation Revolving Fund. The Fund finances the Attorney General’s litigation costs. The Attorney General also may use the funds to finance any expenditures incurred outside its operations that assist with administering the Act.

The bill allows an innocent mistake to be a defense under the Act.

Habeas Corpus Action

The bill amends the law on summary proceedings in a *habeas corpus* action to restore the statute to prior law except for the following:

- Allow the judge to appoint one instead of the original two competent physicians to make an examination of the person restrained because of an alleged infection or communicable disease; and
- Change “shall” to “may” (*i.e.*, a judge “may” appoint at least one competent physician).

Admission of Prior Acts or Offenses

The bill amends the rules of evidence regarding the admission of prior acts or offenses in cases where a defendant is accused of a sex offense or of another criminal offense.

In a criminal action where a defendant is accused of a crime other than a sex offense as specified in the bill, evidence of a prior crime is admissible to show the mode of operation is so similar that it is reasonable for a finder of fact to conclude the same individual committed both acts.

In a criminal action where a defendant is accused of a sex offense as specified in the bill, evidence of a prior act or sexual misconduct is admissible if it is relevant and probative, *i.e.*, tending to prove or actually proving a fact. If the prosecution intends to offer evidence under this rule, the prosecuting attorney must disclose the evidence to the defendant, including statements of witnesses, at least 10 days prior to trial or at a later time when allowed by the court for good cause. This rule should not be construed to limit the admission or consideration of evidence under any other rule or to limit the admissibility of evidence of other crimes or civil wrongs in another criminal action.

Acts or offenses of sexual misconduct are defined to include the following:

- Any conduct prescribed by article 35 of the Kansas statutes;
- The sexual gratification component of aggravated trafficking;
- Exposing another to a life-threatening communicable disease;
- Incest;
- Aggravated incest;
- Contact, without consent, of any part of the defendant's body or an object and the genitals, mouth, or anus of the victim;
- Contact, without consent, between the genitals, mouth, or anus of the defendant and any part of the victim's body;
- Deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain to the victim;
- Attempts or conspiracy to engage in the conduct described above; and
- Any federal or other state conviction or violation of a city ordinance or county resolution that would constitute an offense described above.

The bill includes a severability clause which preserves the other provisions of the bill in the event a provision or application of the provision is held to be invalid.

Kansas Power of Attorney Act

SB 45 amends the Kansas Power of Attorney Act. The bill:

- Authorizes the principal, who is physically unable to sign a power of attorney document but who is competent and conscious, to appoint a designated adult to sign the principal's name on the document in the presence of a notary public. The specific direction of the principal is required to be expressed in the presence of a notary public.
- Requires an attorney in fact, acting under the power of attorney, to keep a record of receipts, disbursements, and transactions made on behalf of the principal. The attorney in fact is prohibited from commingling funds or assets of the principal with the attorney in fact's funds or assets.
- Authorizes a procedure for the voluntary resignation of the attorney in fact.

The bill provides short form certificates of a notary's acts.

Kansas Department of Corrections Authorization to Contract for Certain Work Projects

SB 61 amends prior law to authorize the Secretary of Corrections to enter into a contract with a private entity to repair real estate damaged by a tenant who is under the release supervision of the Kansas Department of Corrections.

Change of Venue; Judicial Branch Surcharge; Prosecuting Attorney's Training Fund; Kansas Criminal Code Recodification Commission; Court Appeals

SB 66 amends prior law regarding:

- The transmittal of documents when venue is changed in care and treatment cases for mentally ill persons and in care and treatment cases for persons with alcohol or substance abuse problems;
- The Judicial Branch authority to issue a surcharge;
- The district court docket fee credited to the Prosecuting Attorneys' Training Fund;

- The authority of the Kansas Judicial Council to use its fee fund to pay for the Kansas Criminal Code Recodification for another year and removing the requirement to evaluate retired judges who work on a part-time basis; and
- The delay of the continued expansion of the Court of Appeals until January 1, 2011.

Change of Venue

The bill authorizes the district court issuing the order to change venue in care and treatment cases for mentally ill persons and in care and treatment cases for persons with an alcohol or substance abuse problem to:

- Send an electronic copy of the entire file of the case to the receiving district court;
- Send an electronic copy of the order transferring venue to the treatment facility where the patient is being detained, evaluated, or treated; or
- Send a facsimile or electronic copy of the entire case file to the proposed patient's county of residence, if the county of residence is not the receiving county.

The bill also authorizes the receiving district court to send a facsimile or electronic copy of the entire case file to the proposed patient's county of residence, if the county of residence is not the receiving district court.

In addition, the transferring district court may send an entire original file by mail to the receiving district court, upon request of the receiving district court or upon an order of the court transferring venue.

Judicial Branch Surcharge

The bill amends current law to allow the Kansas Supreme Court to establish a surcharge of up to \$10 per fee (for a series of fees) for costs for non-judicial personnel. This surcharge would be the only surcharge that the Kansas Supreme Court could charge during the time period from July 1, 2009, through June 30, 2010. Garnishments, hearings in aid, executions, and expungements are subject to the surcharge.

The bill clarifies that moneys collected from the surcharge are to be deposited in the state treasury and credited to the newly created Judicial Branch Surcharge Fund.

Prosecutor's Training Fund

The bill increases the amount of the district court docket fee credited to the Prosecuting Attorneys' Training Fund from \$1.00 to \$2.00 for each docket fee assessed in a criminal case. The bill also increases the docket fee in criminal cases by \$1.00.

Kansas Criminal Code Recodification Commission and Retired Judges

The bill authorizes the Kansas Judicial Council to use its fee funds to pay for the Kansas Criminal Code Recodification Commission for another year. The bill also removes the requirement that the Commission on Judicial Performance evaluate the performance of retired senior judges who are employed on a part-time basis by the Supreme Court.

Kansas Court of Appeals

The bill delays the continued expansion of the Court of Appeals until January 1, 2011.

Judges Retirement

SB 68 establishes the retirement age for judges, including justices of the Supreme Court, at age 75. When the age of 75 is reached, the judge may finish serving the current term. Under previous law, justices of the Supreme Court were required to retire at age 70.

Uniform Principal and Income Act

SB 70 creates new law relating to the Uniform Principal and Income Act (UPIA). The bill authorizes a trustee, unless prohibited by the governing instrument, to convert or redefine income so that distributions to income beneficiaries (current and remainder beneficiaries) are determined by a unitrust distribution formula. Under the formula, a trustee distributes a fixed percentage of the assets to the beneficiary each year as income.

A trustee is authorized to convert a trust into a unitrust if:

- The trustee determines that conversion will enable the trustee to better carry out the intent of the creator of the trust and the purposes of the trust;
- The trustee gives each qualified beneficiary written notice of the intent to convert the trust into a unitrust and the operation of the unitrust; and
- No qualified beneficiary files a written objection to the conversion within 60 days of the notice being mailed to the beneficiary. If there is an objection,

the bill authorizes a trustee to petition the district court to approve the conversion. The court would be required to approve the conversion if the court concludes, among other factors, that the conversion will enable the trustee to better carry out the intent of the creator of the trust and the purpose of the trust.

Additionally, a trustee is required to consider all factors relevant to the trust and its beneficiaries in deciding whether to convert a trust into a unitrust, including:

- The nature, purpose, and expected duration of the trust;
- The intent of the creator of the trust;
- The identity and circumstances of the beneficiaries;
- The need for liquidity, regularity of income, and preservation and appreciation of capital;
- The assets held in the trust;
- The net amount allocated to income, and the increase or decrease in the value of the principal assets;
- The actual and anticipated effect of economic conditions on principal and income; and
- The anticipated tax consequences of conversion.

The bill authorizes a qualified beneficiary to request a trustee to convert a trust to a unitrust and to petition the district court if the trustee does not convert. The court is required to direct the conversion if the court concludes, among other factors, that the conversion will enable the trustee to better carry out the intent of the creator of the trust and the purpose of the trust.

Conversion is prohibited under circumstances specified in the bill.

The bill requires the trustee, after a trust is converted, to follow an investment policy seeking a total return for the investments held by the trust from appreciation of capital and from earnings and distributions from capital, or both.

The bill provides that the income standard set out in the bill does not create a presumption that a trustee who distributes less than three percent or more than five percent of payout percentage is breaching a trustee's fiduciary duty to the beneficiary.

Business Entity Filings

SB 85 amends four business entity statutes requiring the Kansas Secretary of State to return a copy of the document which is required to be recorded in an electronic medium. A certified copy of the document is to be returned to the customer. The electronic document becomes the original document.

Letter of Good Standing

SB 86 amends current law to delete the requirement that the Secretary of State charge a corporation fee for a letter of good standing. A letter of good standing is an uncertified statement issued by the Kansas Secretary of State's Office stating that a business entity is, at the time of the request, qualified and in good standing, having met all the requirements governing this type of business in the State of Kansas.

Kansas Administrative Procedure Act and Kansas Judicial Review Act

SB 87 amends the Kansas Administrative Procedure Act (KAPA) and the Act for Judicial Review and Civil Enforcement of Agency Actions, commonly known as the Kansas Judicial Review Act (KJRA).

The bill:

- Adds a new section to KAPA to authorize the presiding officer to omit the name, address, or other contact information of an alleged victim of crime from any required notice, order, or public record when it is alleged that the health, safety, or liberty of the alleged victim would be jeopardized by the disclosure of such information;
- Amends the Kansas Open Records Act by adding to an existing exception the provision that a public agency would not be required to disclose the name, address, or other contact information of an alleged victim of crime;
- Adds a new provision to clarify the computation of time in KAPA actions;
- Deletes the provision that changes the burden of proof for disputed issues of fact in occupational or professional license disciplinary proceedings;
- Exempts the State Court of Tax Appeals from KAPA;
- Adds a new provision to prohibit a person who has participated in an investigatory or prosecutorial capacity in connection with a proceeding, or who is supervised or directed by such a person, from acting as presiding officer or providing confidential legal or technical advice to a presiding officer in that proceeding;
- Authorizes the presiding officer to determine the manner of service of process in the proceeding;

- Adds a new provision to clarify that if the presiding officer is the agency head, the default order is a final order. If the presiding officer is not the agency head, the default order is an initial order;
- Clarifies that a presiding officer may close parts of a hearing pursuant to a provision of law requiring confidentiality or expressly authorizing closure; and also clarifies that any hearing under KAPA is not a meeting pursuant to the Kansas Open Meetings Act;
- Expands the prohibition on *ex parte* communications to any person who has served in an investigatory or prosecutorial capacity. *Ex parte* communications are prohibited communications where a party or witness to the action is communicating with the presiding officer during the pendency of the action without notice and opportunity for all parties to participate in the communication;
- Adds a provision to clarify that the agency head is required to give due regard to the presiding officer's credibility determinations and is required to consider the record when reviewing findings of fact in the presiding officer's initial order;
- Requires written findings of fact and conclusions of law in an order on reconsideration that alters a prior order;
- Clarifies the agency retains jurisdiction to consider a timely petition for reconsideration in a multiple party action where one party files a petition for judicial review;
- Clarifies that confidential internal communications are not part of the official state agency record, while oral or written statements allowed by the presiding officer are part of the official state agency record;
- Clarifies that a state agency may use summary proceedings if the agency, based on the investigation beyond the receipt of the allegations, believes in good faith that the allegations will be supported to the applicable standard of proof. The alleged failure to meet the standard of proof is not subject to immediate judicial review or does not invalidate any later agency action.
- Provides that an order for summary proceeding does not take effect until after the time for requesting a hearing has expired;

- Clarifies that the burden of proof remains with the party who sought the summary order and does not shift to the party requesting a hearing to prove that the summary order was entered in error;
- Changes the name of the Act for Judicial Review and Civil Enforcement of Agency Actions to the Kansas Judicial Review Act (KJRA);
- Clarifies that KJRA does not apply to agency actions concerning the civil commitment of sexually violent predators;
- Adds a provision to authorize a court to relieve a petitioner of the requirement to exhaust administrative remedies prior to seeking judicial review if administrative remedies are inadequate or would result in irreparable harm;
- Prevents dismissal of an appeal for lack of jurisdiction when there is a defect in the petition for judicial review and authorizes such petition to be amended to include the omitted information;
- Provides that substantial compliance with service requirements is sufficient service regarding a petition for judicial review;
- Authorizes a party to raise an issue arising from agency action which the party could not reasonably know before the filing of the petition for judicial review; and
- Adds a provision that requires the reviewing court to consider the whole record.

Business Entity Transactions Act

SB 132 enacts the Business Entity Transaction Act (BETA) to provide comprehensive statutory authority for business entities (corporations, partnerships, limited partnerships, and limited liability companies) to perform mergers, conversions, interest exchanges, and domestications with similar or dissimilar business entities. Additionally, the bill codifies procedures for business entities to accomplish these transactions.

The bill defines the authorized transactions as follows:

- A merger means a transaction in which two or more entities are combined into a surviving entity pursuant to a filing with the Secretary of State;

- A conversion means a transaction in which a single entity transforms itself into a different type of entity, *e.g.*, a limited liability company becomes a partnership;
- An interest exchange, which currently is not an authorized transaction in Kansas but is authorized with the passage of this bill, means a transaction in which one entity acquires the stock of another entity; and
- A domestication, which currently is not an authorized transaction in Kansas but is authorized with the passage of this bill, means a transaction in which a foreign entity, *e.g.*, a Missouri limited partnership, becomes a domestic entity whose internal affairs are governed by Kansas law. It also means a transaction in which a domestic entity becomes a foreign entity whose internal affairs are governed by another state's law, assuming a reciprocal law is in place in the foreign jurisdiction.

The bill excludes insurance companies, banks, trust companies, credit unions, professional corporations, and limited liability companies from participating in transactions under BETA. Public utilities, however, are subject to the general business entity provisions, unless the provisions are inconsistent.

The bill is effective on July 1, 2010.

Child In Need of Care

SB 134 limits the court's jurisdiction over a child in need of care and amends current law regarding placement of a child taken into custody.

Jurisdiction

The bill limits the court's jurisdiction over a child in need of care to the child's 18th birthday or June 1 of the school year during which the child turns 18 if the child is still in high school, unless there is no court-approved transition plan. If there is no court-approved transition plan, the court retains jurisdiction over the child until a transition plan is approved by the court or until the child's 21st birthday.

The bill amends the definition of "transition plan" to add education and employment to the list of services to be provided in an individual case. It further amends the definition of "transition plan" to clarify that it specifically provides for the support and any services for which an adult with a disability would be eligible including, but not limited to, funding for home and community based services waivers.

Finally, the bill authorizes an 18-year-old child in need of care to make a written request to the court to cease its jurisdiction, which requires the court to give notice to all parties and cease its jurisdiction 30 days after the request.

Placement

The bill amends prior law to authorize the Department of Social and Rehabilitation Services (SRS) custody for a child 15 years or younger, a 16- or 17-year-old child if the child has no identifiable parental or family resources, or a 16- or 17-year-old child if the child shows signs of physical, mental, emotional, or sexual abuse.

Kansas Silver Alert Plan

SB 148 establishes the Kansas Silver Alert Plan to provide public notice of a missing elderly person. The bill authorizes, but does not require, a prompt broadcast or a timely search. The plan is required to be implemented by the Kansas Attorney General's Office in collaboration with state and local law enforcement, and other public and private agencies and organizations.

Close Corporations

SB 156 amends prior law to coordinate the number of allowable members in a close corporation from 30 to 35 to conform to the number with other Kansas Statutes and the U.S. Securities Act of 1933.

Scrap Metal; Traffic in Contraband

SB 237 amends the law concerning the regulation of scrap metal under the Kansas Consumer Protection Act.

The bill:

- Expands the definition of “regulated scrap metal” to include:
 - Junk vehicles;
 - Vehicle parts; and
 - Any item composed, in whole or in part, of any nonferrous metal other than an item composed of tin, that is purchased or otherwise acquired for the purpose of recycling or storage for later recycling;

- Adds a definition for:
 - Bales of regulated metal;
 - Ferrous metal;
 - Junk vehicle;
 - Nonferrous metal;
 - Tin; and
 - Vehicle part;
- Makes it unlawful to sell regulated scrap metal unless the seller provides to the scrap metal dealer, or employee or agent of a dealer, the seller's sex, date of birth, and an identifying number from an official United States government document such as the seller's driver's license, state or military identification card, or passport. A legible fingerprint is required of a seller using the identifying number from an official governmental document from outside of the United States;
- Requires scrap metal dealers, or employees or agents of a dealer, to accurately and legibly record information of the transaction and of the parties to the transaction, as specified in the bill;
- Makes it unlawful for any scrap metal dealer, or employee or agent of a dealer, to purchase regulated scrap metal without obtaining a signed statement from the seller that the seller is the owner of the scrap metal, the scrap metal is free of encumbrances, and the scrap metal is not stolen; or a signed statement from the seller that the seller is acting on behalf of the owner and has the owner's permission to sell the scrap metal;
- Makes it unlawful for any scrap metal dealer, or employee or agent of a dealer, to purchase any junk vehicle from a seller without inspecting the vehicle and recording the vehicle identification number, and obtaining an appropriate vehicle title or bill of sale;
- Makes it unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase or receive any regulated scrap metal from a minor;

- Specifically lists items of regulated scrap metal that would be unlawful for any scrap metal dealer to purchase without obtaining proof that the seller is authorized to sell the regulated scrap metal on behalf of the governmental entity, utility provider, railroad, cemetery, civic organization, or scrap metal dealer;
- Makes it unlawful for any scrap metal dealer to dispose of, alter, or destroy any regulated scrap metal when notified by any law enforcement agency that there is cause to believe the regulated scrap metal has been stolen. The scrap metal dealer would be required to hold the item or items for 30 days, excluding weekends and holidays; and
- Provides a graduated penalty for convictions of a violation of the scrap metal statutes as follows:
 - A conviction for a first violation is a class C misdemeanor and would require a fine of not less than \$200, or confinement in the county jail for not more than one month, or both;
 - A conviction for a second violation, within a two-year period, is a class B misdemeanor and would require a fine of not less than \$500, or confinement in the county jail for not more than six months, or both such fine and jail time; and
 - A conviction for a third or subsequent violation, within a two-year period, is a class A misdemeanor and would require a fine of not less than \$1,000, or confinement in the county jail for not more than one year, or both.

In addition, the bill deals with the crime of traffic in contraband in a correctional institution to add any care and treatment facility to the facilities where contraband is illegal. The bill:

- Defines care and treatment facility to mean a facility operated by the Department of Social and Rehabilitation Services (SRS) for the purpose of care and treatment of involuntarily committed sexually violent predators;
- Defines firearms, ammunition, explosives, or a controlled substance as contraband, a severity level 5, nonperson felony, in a care and treatment facility;

- Authorizes the Secretary of SRS to define contraband by rules and regulations and make traffic in contraband of this type of contraband in a care and treatment facility a severity level 6, nonperson felony; and
- Makes traffic in contraband in a care and treatment facility by an employee a severity level 5, nonperson felony.

Proceeds Derived from a Violation of the Uniform Controlled Substance Act

HB 2059 amends the crime of receiving or acquiring proceeds derived from a violation of the Uniform Controlled Substance Act (UCSA) to include proceeds derived from violations of similar offenses from another jurisdiction. Previous law made it illegal to receive or acquire proceeds derived from violations of the Kansas UCSA rather than from violations in any jurisdiction.

Crimes, Sentencing, Parole Board

HB 2060 amends the prior law to:

- Create a special rule in sentencing for a violation of battery on a law enforcement officer where bodily injury occurs;
- Create a special rule in sentencing to enhance the sentence on drug manufacturing, drug trafficking, and some drug possession crimes if the offender carries or discharges a firearm during the commission or furtherance of the drug crime;
- Amend the crime of unlawful conduct of cockfighting;
- Amend the crimes of unlawful conduct of dog fighting and unlawful attendance of dog fighting;
- Amend the sentence for a third or subsequent drug felony conviction to clarify the alternative sentence would be subject to appropriation;
- Amend the statutes on authorized disposition for crimes committed on or after the adoption of the Kansas Sentencing Guidelines Act and to add an administrative driver's license suspension for transporting a controlled substance or controlled substance analog in a vehicle;
- Amend the crime of fleeing or eluding a law enforcement officer;

- Amend the crimes of criminal threat and aggravated criminal threat;
- Amend the burden of proof on a subsequent challenge to the defendant's previously established prior criminal history;
- Amend prior law to extend the standard probation term for a drug felony sentenced pursuant to KSA 21-4729, commonly referred to as 2003 SB 123, from 12 months to 18 months;
- Delay the implementation of a statewide offender risk assessment analytical tool for community correctional service programs to July 1, 2011;
- Require the Kansas Parole Board to make available to the newly created Joint Committee on Parole Board Oversight redacted documents, records, and reports concerning 30 cases selected by the Secretary of Corrections. A final report and recommendation of the Joint Committee would be required by January 1, 2010; and
- Resolve conflicts in the recodification of drug crimes bill (HB 2236).

Battery on a Law Enforcement Officer

The bill amends prior law on sentencing to create a special sentencing rule for a violation of battery on a law enforcement officer where bodily injury occurs. The bill makes the sentence a presumptive prison sentence which is not to be considered a departure and is not subject to an appeal. Additionally, the sentence is consecutive to any other term or terms of imprisonment imposed.

Drug Crime Committed with a Firearm

The bill amends the felony sentencing statute to create a special rule to enhance the sentence on drug manufacturing, drug trafficking, and some drug possession crimes if the trier of fact makes a finding that the offender carries or discharges a firearm during the commission or furtherance of the drug crime.

The sentence is presumed imprisonment. In addition to the sentence for the drug crime, an offender's sentence is enhanced as follows:

- Possessing a firearm results in an additional six months; and
- Discharging a firearm results in an additional 18 months.

Unlawful Conduct of Cockfighting

The bill amends prior law on the unlawful conduct of cockfighting and the statute on asset seizure and forfeiture to:

- Add the element of causing any gamecock to kill another gamecock to the crime of unlawful conduct of cockfighting;
- Add the elements of grooming, preparing, or medicating any gamecock with the intent to have it kill another gamecock to the crime of unlawful conduct of cockfighting;
- Recodify the crime of attending the unlawful conduct of cockfighting to make it a class B, nonperson misdemeanor;
- Create the crime of unlawful possession of cockfighting paraphernalia and make it a class A, nonperson misdemeanor;
- Increase the penalty for the crime of unlawful conduct of cockfighting from a class A, nonperson misdemeanor, to a level 10, nonperson felony; and
- Redefine “gamecock” to mean a domesticated fowl that is reared or trained for the purpose of fighting with other fowl.

Unlawful Conduct of Dog Fighting

The bill amends the law to create the crime of unlawful possession of dog fighting paraphernalia, a class A, nonperson misdemeanor, and to define the crime of unlawful attendance of dog fighting, a class B, nonperson misdemeanor. Dog fighting paraphernalia is defined as any braking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia together with evidence that the paraphernalia is being used or is intended for use in the unlawful conduct of dog fighting.

Further, the bill authorizes the seizure of any dog owned or kept on the premises of any person arrested for unlawful possession of dog fighting paraphernalia.

Third or Subsequent Felony Drug Conviction

The bill amends the law on the sentence for a third or subsequent felony drug conviction to provide, subject to appropriation, and if the Secretary of Corrections determines substance abuse treatment resources are available, that the term of imprisonment may be served in a facility designated by the Secretary for intensive substance abuse treatment. The determination regarding the availability of treatment resources is not subject to review.

Administrative Driver's License Suspension

The bill adds an administrative driver's license suspension or restriction to the penalty or disposition already imposed by law for a conviction of unlawful possession of a controlled substance or controlled substance analog if the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle on a highway or street.

Fleeing or Eluding a Law Enforcement Officer

The bill amends the law on fleeing or eluding a law enforcement officer by clarifying that the law enforcement officer must be either in or upon an appropriately-marked vehicle or bicycle or in uniform prominently displaying the law enforcement officer's badge of office when giving a signal to a driver of a motor vehicle to stop his or her vehicle.

The bill defines appropriately-marked vehicle or bicycle to include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren, or both.

The bill provides an affirmative defense to any prosecution if the driver has a reasonable belief that the vehicle or bicycle pursuing the driver is not a police vehicle or police bicycle.

Criminal Threat and Aggravated Criminal Threat

The bill amends the law on criminal threat and aggravated criminal threat to expand the crimes to include the intent to cause, or recklessly cause, the lock down or disruption of regular, ongoing activities of any building, place of assembly, or facility of transportation.

Prior Criminal History

The bill amends the law in the specific situation where an offender's prior criminal history was either admitted by the offender or judicially determined by a preponderance of the evidence but the offender subsequently challenges his or her criminal history. If the offender subsequently challenges his or her criminal history, the burden of proof is on the offender to prove his or her criminal history by a preponderance of the evidence.

Extend Probation

The bill amends the law to extend the standard probation term for a drug felony sentenced pursuant to KSA 21-4729, commonly referred to as 2003 SB 123, from 12 months to 18 months.

Risk Assessment Tool

The bill delays the implementation of a statewide offender risk assessment analytical tool for community correctional service programs to July 1, 2011.

Kansas Parole Board

The bill amends the law to require the Kansas Parole Board (KPB) to make available to the newly created Joint Committee on Parole Board Oversight redacted documents, records, and reports concerning 30 cases selected by the Secretary of Corrections. The KPB also is required to provide to the Joint Committee a summary statement listing the factors and rationale used to grant or deny parole in each such case and any correspondence received by the KPB relating to such grant or denial. The Joint Committee is required to submit a final report and recommendation to the Legislature on or before January 1, 2010.

The Secretary of Corrections is required to select 30 cases representative of a variety of circumstances, including, but not limited to inmates with different custody levels, inmates with different types of offenses that resulted in such inmates' incarceration, and inmates incarcerated at different state correctional facilities. Fifteen of the cases come from the group of inmates who were sentenced to prison for a crime committed prior to the enactment of the Kansas Sentencing Guidelines Act (July 1, 1993), who were not eligible for retroactive application of the Sentencing Guidelines Act, and who are still incarcerated. Fifteen of the cases come from the group of inmates who were sentenced for a crime committed prior to the enactment of the Kansas Sentencing Guidelines Act and while on probation, parole, conditional release or in a community corrections program for that crime, were sentenced to prison for a crime committed after July 1, 1993; who were not eligible for retroactive application of the Sentencing Guidelines Act on the prior sentence; and who are still incarcerated.

The Joint Committee on Parole Board Oversight consists of six members of the Legislature as follows:

- The chairperson and the ranking minority member of the standing Senate Committee on Judiciary;
- The chairperson and the ranking minority member of the standing House Committee on Corrections and Juvenile Justice;
- One member appointed by the chairperson of the standing Senate Committee on Judiciary; and

- One member appointed by the chairperson of the standing House Committee on Corrections and Juvenile Justice.

The chairperson of the standing House Committee on Corrections and Juvenile Justice is the chairperson of the Joint Committee.

The bill authorizes the Joint Committee to convene an executive session and requires the redacted documents, records, and reports be received while the Committee is in an executive session. All copies of redacted documents, records, and reports are required to be returned prior to the open meeting resuming. Unauthorized disclosure may subject such members to discipline or censure from the House of Representatives or the Senate. Further, the redacted documents, records, reports and summary statement listing the factors and rationale used to grant or deny parole are confidential and not subject to compulsory process seeking disclosure.

Kansas DUI Commission; DUI; Driver Improvement Clinics

Senate Sub. for HB 2096 creates the Kansas DUI Commission, amends current law on driving under the influence of alcohol or drugs (DUI) and DUI penalties, amends the duties of the municipal court, and creates statewide driver improvement clinics.

Kansas DUI Commission

The Kansas DUI Commission is required to:

- Review Kansas DUI statutes;
- Review DUI statutes in other states;
- Review evaluation, treatment, and supervision practices, enforcement strategies, and penalty structure to determine what is effective in changing behavior of DUI offenders;
- Develop a legislative proposal for centralized recordkeeping;
- Gather and assess information on all groups and committees working on DUI issues;
- Review proposals introduced in the 2009 Legislative Session; and

- Consider other DUI-related proposals as directed by chairpersons of the standing Committees of House and Senate Judiciary, and Corrections and Juvenile Justice.

The Commission is required to submit a preliminary report of its findings by the first day of the 2010 Legislative Session and a final report by the first day of the 2011 Legislative Session. The Commission would have the assistance of the staff of the Office of the Revisor of Statutes and the Kansas Legislative Research Department.

The Commission has a total membership of 23 individuals who are entitled to receive *per diem* compensation, except the public members of the Commission who would be entitled to receive compensation commensurate with compensation a legislator would receive. Members of the Commission include:

- Four legislators;
- Two judges;
- The Attorney General or designee;
- One prosecutor;
- One defense attorney;
- One victim advocate;
- Two addiction professionals;
- The Secretary of Corrections;
- The Secretary of Social and Rehabilitation Services;
- The Secretary of Revenue or designee;
- The Secretary of Transportation or designee;
- The Chairperson of the Kansas Sentencing Commission or designee;
- The Superintendent of the Kansas Highway Patrol or designee;
- The Director of the Kansas Bureau of Investigation or designee;

- One sheriff;
- One municipal law enforcement officer;
- One court services officer; and
- One parole officer.

The provisions of this section would be in effect on July 1, 2009, and would expire on July 1, 2011.

DUI Law

The bill amends the DUI law by adding a new provision that requires district or county attorneys to request and receive the DUI offender's driving record from the Division of Vehicles and the DUI offender's criminal history record from the Kansas Bureau of Investigation, prior to filing a complaint to initiate prosecution. A similar provision requires a city attorney to request and receive the same records upon the filing of a complaint, citation, or notice to appear, or prior to a conviction. The bill requires a city attorney to refer a felony DUI to the appropriate district or county attorney for prosecution.

DUI Penalties

The bill amends the law regarding penalties for third convictions of DUI to make the penalty the same as a fourth or subsequent conviction of DUI under prior law. The penalty for a fourth and subsequent conviction of DUI would be a new penalty. The provisions of this section go into effect on July 1, 2010.

Specifically, the bill requires the penalty for a third conviction of DUI to be:

- A nonperson felony requiring a minimum sentence of 90 days, but not more than one year imprisonment in the county jail, and a minimum fine of \$1,500, but not more than \$2,500. After serving 48 consecutive hours of imprisonment, the remainder of the mandatory minimum sentence may be served in a work release program or on house arrest; and
- The court has the discretion to order the term of imprisonment be served in a state facility designated by the Secretary of Corrections for the provision of substance abuse treatment. Upon completion of the substance abuse treatment program, the person would be returned to the custody of the sheriff to serve the balance of the term of imprisonment.

- The person also would be returned to the custody of the sheriff if:
 - There are no resources or capacity for treatment in a facility designated by the Secretary of Corrections;
 - The person fails to meaningfully participate in treatment;
 - The person is disruptive to the security or operation of the designated facility; or
 - The medical or mental health of the person makes the person unsuitable for confinement at the designated facility.
- After the term of imprisonment, the person would be placed in the custody of the Secretary of Corrections for a mandatory one-year period of postrelease supervision and would be required to participate in an inpatient or outpatient program for alcohol and drug abuse.

The bill requires the penalty for a fourth or subsequent conviction of DUI to be:

- A nonperson felony requiring a minimum sentence of 180 days, but not more than one year imprisonment in the county jail, and a fine of \$2,500. After serving 144 consecutive hours of imprisonment, the remainder of the mandatory minimum sentence may be served in a work release program; and
- The court has the discretion to order the term of imprisonment be served in a state facility designated by the Secretary of Corrections for the provision of substance abuse treatment. Upon completion of the substance abuse treatment program, the person would be returned to the custody of the sheriff to serve the balance of the term of imprisonment.
 - The person also would be returned to the custody of the sheriff if:
 - There are no resources or capacity for treatment in a facility designated by the Secretary of Corrections;
 - The person fails to meaningfully participate in treatment;
 - The person is disruptive to the security or operation of the designated facility; or

- The medical or mental health of the person makes the person unsuitable for confinement at the designated facility.
- There is no provision for postrelease supervision for a fourth or subsequent conviction of DUI.

Municipal Court Duties

The bill requires a municipal court judge to forward the arrest and charging information of a DUI to the Kansas Bureau of Investigation central repository. Furthermore, a municipal court judge is required to ensure the person arrested or charged with a municipal DUI is fingerprinted and processed at the time of booking or first appearance, whichever occurs first.

Driver Improvement Clinics

The bill amends prior law to authorize the Department of Revenue, Division of Vehicles, to establish driver improvement clinics throughout the state or contract with private individuals or companies to provide such services. The Division is authorized to allow a person whose driving privileges are subject to suspension because the person has been convicted of three or more moving traffic violations within a 12-month period to retain his or her driving privileges by attending a driver improvement clinic. The Division is not authorized to allow a person issued a commercial driver's license this option. The individual subject to suspension is required to make application and pay the required fee to the Division to attend the clinic.

The bill requires the Secretary of Revenue to adopt rules and regulations to establish a driver's improvement clinic fee which could not exceed \$500. Half of the fees collected would be credited to the Division of Vehicles Operating Fund and the other half would be credited to the Correctional Services Special Revenue Fund created in the bill. The Kansas Department of Corrections is authorized to use the Correctional Services Special Revenue Fund for the sole purpose of providing substance abuse treatment in a Kansas Department of Corrections facility.

The provisions in this section will be in effect on January 1, 2010.

Sex Offenses

HB 2098 amends what is commonly referred to as the "Rape Shield" law. The bill adds aggravated trafficking and electronic solicitation to the list of crimes in which evidence of the complaining witness' previous sexual conduct with any person, including the defendant, would not be admissible or referenced during the trial unless the defendant files a written motion to the court to admit the evidence and the court rules the evidence is relevant.

The bill also amends prior law concerning electronic solicitation. The bill clarifies that enticing a person whom the offender believes to be a child 14 or more years of age but less than 16 years of age for an unlawful sexual act would be a severity level 3 person felony.

Docket Fees

HB 2111 extends the sunset provision on the Kansas Commission on Judicial Performance to June 30, 2013. The bill also deletes the provision in prior law that would have decreased docket fees, generally, by \$2.00 on or after July 1, 2010. The decrease is set to take effect on and after July 1, 2013.

Unlawfully Hosting Minors Consuming Alcoholic Liquor or Cereal Malt Beverages

HB 2165 expands the crime of unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage to include recklessly permitting a person's land, building, structure or room owned, occupied or procured by such person to be used in such a manner that results in the possession or consumption of alcoholic liquor or cereal malt beverages by a minor.

The penalty is a class A person misdemeanor, with a minimum fine of \$1,000. If the court sentences the offender to perform community service work as a condition of probation, the court is required to consider ordering the offender to serve the community service at an alcohol treatment facility.

The bill provides that no civil liability is created for any lodging establishment.

Bond Supervision Fees

HB 2207 amends prior law to increase the maximum amount that could be assessed for supervision fees against an individual who is charged with a crime and released on supervision under the conditions of an appearance bond. The amount changes from \$10 per week to \$15 per week supervision fees.

Corrections Advisory Board Membership

HB 2232 amends prior law to increase the limit of the number of members on the Corrections Advisory Board (Board) to at least 12 but not more than 15 members. Under current law, total Board membership is limited to 12.

Of the total Board membership, the board of county commissioners would be authorized to appoint at least three but not more than six members to the Board. Currently, the maximum number of members the board of county commissioners may appoint is three.

Withdrawal of Plea

HB 2233 amends prior law on an appeal by the prosecution, withdrawal of a guilty or no contest plea after sentencing, and selection of alternate jurors.

Appeal by the Prosecution

The bill amends prior law regarding appeals by the prosecution to clarify the term “an appeal by the prosecution.” The term includes appeals, interlocutory appeals, and appeals that seek discretionary review in the Kansas Supreme Court or the United States Supreme Court.

Criminal defendants have a statutory right to a speedy trial pursuant to KSA 22-3402. A criminal defendant is discharged from further liability if not promptly brought to trial. The law provides for certain circumstances to toll, or stop, the time counted for speedy trial purposes. KSA 22-3604 tolls the time during the pendency of an appeal by the prosecution for speedy trial.

Withdrawal of a Guilty or No Contest Plea

The bill also amends the statute on withdrawal of a guilty or no contest plea after a sentence has been imposed in a criminal case. The bill places a one year limitation from the final order on the direct appeal in the case or when Kansas appellate jurisdiction terminates; or upon the United States Supreme Court’s (Court) denial to review the case or on the final order in the case if the Court granted review.

The bill provides a provision to extend the time limitation upon an additional, affirmative showing of excusable neglect by the defendant.

Under prior law, there is no time limitation on when a defendant may withdraw a guilty or no contest plea after sentencing.

Selection of Alternate Jurors

The bill also amends prior law to authorize selection of one or more alternate jurors in a criminal case to be selected at the same time as the regular jury is being selected. Under prior law, the alternate juror or jurors are selected after the regular jury has been empaneled and sworn. The bill leaves it to the discretion of the judge to decide whether

the alternate juror or jurors are selected at the same time as the regular jury or after the regular jury has been empaneled and sworn.

Drug Offenses

HB 2236 moves the drug crimes from Chapter 65 (Public Health) to Chapter 21 (Crimes and Punishments) of the Kansas Statutes Annotated. In addition, the drug crimes are reorganized to group the crimes into the following categories: manufacture, distribution, possession, and paraphernalia.

New sections provide:

- A section for definition of terms;
- A declaration that the version of the law that controls would depend on the date the crime was committed;
- Manufacture of a controlled substance or controlled substance analog would be a drug severity level 1 felony and would provide for the sentence for such crime;
- The defendant would be responsible for the cost and expenses of seizure, disposition, and decontamination of a manufacturing site;
- Distribution of a controlled substance or controlled substance analog would be a drug crime ranging from a class A nonperson misdemeanor to a drug severity level 1 felony, depending on the violation;
- Possession of a controlled substance or controlled substance analog would be a class A nonperson misdemeanor or a drug severity level 4 felony, depending on the violation;
- For a separate crime for the use of any communication facility to commit, cause, or facilitate a crime of manufacture, distribution, or possession of a controlled substance or controlled substance analog;
- For the crime of unlawfully obtaining and distributing a prescription drug;
- For the crime of possession of precursor chemicals with the intent to use the chemicals to manufacture a controlled substance and for the crime of possession of drug paraphernalia;
- For the crime of advertising, marketing, labeling, distributing or possessing with the intent to distribute precursor chemicals or drug paraphernalia;
- Factors to consider in determining whether an object is drug paraphernalia;
- For the crime of unlawful abuse of toxic vapors;
- For the crime of distribution, possession with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance;
- For the crime of unlawfully distributing or possessing with the intent to distribute any substance which is not a controlled substance, *e.g.*, purporting to distribute cocaine but distributing flour instead;

- That the prosecuting attorney would be required to notify the Board of Pharmacy of the initiation of a drug prosecution for a controlled substance analog so that the Board may collect the data to recommend to the Legislature whether the controlled substance analog should or should not be scheduled;
- For the crime regarding the proceeds derived from a violation of any of the previously described sections; and
- Uniformity.

Other sections change references to the drug crimes in the Kansas Statutes Annotated from the Chapter 65 references to a reference to the new section or sections in the bill.

Service of Process

HB 2311 adds licensed private detectives to the list of those people who could complete service of process in or out of state.

LOCAL GOVERNMENT

Issuance of Bonds

SB 35 makes substantive revisions and technical corrections regarding bonds issued by local units of government.

Interest Rates on Bonds Issued by Local Governments

The bill increases temporarily the cap on interest rates that is placed upon bonds issued by municipalities and other local taxing subdivisions of the state. The statute otherwise prohibits the interest rate on bonds issued by a municipality or a local taxing subdivision from exceeding the daily yield for ten-year treasury bonds, plus 3.0 percent if the interest is not taxable or 4.0 percent if it is taxable. The bill increases the caps from the Act's publication date in the *Kansas Register* until June 30, 2010, to be the daily yield for ten-year treasury bonds, plus:

- 5.0 percent if the interest is not taxable; or
- 6.0 percent if the interest is taxable.

STAR Bond Clarifications

The bill makes technical corrections and clarifications regarding the usage of Sales Tax and Revenue (STAR) bonds. Since STAR bonds utilize funding from sales tax instead of property taxes, the bill also repeals the requirement that the county appraiser annually certify the increase in assessed value of real and personal property in the STAR bond district to the county clerk. The bill clarifies that the Secretary of Commerce is to set a limit on the total amount of bonds issued by a city or county when the funding comes from the incremental revenue received from any state sales tax. Previously, the law referred to the setting of such a limit only when a county pledged 100.0 percent of the incremental revenue from a county sales tax.

Hospital District in Linn County

SB 38 provides two options for holding an election to establish a hospital district in Linn County's Mound City and Paris townships. It also sets requirements for any hospital board established.

The bill requires the Board of County Commissioners to call for an election if at least 10 percent of the two townships' qualified electors sign and file a petition requesting the

formation of a hospital district. Alternatively, it allows the Board of County Commissioners to submit the proposition to the two townships' voters on the Board's own motion.

If the hospital district is approved by a majority of those voting in such an election, the Board then must establish the hospital district and establish the original hospital district board, as provided for in law, which includes holding a public meeting for the purpose of electing the first board.

The bill permits the hospital board, once established, to levy an annual tax of not more than two mills for operating, equipping, maintaining and improving the hospital. It permits the hospital board to exceed the two-mill limitation if (a) the hospital board adopts a resolution to increase the levy above two mills; and (b) no petition in opposition of the increase, signed by at least five percent of the qualified voters, is filed as required by law. If such a petition is filed, an election must be held, and only if a majority of those voting approve of the increase would the increase be permitted.

Vesting of Development Rights; Placement of Sexually Violent Predators

House Sub. for SB 91 makes changes to the statute dealing with the vesting of development rights in residential developments. Specifically, the bill:

- Allows the statute's application to single-family residential developments to include those development rights vested prior to July 1, 2009; and
- Expands the statute's application regarding residential development to include single-family housing; multiple-family housing, such as apartments, duplexes, townhomes and similar configurations; condominiums; and manufactured and modular homes. A ten-year time frame will apply between recording the plat and beginning construction; substantial work must be completed or development rights could expire.

These provisions apply to development rights vested after July 1, 2009.

Placement of Sexually Violent Predators

The bill contains a provision whereby no more than eight sexually violent predators may be placed in any one county on transitional release or conditional release. The Secretary of Social and Rehabilitation Services is required to issue an annual report to the Governor and Legislature detailing activities regarding transitional and conditional release of sexually violent predators. Such details include the following:

- The number of such predators;

- The location of such predators;
- The number of predators who have been returned to treatment at Larned State Hospital and the reasons for the return; and
- Any plans for the development of additional transitional or conditional release facilities.

Rezoning Related to Mining Operations

SB 253 addresses modification of zoning regulations in cities and counties (*i.e.*, rezoning).

Rezoning in All Cities and Counties

In laws applicable to all cities and counties, the bill exempts rezoning related to mining operations, subject to the Surface-Mining Land Conservation and Reclamation Act (KSA 49-601 *et seq.*), from any super-majority vote requirement of the city or county governing body. Specific details of these sections follow.

- Prior to enactment of this bill, the law required the same procedure for rezoning proposals as is required for consideration and adoption of the original zoning regulations. The planning commission must recommend by simple majority vote approval or disapproval of the rezoning proposal to the governing body (inaction presumes disapproval), and the governing body may override the planning commission's recommendation only by a 2/3 majority vote. The bill exempts mining operation rezoning proposals from this 2/3 majority vote requirement. The bill requires instead only a simple majority vote of the governing body on these rezoning proposals.
- Prior to enactment of this bill, the law provided for a protest petition process which, if the protest petition conditions were met, prohibited the governing body from approving a rezoning amendment unless 3/4 of the governing body members voted in favor of the proposed zoning change. The bill exempts mining operation rezoning proposals from this 3/4 majority vote requirement. The bill requires instead only a simple majority vote of the governing body on these rezoning proposals.
- The bill also prohibits a city or county from establishing procedures regarding the adoption of special use or conditional use permits for mining operations that require the approval of more than a majority of governing body members.

Rezoning in Johnson County

The bill also addresses the issue of rezoning in Johnson County's unincorporated areas. The section of the bill dealing only with Johnson County exempts rezoning related to mining operations, subject to the Surface-Mining Land Conservation and Reclamation Act (KSA 49-601 *et seq.*), from the super-majority vote requirement of the Board of County Commissioners.

Under current law, the Board of County Commissioners requires the Johnson County Planning Commission to make recommendations regarding zoning classifications which are uniform by zoning class. All zoning classifications, including conditional use permits which may provide exceptions to these uniform regulations, must adhere to the same notice, hearing and voting requirements. The law provides for a protest petition process which, if the protest petition conditions are met, prohibits the governing body from approving a rezoning amendment unless 4/5 of the members of the Board of County Commissioners vote in favor of the proposed zoning change. The bill exempts mining operation rezoning proposals from this 4/5 majority vote requirement. The bill requires instead only a simple majority vote of the Board on these rezoning proposals.

City Improvements in Unincorporated Areas

House Sub. for SB 257 deals with city improvements in unincorporated areas. The bill provides two additional conditions, each of which would allow a city to make improvements in unincorporated areas within three miles of their corporate limits. Current law allows these improvements only if the city has adopted regulations governing the subdivision of land in the unincorporated area; the bill retains this option and adds two more conditions, requiring only one of the three to be met:

- The city has obtained the county's consent to making the improvements; or
- One hundred percent of the property owners outside the city who will benefit have signed a petition requesting the improvements be made.

Land Banks

HB 2155 authorizes the creation of a land bank in any city. The provisions are as follows:

- The bill grants authority for the city's governing body to establish or dissolve a city land bank by adoption of an ordinance. The city also may advance operating funds to the land bank.

- The land bank is subject to fiscal and budgetary requirements such as the cash-basis law, must make investments in accordance with state law, and must publish annual reports.
- The land bank must be governed by a board of trustees, whose meetings are subject to state open meetings laws. The board is allowed to have employees.
- The city, the county, another city, or another taxing subdivision in the county may transfer property to the land bank, which may refuse to accept any property offered. The transfer of property to the land bank is not subject to any bidding requirement and is exempt from any provision of law requiring a public sale.
- The board's duties include managing its property, keeping an inventory of such property, and selling or otherwise disposing of the property. The bill allows the board to sell property without competitive bidding under terms necessary or appropriate to assure the property's effective reutilization.
- The land bank is exempt from property taxes and, except for special assessments levied by a municipality, the county treasurer is required to remove from the tax rolls all taxes and other charges due on the property when it is acquired by the board.
- The board will retain moneys from the sale of properties, except that the board may use proceeds to reimburse any municipality for delinquent special assessments due on such property.
- The board may establish and consult with advisory committees.

Topeka/Shawnee County Riverfront Authority

HB 2157 amends state law to allow the Topeka/Shawnee County Riverfront Authority to meet quarterly, or more often if called by the chairperson, rather than monthly as is required under the original law.

OPEN RECORDS ACT

Open Records Amendment

Senate Sub. for HB 2099 amends the Kansas Open Records Act (KORA) to add to an existing exception the provision that a public agency would not be required to disclose the name, address, or other contact information of an alleged victim of stalking, domestic violence, or sexual assault.

See also: SB 34; SB 87, and HB 2052.

REAL ESTATE

Transfer Fee Covenants—Prohibition

HB 2092 enacts new law to specify that transfer fee covenants recorded on and after July 1, 2009, shall not run with the title to real property and will not be binding or enforceable in law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Additionally, the bill declares transfer fee covenants, on and after the effective date of this act, to be against public policy and any such covenant will be void and unenforceable.

A “transfer fee” is defined by the act to mean “a fee or charge payable upon the transfer of an interest in real property or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price or other consideration given for the transfer.” A transfer fee would not include, among those items outlined in the bill, commissions payable to real estate salespersons and brokers; any rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor; any tax, fee, charge, assessment, fine or other amount payable to or imposed by a government authority; and any fee charged that is a typical real estate closing cost, including escrow fees, settlement fees or title insurance premiums charged by a licensed real estate title company.

RETIREMENT

Budget Savings Moratorium

SB 219 implements a nine-month moratorium on state and local employer contributions to the KPERS Death and Long-term Disability Benefits Plan. The nine-month moratorium begins on March 1, 2009, and ends on November 30, 2009.

A revised fiscal note from KPERS indicates that the total savings from March 1 to November 30, 2009, for state and local governments will total approximately \$48.8 million in budget reductions from not having to make statutory employer contributions. State contributions will be reduced \$37.4 million and local contributions will be reduced \$11.3 million as a result of the moratorium. SB 23 as approved by the Governor earlier this year removed \$16.7 million, including \$13.5 million from the State General Fund, of the estimated FY 2009 state savings from agency budgets. SB 219 is trailer legislation to ratify that action earlier in the 2009 Session for the period through June 30, 2009. Subsequent adjustments in the state's FY 2010 agency budgets and in local units of government that reduce their expenditures also are dependent upon SB 219 authorizing such actions.

KPERS 2009 Omnibus Bill

Senate Sub. for HB 2072 amends certain statutes for the Kansas Police and Firemen's (KP&F) Retirement System and the Kansas Public Employees Retirement System (KPERS). Amendments, with fiscal impacts noted, are summarized below.

Waiting Period After Retirement for KPERS Retirees. The bill increases the break-in-service requirement from 30 to 60 days after retirement for all new KPERS retirees before they can return to work for any KPERS participating employer, and includes all members of the KPERS plan, including state, school and local employees. This amendment does not affect members of the Retirement System for Judges or the KP&F Retirement System.

Change in KP&F Earnings Limitation. The bill removes the current statutory earnings limitation of \$10,000 for members of the KP&F Retirement System who are assigned to Tier II and qualify for disability benefits, but who are able to work part-time at a non-public safety job while drawing KP&F disability payments. The fiscal note indicates that KPERS will pay an estimated \$300,000 in additional disability benefits each fiscal year when the cap is removed.

Computation of Employer Contributions. The bill requires the KPERS employer contribution rate for both the state group and the school group to be equal to the statutory

rate in FY 2010 and subsequent fiscal years. Any additional contributions for the state group in excess of those required by the actuarial rate that are a result of using the statutory rate and that are remitted to KPERs will be credited to the school group. The fiscal note indicates that State General Fund savings of approximately \$2.6 million will result in FY 2010 from this change recommended in the Governor's FY 2010 Budget Report and approved by the Legislature.

Working after Retirement for Contractors. The bill clarifies that statutory provisions pertaining to retirees of KPERs who return to work after retirement as contracted employees will be subjected after April 1, 2009, to the same state policies as other KPERs retirees who return to work as individuals. The bill requires the third-party companies to provide information about the salaries of their contract employees in order for KPERs and participating employers to apply current statutory provisions regarding salary caps and special additional employer contributions.

Three-Year Salary Cap Exemption for School Professionals. The bill eliminates for three years beginning July 1, 2009, the statutory \$20,000 earnings limitation for licensed public school employees (teachers and administrators) of the KPERs school group who return to work for the same KPERs participating employer from which they retired and who choose a normal retirement option (including the 85-point plan). The bill requires special payments from all public school employers who employ such licensed KPERs school group retirees and the payments will be based on a contribution rate equal to the employer actuarial rate plus an additional 8.00 percent. For FY 2010, this rate is 20.07 percent. The provision will sunset on July 1, 2012. After this date, a report about this three-year program from KPERs and its actuary is required to be submitted to the Joint Committee on Pensions, Investments and Benefits. Any fiscal impact is determined and reported at that time to the Joint Committee.

Substitute Teachers Not Affected. The bill clarifies that substitute teachers are not addressed by the changes in law.

Service Credit Purchases. The bill allows the purchase of KPERs participating service credit for journeyman experience that is necessary to obtain certain technical or vocational teacher certifications.

STATE FINANCES

Salary and Wage Priority

House Sub. for SB 168 requires that all funds budgeted for salaries, wages, compensation, and employer's benefit contributions for full-time equivalent positions shall be spent on those specific expenditures and requires that agencies give priority to payment of employee salaries over all other expenditures when a state agency processes payments through the State Treasury.

Investment of State Moneys

HB 2331 amends existing law to establish a minimum interest rate of 0.50 percent for remediation loan linked deposits, agricultural loan linked deposits, and housing loan linked deposits, if the market rate is below 2.5 percent. The bill sets the dates the minimum interest rate is calculated, on the first business day of January and July of each year, for the remediation loan linked deposit.

Under existing law deposits are placed with lending institutions at a rate of 2.0 percent below market rate. Since the current market rate is below 2.0 percent, the minimum interest rate is 0.0 percent. HB 2331 sets a minimum interest rate of 0.50 percent whenever the market rate is below 2.5 percent.

Under the existing law, the State Treasurer recalculates the minimum interest rate on the first business day of each calendar year for the remediation loan linked deposits. HB 2331 amends existing law so that the minimum interest rate is recalculated at the same time for all three loans, on the first business day of January and July of each year.

FY 2009 and FY 2010 Budget

House Sub. for Sub. for SB 23, Senate Sub. for HB 2354, and Senate Sub. for HB 2373. Three bills contain most appropriations for FY 2009 and FY 2010. House Sub. for Sub. for SB 23 is the rescission appropriations bill passed during the 2009 regular legislative session, containing mainly FY 2009 rescissions of appropriations. Senate Sub. for HB 2354 contains FY 2010 appropriations and appropriations for a number of capital improvement projects. Senate Sub. for HB 2373 is the Omnibus appropriation bill.

House Sub. for Sub. for SB 23, Senate Sub. for HB 2354, and Senate Sub. for HB 2373.

The revised amount for FY 2009 decreases amounts approved by the 2008 Legislature by \$276.0 million from the State General Fund and \$208.4 million from all funding sources.

FY 2009 and FY 2010 Budget—House Sub. for Sub. for SB 23, Senate Sub. for HB 2354, and Senate Sub. for HB 2373

Included in the State General Fund reduction is \$102.8 million that is offset with a corresponding increase in federal economic stimulus funding made available through the American Recovery and Reinvestment Act. The remaining \$173.2 million in reductions was distributed across state agencies. Most of the State General Fund decrease, after adjusting for the federal economic stimulus funding, is reflected in the budgets of the Board of Regents and institutions (\$40.0 million), the Department of Education (\$30.1 million), the Department of Corrections and institutions (\$16.6 million), and the Health Policy Authority (\$14.7 million).

For FY 2010, the approved amount is \$5.614 billion from the State General Fund and \$13.056 billion from all funding sources. The FY 2010 amount is \$134.5 million below the amount recommended by the Governor from the State General Fund and \$76.4 million below the amount recommended by the Governor from all funding sources. The approved FY 2010 State General Fund amount is \$551.2 million, or 8.9 percent, below the revised FY 2009 amount, while the approved FY 2010 expenditures from all funding sources are a decrease of \$259.5 million, or 1.9 percent, below the revised FY 2009 amount. The State General Fund decrease is primarily attributable to a reduction of \$396.2 million that is offset by an increase of the same amount of federal American Recovery and Reinvestment Act funding. The remaining \$155.0 million in reductions was achieved from targeted agency reductions and across-the-board reductions. The approved number of full-time equivalent (FTE) positions totals 41,610.2 for FY 2010, a decrease of 198.4 FTE positions from the FY 2009 approved amount of 41,808.6.

The following table reflects the dollar and percentage change from FY 2008 actual expenditures to the approved FY 2010 amount.

State General Fund and All Funds Expenditures
FY 2008-FY 2010
(Amounts in Thousands)

	State General Fund	Change From Prior Year		All Funds	Change From Prior Year	
		\$	%		\$	%
FY 2008	\$ 6,101,781	\$ 494,071	8.8%	\$ 12,688,689	\$ 720,152	6.0%
FY 2009	6,164,742	62,961	1.0	13,314,971	626,282	4.9
FY 2010	5,613,586	(551,156)	(8.9)	13,055,511	(259,460)	(1.9)

Major State General Fund items reflected in the approved FY 2010 budget, after compensating for the federal economic stimulus shift, include the following:

All state agencies are reduced by a 2.75 percent across-the-board reduction, excluding debt service and human services consensus caseloads, totaling \$137.5 million from the State General Fund.

Agencies must self-fund the longevity bonus pay for all current state employees, which must be made in the same manner as the current practice. Employees are eligible for the longevity bonus payment once they have a minimum of 10 years of service and maintain a satisfactory or better job performance evaluation rating. The maximum number of years of service that are compensated under the longevity bonus payment is 25 years of service. Employees hired or re-employed on or after June 15, 2008 (the first payroll period chargeable to FY 2009) are no longer eligible for the longevity bonus.

An appropriation of \$8.5 million is included as part of a five-year program to bring certain classified state positions whose salaries are below market pay up to market. The classifications that are substantially below market are the highest priority.

State General Fund expenditures for the Department of Education decrease by \$84.0 million, or 2.6 percent. The approved budget decreases Base State Aid Per Pupil (BSAPP) by \$87 in FY 2010 (from \$4,367 to \$4,280) and eliminates the transfer to the School District Capital Outlay Aid Fund (\$25.6 million).

State General Fund expenditures for the Department of Social and Rehabilitation Services decrease by \$51.6 million, or 7.6 percent, largely for increased federal match rate adjustments.

State General Fund expenditures for the Department of Administration decrease by \$20.8 million, or 26.4 percent, largely for debt service restructuring.

State General Fund expenditures for the Health Policy Authority decrease by \$9.0 million, or 1.8 percent, largely for increased federal match rate adjustments.

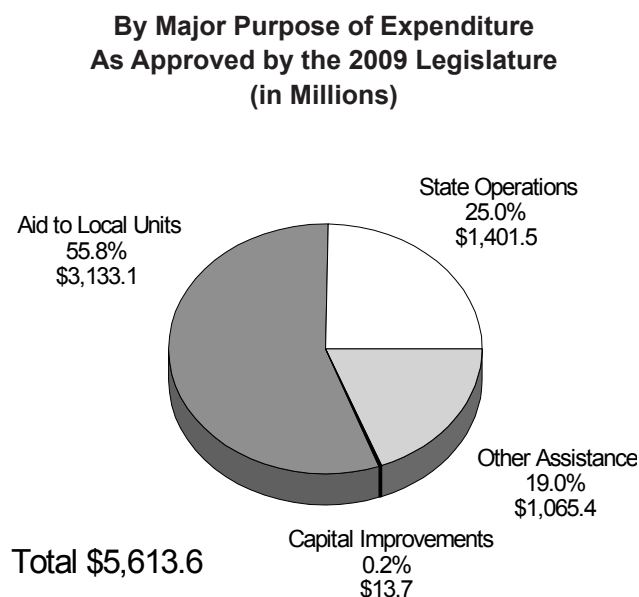
Also, State General Fund expenditures for the Judicial Branch decrease by \$9.3 million, or 8.6 percent, largely for operating reductions. A portion of the reduction may be offset by a docket fee surcharge.

For FY 2010, there are no State General Fund transfers to the Local *Ad Valorem* Tax Reduction Fund or the City County Revenue Sharing Fund; to the State Fair Capital Improvements Fund; or to the Business Machinery and Equipment Tax Reduction Assistance Fund - "Slider." The approved State General Fund budget includes transfers to the School District Capital Improvements Fund (\$80.0 million); to the State Water Plan Fund (\$3.3 million); the Regents Faculty of Distinction Program (\$4.0 million); and to the Special City County Highway Fund (\$5.0 million) though this transfer was from the State Highway Fund.

FY 2009 and FY 2010 Budget—House Sub. for Sub. for SB 23, Senate Sub. for HB 2354, and Senate Sub. for HB 2373

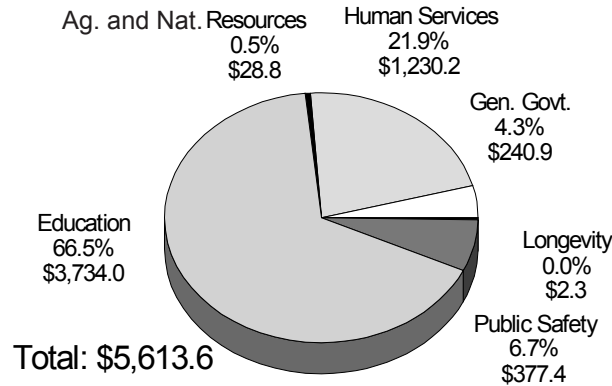
Other transfers that increased the State General Fund receipts by \$87.0 million include expanded gaming revenue (\$50.0 million) and a shift to the State Highway Fund to pay for certain Comprehensive Transportation Plan bonds (\$25.3 million).

State General Fund Expenditures by Major Purpose. Of the approved FY 2010 State General Fund expenditures of \$5.614 billion, 55.8 percent, or \$3.133 billion, is for state aid payments to local units of government (mainly local school districts); 25.0 percent, or \$1.401 billion, is for state operations (the daily costs of operating state government, including state employee salaries, rents, travel, and communications); 19.0 percent, or \$1.065 billion, is for other assistance (payments to individuals such as public assistance and unemployment benefits); and 0.2 percent, or \$13.7 million, is for capital improvements. The following pie chart displays FY 2010 State General Fund expenditures by major purpose. **FY 2010 STATE GENERAL FUND EXPENDITURES**



State General Fund Expenditures by Function of Government. Of the total approved FY 2010 State General Fund expenditures, 66.5 percent, or \$3.734 billion, is for education (local schools, community colleges, Regents institutions); 21.9 percent, or \$1.230 billion, is for the human services function of government (including the Department of Social and Rehabilitation Services and state hospitals, the Health Policy Authority, Department on Aging and the Department of Labor); and the remaining 11.7 percent, or \$0.656 billion, is for public safety agencies, general government agencies, agriculture and natural resources agencies, the transportation function, and classified employees below market pay/longevity adjustment. The following pie chart displays the FY 2010 State General Fund expenditures by function of government.

**FY 2010 STATE GENERAL FUND EXPENDITURES
By Function of Government
As Approved by the 2009 Legislature
(in Millions)**



State General Fund Profile. The following State General Fund profile reflects legislative action on the state budget as of adjournment on May 8, 2009. Based on the approved budget, the projected ending balance in the State General Fund at the end of FY 2010 would equal 0.0 percent of expenditures (\$0.8 million). While provisions of KSA 75-6702 require the projected State General Fund ending balance to equal 7.5 percent of expenditures, those provisions were waived in Senate Substitute for HB 2354.

	FY 2008 Actual	Legislature Approved FY 2009	Legislature Approved FY 2010
Beginning Balance	\$ 935.0	\$ 526.6	\$ 71.6
Receipts (April 2008 Consensus)	5,693.4	5,665.9	5,380.8
Legislative Receipt Adj.	0.0	43.9	92.0
Additional Revenue Adj. (April actual receipts; SB 97; and HB 2365)	0.0	0.0	70.0
Adjusted Receipts	\$ 5,693.4	\$ 5,709.8	\$ 5,542.8
Total Available	6,628.4	6,236.4	5,614.4
Less Approved Expenditures	6,101.8	6,164.7	5,613.6
Ending Balance	\$ 526.6	\$ 71.6	\$ 0.8
Ending Balance as a Percentage of Expenditures	8.6%	1.2%	0.0%
Receipts Above Expenditures	\$ (408.4)	\$ (455.0)	\$ (70.8)

STATE GOVERNMENT

State Use Law Committee

SB 77 extends the sunset provisions of the State Use Law Committee until July 1, 2014. Originally, the State Use Law Committee was set to be abolished on July 1, 2009. The bill extends the Committee's operations by five fiscal years.

Governor's Task Force on Racial Profiling; Confirmation Procedures; Kansas Commission on Rural Policy

Senate Sub. for HB 2267 requires the Kansas Bureau of Investigation (KBI) to conduct a background investigation on all appointees to positions that are subject to confirmation by the Senate.

The bill allows information received from the KBI to be disclosed to the Governor's staff if the appointing authority is the Governor.

Under the bill, no appointee may be appointed unless such appointee is current in payment of taxes and consents to the release of a tax certification by the Kansas Department of Revenue which states whether the appointee is current in the payment of taxes.

The bill authorizes the Director of the Legislative Research Department or such Director's designee (Director) to notify the Chairperson and the Vice-Chairperson of the Confirmation Oversight Committee that the KBI background investigation and the tax certification are available for review.

The bill revises and clarifies statutory provisions relating to the Kansas Commission on Rural Policy. The bill deletes the requirement that persons appointed to the Commission would be subject to Senate confirmation. The bill clarifies the lengths of term for various members newly appointed, depending upon the official who makes the appointment. The three members appointed by the Governor would serve until June 30, 2012. The three members appointed by the Senate President and Minority Leader would serve until June 30, 2011, and the three members appointed by the House Speaker and Minority Leader would serve until June 30, 2010. All subsequent voting members would hold terms of four years and serve until a successor is appointed and qualified.

The bill expands the Commission's review of the state's rural development programs to include programs that promote new homestead opportunities for individuals and that provide new incentives for business development. After completing its review, the

Commission is required by statute to make recommendations to those agencies that administer the programs.

The bill extends the deadline by which the Commission would be required to develop operational plans and partnerships from July 1, 2009, to July 1, 2010. The bill also extends the Commission's sunset date from July 1, 2011, to July 1, 2012. Finally, the bill makes several technical corrections, making uniform use of the term "commission" rather than "board of directors."

The bill extends the Governor's Task Force on Racial Profiling sunset date from July 1, 2009, until July 1, 2011.

In addition, the bill authorizes the Governor to appoint membership of the Task Force on July 1, 2009. Members serving on the Task Force as of June 30, 2009, may be reappointed. Terms of members appointed or reappointed would expire on July 1, 2011.

TAXATION

Income Tax—Withholding

SB 97 enacts the Promoting Employment Across Kansas (PEAK) Act.

The bill authorizes a diversion of employee withholding taxes under certain circumstances to “qualified” companies or third parties performing services on behalf of such companies.

Qualified companies generally include those which have closed down an existing business entity outside the state and have relocated the entity in Kansas and have made available to full-time employees adequate health insurance for which the companies will pay at least 50 percent of the premiums. Companies meeting these requirements also will be able to qualify if they have contracted with third parties to perform services as the legal employer of newly relocated employees.

Business entities within certain industry groups and sectors (including bioscience companies, gambling entities, religious organizations, retailers, and utilities) are excluded from being considered as qualified companies. Companies delinquent in payment of non-protested taxes to any governmental entity also are disqualified, as are companies which have filed for bankruptcy or announced their intention to do so. Companies participating in other statutory withholding tax diversion programs also are not eligible.

Companies meeting these criteria which also locate in a metropolitan county (Douglas, Johnson, Sedgwick, Shawnee, Wyandotte) and hire at least 10 new employees within two years, or locate in a non-metropolitan county and hire at least five new employees within two years, are eligible to retain 95 percent of new employee withholding taxes for a period of five to seven years, provided such employees are compensated at a rate equal to at least 100 percent of the county average wage.

Certain “high-impact” projects resulting in the hiring of at least 100 new employees within five years, regardless of location, could qualify for withholding tax diversions of 95 percent for seven to 10 years, provided such employees are compensated at a rate equal to at least 100 percent of the county average wage.

Qualified companies are required to submit agreement applications for the revenue-diversion program to the Secretary of Commerce. The Secretary is required to conduct an annual review of activities undertaken by qualified companies. The Department of Revenue also is authorized to disclose certain taxpayer-specific information to the Secretary of Commerce to assist with compliance audits associated with the program. The

Secretary also is required to submit an annual report to the various legislative committees on the overall impact of the program.

Certain income tax credits associated with hiring new employees will no longer be available to companies participating in this program.

The bill is expected to have the following impact on receipts:

(\$ in millions)	
FY 2010	(\$1.950)
FY 2011	(\$3.978)
FY 2012	(\$6.006)
FY 2013	(\$8.034)
FY 2014	(\$10.062)
5-Year Total	(\$30.030)

Property Tax Provisions—Various

House Sub. for SB 98, which relates generally to property taxes, renews the mandatory school district general fund property tax levy; amends the definition of public utility; and adds specific factors needed to be considered in the determination of fair market value for property tax purposes.

School Finance Levy Provisions

The bill renews for the 2009-2010 and 2010-2011 school years (tax years 2010 and 2011) the mandatory school district general fund property tax levy at the current level of 20 mills. The bill also extends for the same two tax years the residential “homestead” property tax exemption from that levy equivalent to \$20,000 of appraised valuation per parcel.

Property Tax on Stored Gas

An additional section amends the definition of public utility in KSA 2008 Supp. 79-5a01 to include marketers and other entities which own, broker or market natural gas inventories stored for resale in underground formations in Kansas.

Additional language stipulates that the purpose of this part of the bill is to carry out the mandate of the electorate relative to a constitutional amendment adopted in 1992 that explicitly provided for the property taxation of public utility inventories.

Fair Market Value of Section 42 Housing

Finally, the bill adds certain requirements to the list of factors needed to be considered in the determination of fair market value for property tax purposes. Specifically, county appraisers are required to take into account when determining the productivity of property the extent to which various rental and other restrictions have been imposed by state, federal and local governing bodies, including those restrictions associated with the rental or lease of such property to low-income individuals pursuant to section 42 of the federal Internal Revenue Code.

Property Tax Exemption—Certain Leased Vehicles

SB 228 provides a property tax exemption beginning in tax year 2010 for certain vehicles leased for at least one year which would otherwise be property tax exempt if being actually and regularly used for literary, educational, scientific, religious, benevolent, or charitable purposes; or would otherwise be exempt by virtue of being used exclusively by the state or a political subdivision.

Local Sales Tax—Lyon and Rawlins Counties

HB 2026 retroactively validates the results of local sales tax elections held in Lyon and Rawlins counties in August 2008. Voters had approved both ballot questions.

An additional 1.0 percent sales tax is authorized in Lyon County for purposes of property tax relief and capital outlay, bringing the total rate imposed by the county to 1.5 percent. The new tax is required to sunset not later than five years after imposition.

An additional 0.75 percent sales tax is authorized in Rawlins County for financing the costs of a swimming pool, bringing the total rate imposed by the county to 1.75 percent. The new tax is required to sunset not later than 15 years after imposition.

Deadline Extension to Qualify for a Single-Factor Corporation Income Tax Apportionment Formula

HB 2270 authorizes the Secretary of the Department of Revenue to extend by a maximum of six months (from December 31, 2009, to June 30, 2010) the deadline by which a manufacturer could qualify for an optional income tax apportionment formula. The bill requires the Secretary of Revenue to find good cause for extending the deadline. Before a deadline can be extended, the Secretary of Commerce is required to certify to the Revenue Secretary that a company has significantly complied with the provisions found in the law that require a manufacturer to invest \$100.0 million in construction and employ a minimum of 100 new employees with higher than average wages.

Sales Tax Exemption—Horsethief Reservoir

HB 2321 expands the definition of “political subdivision” within the sales tax law to include the Horsethief Reservoir Benefit District, effectively extending a sales tax exemption to purchases made by or on behalf of that entity.

Sales Tax Provisions—Various

HB 2324 makes several changes in law relative to the sales tax exemption associated with enterprise zones, and creates the Community Investment District Act.

Sales Tax Exemption Provisions

The bill amends the population qualification criteria within the Kansas Enterprise Zone Act to provide that the annual figures certified by the Kansas Division of Budget be utilized in lieu of the figures provided by the latest United States Census.

The bill also repeals a July 1, 2010, sunset on the ability of retail businesses to qualify for certain sales tax exemptions when locating or expanding in unincorporated areas of certain low-population counties.

Community Investment District Provisions

Additional sections of the bill create the Community Investment District Act. The purpose of a community investment district (CID) is to promote and support economic development, including tourism and cultural activities.

The bill defines CID projects to include capital improvements, infrastructure, and certain operational costs.

Projects may be funded by the use of special obligation bonds, full faith and credit bonds, or on a pay-as-you-go basis. The bill authorizes a city or county to create a CID after receiving a petition that is signed by either:

- All landowners within the proposed district who seek financing solely by assessment and not by the issuance of full faith and credit bonds. If all landowners petition for a CID, then the city or county may proceed with its creation and assessments without notice or hearing; or
- More than 55.0 percent of the landowners within the proposed district and also signed by landowners collectively owning more than 55.0 percent of the assessed value of the land area within the proposed district. If this second petition method is utilized, then the bill requires a city or county to adopt a

resolution giving public notice of a hearing concerned with the creation and financing of a CID.

Under the second petition method, the bill allows for funding to come from any combination of the following means:

- Special assessments, either paid in full or by installments.
- A CID sales tax, in any increment of 0.1 percent or 0.25 percent, that may not exceed 2.0 percent. The Department of Revenue would collect any sales tax levied and remit it on at least a quarterly basis. Revenue from this sales tax would go either for the repayment of bonds or on a pay-as-you-go basis. If bonds are repaid, the CID sales tax would expire no later than the date the bonds matured. On a pay-as-you-go basis, the sales tax would expire 22 years after the date the sales tax is levied or when the pay-as-you-go costs have been paid.
- A city or county's *ad valorem* taxing authority for the repayment of full faith and credit bonds.
- Any other funds appropriated by the governing body.

The bill authorizes the Department of Revenue to retain 2.0 percent of the sales tax revenue collected within all CIDs, up to a maximum of \$60,000 to be used for the administration of the program.

Tax Settlement Authority; Tax Credits; Other Provisions

Senate Sub. for Sub. for HB 2365 enacts new revenue settlement authority for the Secretary of Revenue; makes several changes in the statute of limitation provisions relating to sales and income taxes; makes a number of adjustments relative to the amount of various income, privilege, and premium tax credits that may be claimed; clarifies the sales tax treatment of purchases by or on behalf of a certain not-for-profit group; enacts several new sales tax exemptions; clarifies the estate tax relative to the valuation of agricultural land; and expands the Homestead Property Tax Refund program.

Settlement Authority

One section of the bill grants the Secretary of Revenue additional authority to equitably resolve certain audit-related assessments that are pending in the administrative appeals process or the State Court of Tax Appeals, or are pending in the judicial review process before any state or federal district or appellate court. The settlement authority includes

the ability to resolve amounts of tax, penalty, and interest in question.

Income Tax – Statute of Limitations

Additional provisions amend KSA 79-3220 to clarify deadlines applicable to filing income tax refund claims. An amendment to subsection (c) clarifies that a taxpayer has three years from the date the original return is due, including any extensions allowed, to file a refund claim.

The amendment to subsection (f) provides that, notwithstanding any otherwise applicable statute of limitations, the Department of Revenue would have 180 days after receipt of a revenue adjustment report to assess any additional tax.

The amendment to subsection (g) tolls the 180-day period when a taxpayer has failed to timely report a revenue adjustment to the Department.

Sales/Use Tax - Statute of Limitations

The statute of limitations for sales and use tax refund claims is reduced from three years to one year, effective for all claims filed after June 15, 2009.

Tax Credit - Various Adjustments

A tax credit for direct production expenditures by eligible film production companies is suspended for tax years 2009-2010.

Numerous other tax credits generally are given a ten percent “haircut” for tax years 2009 and 2010, including credits for individual development accounts; facility or residential modification for handicapped accessibility; certain employee child day care provision expenses; provision of financial assistance to persons eligible for aid to families with dependent children; provision of small employer health benefit plans; donations to regional economic development foundations; purchase of agritourism liability insurance; donations from community service “program” contributors; angel investor qualified securities investments; certain venture capital company investments; donations for Kansas Center for Entrepreneurship; selected investments in qualified business facilities; interest rate reductions on certain agricultural production loans; certain research and development expenditures; community service donations by business firms; certain alternative motor-fueled vehicle property expenditures; certain adoption expenses; improvements to qualified swine facilities; expenses associated with plugging abandoned oil or gas wells; retirement of bonded debt authorized by a city port authority; employer provision of health insurance for National Guard members; payment of salary to teachers by business firms pursuant to partnership agreements; certain oil refinery environmental compliance expenditures; “high performance” incentive program (HPIP) qualified investments; job expansion and investment program expenditures; certain nitrogen fertilizer plant expenditures; certain

biomass-to-energy plant expenditures; certain power plant expenditures; contributions to the Kansas Law Enforcement Training Center; certain compensation paid to employees also in the National Guard; certain renewable electric cogeneration facility expenditures; certain storage and blending equipment expenditures; contributions for certain higher educational infrastructure programs; and certain business capital investments made in or around disaster-area cities.

A specific statutory cap is provided for historic preservation credits equivalent to 90 percent of the amount currently claimed.

Additional transitional provisions assure that certain HPIP and job expansion and investment credits that previously could have been claimed during the haircut period may effectively be carried forward to future tax years.

Sales Tax Exemptions

The bill also clarifies the sales-tax-exempt status of purchases made by or on behalf of Goodwill Industries Easter Seals of Kansas, Inc. and Goodwill Industries of Kansas, Inc. for the purpose of providing education, training, and employment opportunities for people with disabilities and other barriers to employment.

Another exemption is provided for purchases by or on behalf of Sheltered Living, Inc.

The bill further provides exemptions for purchases and sales made by or on behalf of the Kansas Fairgrounds Foundation for purposes of beautifying the state fairgrounds.

Finally, the bill provides an exemption for purchases made by or on behalf of All American Beef Battalion, Inc., for the purpose of educating, promoting, and participating as a contact group through the beef cattle industry in order to carry out such projects that provide support and morale to members of the United States armed forces and military services.

Estate Tax Provisions

Another section of the bill clarifies that agricultural land is to be use-valued for Kansas estate tax purposes, regardless of whether such land was held directly by decedents or was held in non-publicly traded legal entities, including certain partnerships, corporations, limited liability companies, or limited liability partnerships.

The clarification of the use-valuation provisions also is made retroactive relative to estates of decedents dying after December 31, 2006.

Homestead Provisions

The bill also expands the definition of eligible claimants for the Homestead Property Tax Refund Program to include certain disabled veterans and surviving spouses of active-duty military personnel who have died in the line of duty.

Disabled veterans are defined to include Kansas residents who have been honorably discharged from active service in the armed forces or Kansas National Guard and who have been certified to have a 50 percent or more permanent disability sustained through military action or accident or resulting from disease contracted while in such active service.

The bill further clarifies that surviving spouses of disabled veterans will continue to remain eligible until such time as they remarry.

The provisions of the bill are expected to have the following impact:

	Tax Credits (\$ in millions)					
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	5-yr total
Most Tax Credits – 10% Reduction for Two Years	\$ 9.200	\$ 8.800	\$ (1.900)	\$ (0.095)	\$ -	\$ 16.005
Suspend Film Credit for Two Years	\$ 1.000	\$ 1.000	\$ -	\$ -	\$ -	\$ 2.000
Statute of Limitations — Income Tax	\$ 3.000	\$ 3.000	\$ 3.000	\$ 3.000	\$ 3.000	\$ 15.000
Statute of Limitations — Sales and Use Tax	\$ 13.700	\$ 8.800	\$ 4.400	\$ 4.400	\$ 4.400	\$ 35.700
Settlement Authority	\$ 35.000	\$ (15.000)	\$ (5.000)	\$ -	\$ -	\$ 15.000
Estate Tax — Valuation of Agricultural Land	\$ (0.500)	\$ -	\$ -	\$ -	\$ -	\$ (0.500)
Sales Tax Exemption — Goodwill	\$ (0.038)	\$ (0.039)	\$ (0.040)	\$ (0.041)	\$ (0.042)	\$ (0.200)
Homestead Program — Expansion	\$ (0.215)	\$ (0.215)	\$ (0.215)	\$ (0.215)	\$ (0.215)	\$ (1.075)
Sales Tax Exemption — Beef Battalion	\$ (0.004)	\$ (0.004)	\$ (0.004)	\$ (0.004)	\$ (0.004)	\$ (0.020)
Sales Tax Exemption — Sheltered Living	\$ (0.030)	\$ (0.031)	\$ (0.031)	\$ (0.032)	\$ (0.032)	\$ (0.156)
Sales Tax Exemption — Fairgrounds	minimal	minimal	minimal	minimal	minimal	minimal
Total	\$ 61.113	\$ 6.311	\$ 0.210	\$ 7.013	\$ 7.107	\$ 81.754

TRANSPORTATION AND MOTOR VEHICLES

1011th Quartermaster Co. U.S. Army Reserve Memorial Highway

SB 5 designates a portion of U.S. 60 as the 1011th Quartermaster Co. U.S. Army Reserve Memorial Highway. The portion so designated starts at the east city limits of Independence, east to the intersection with U.S. 169. The bill requires that the Secretary of Transportation receive an amount (\$3,870, according to the fiscal note) from donations to cover costs of placing and maintaining signs before the Department of Transportation installs any signs indicating the designation.

Port Authority Sale of Certain Railroad Assets

SB 46 exempts a port authority with an agreement in place before 1987 from certain restrictions on sale of property enacted in 1987. Those restrictions include a required appraisal before sale and sale for no less than the appraised value. The bill allows the Kyle Railroad Company to purchase certain railroad assets of the Mid-States Port Authority in northwest and north central Kansas at the end of its lease with the Mid-States Port Authority, June 1, 2009. In 1984, those parties entered into a lease agreement that included a purchase option.

Exempting a Redevelopment District from Certain Requirements on Sales of Property

SB 60 exempts conveyance of real property located within a redevelopment district in Labette County established pursuant to KSA 19-4901 *et seq.* from the requirements of KSA 19-211. The redevelopment district is the site of the Kansas Army Ammunition Plant in Labette County. The requirements of KSA 19-211 include, for most sales of property by counties, notice of sale or disposition, bids, and publication of notice.

Transportation Development Districts

SB 78 allows transportation development districts to pay for projects from the revenue derived from a development district sales tax. This payment provision will be an alternative to the issuance of bonds. If bonds are issued, assessments may be reduced or eliminated after sufficient revenue has been raised from the development district sales tax, additional funds appropriated by the municipality, or both. A sales tax levied on the behalf of a transportation district expires once sufficient revenue is raised for the project.

Rebuilt Salvage Vehicles—Reducing the Classification by Two Classes

SB 122 reduces the classification of rebuilt salvage vehicles by two classes. The reduction will be recorded on any title for a rebuilt salvage vehicle issued on and after January 1, 2010. The reduction will be recorded only at the initial registration of the vehicle. Vehicle taxable values are based largely on classification.

Display of City-Issued License Plates

SB 123 amends state law to allow the owner of a registered antique vehicle to display a model year license plate originally issued by a Kansas city or a reproduction of such a city-issued license plate. Such a plate may be displayed on either the front or the rear of the vehicle. The law applies, in general, to vehicles manufactured before 1913, when the State of Kansas first registered vehicles; before that, cities or municipalities issued numbers for registration purposes.

“Drive on the Right”; Increases in Certain Motor Carrier Permit Fees; and Cotton Module Permits

House Sub. for SB 145 requires vehicles to be driven in the right lane on a multi-lane road outside of a city, increases certain permit fees charged by the Kansas Department of Transportation (KDOT), and changes requirements for cotton module permits.

Specifically, the bill makes the following changes to the existing law:

- It amends existing law to require vehicles to be driven in the right lane when two lanes of traffic are going in the same direction on a highway outside of any city. It also requires vehicles on highways with three or more lanes proceeding in the same direction not to be driven in the far left lane. Exceptions apply to both cases:
 - When overtaking and passing another vehicle;
 - When preparing to make a proper left turn;
 - As otherwise directed by official traffic-control devices; or
 - As otherwise required by other provisions of law.

The provisions do not apply to authorized emergency, law enforcement, or Kansas Turnpike Authority vehicles or to KDOT vehicles used for construction or maintenance work. Law enforcement officials will be required to issue warning

citations for the first full year the bill's provisions will be in effect (until July 1, 2010).

- It increases the single-trip permit fee KDOT charges for certain oversize or overweight vehicles from \$5 to \$25 and the annual permit fee from \$125 to \$150. (The single-trip permit fee had been \$5 since 1970, and the annual permit fee had been \$125 since the provision was added in 1992.) The bill also specifies single-trip permit fees of \$30 for "large structures," which are structures that exceed either 16 feet, 6 inches in width or 18 feet in height, and \$50 for "superloads." A "superload" means a vehicle transporting a nondivisible load that exceeds 150,000 pounds gross weight or a vehicle transporting a nondivisible load in which any group or groups of axles exceed the limitations of the regulations.
- It restricts to 50,000 pounds the gross weight on tandem axles of a cotton module issued a special permit for an oversize or overweight vehicle on a highway under KDOT's jurisdiction. The bill excludes such a cotton module from being considered a superload.

Driver's License Restriction

SB 158 amends the statute on failure to comply with a traffic citation to authorize, in lieu of suspension, a driver's license restriction to eligible drivers. The driver is required to submit a written request for the license restriction, along with a nonrefundable \$25 application fee, to the Division of Vehicles (Division). The application fee is applied by the Division for additional administrative costs to implement restrictive driving privileges. If the driver is eligible, the Division is required to restrict the driver's license as follows:

- To and from work or school;
- In the course of employment;
- During a medical emergency; and
- To and from probation or parole meetings, drug or alcohol counseling, or any place the driver is ordered by the Court to go.

The driver's license is restricted for up to one year or until there is compliance with the terms of the traffic citation. The Court would be required to immediately electronically notify the Division of the driver's compliance with the terms of the citation.

If the driver fails to comply with the traffic citation within the one-year restriction period, the driver's driving privileges are suspended. The Court is required to immediately and

electronically notify the Division of the driver's compliance. The Division is required to terminate the suspension action upon notification by the Court of the driver's compliance with the terms of the citation.

The bill clarifies that the \$25 application fee is nonrefundable and is in addition to the reinstatement fee already assessed in current law.

The provisions will expire on January 1, 2012.

Certain Vehicle Definitions and Requirements

SB 275 amends the definitions of certain vehicles and related terms and created an exclusion to one of the definitions modified by the bill. The bill also creates exclusions from certain certificate of title provisions.

Nonhighway Vehicle Exclusion

The bill amends the definition of "nonhighway vehicle" to exclude implements of husbandry from the definition. Additionally, the bill excludes farm tractors from certificate of title provisions and notices of security interest on certificates of title under Article 9 of the Uniform Commercial Code.

"Implements of husbandry" are defined in existing law to mean vehicles that are designed or adapted and used exclusively for agricultural operations, including feedlots, and are only incidentally moved or operated upon the highways. Farm tractors are included in the vehicles identified by the law as "implements of husbandry."

All-Terrain Vehicle Requirements

The bill also increases the size requirements for a motor vehicle to be classified as an "all-terrain vehicle" in these ways:

- Increase the maximum width from 48 to 50 inches;
- Increase the maximum dry weight from 1,000 to 1,500 pounds; and
- Increase the maximum rim diameter from 12 inches to 14 inches.

The bill also changes "low-pressure tire" in the definition to "nonhighway tire."

Revoking or Denying Vehicle Registration for Unsafe Motor Carriers

HB 2023 allows the Director of Vehicles to revoke, suspend, cancel, refuse, or retrieve a motor carrier's registration certification upon notice from the Kansas Corporation Commission that it has terminated or denied that intrastate motor carrier's operating authority for violation of safety regulations. It also allows the Director to request law enforcement assistance to enforce these provisions. The bill is designed to ensure that a motor carrier placed out of service cannot apply and receive registration at a county treasurer's office and, therefore, to keep more unsafe vehicles off Kansas highways.

Veterans Memorial Bridge

HB 2045 designates Bridge No. 85 in Labette County, at the edge of Chetopa, as Veterans Memorial Bridge. It requires that the Secretary of Transportation receive an amount (\$1,170, according to the fiscal note) from donations to cover costs of placing and maintaining the signs before the Department of Transportation installs any signs indicating the designation.

Intermodal Transportation Revolving Fund To Aid Government Units

HB 2131 creates an Intermodal Transportation Revolving Fund (Fund) within the state treasury. The Kansas Department of Transportation will administer that fund to provide assistance to government units for intermodal transportation projects, which the bill defines along with other terms. In order to be eligible for assistance from the Fund, a governmental unit must have an intermodal facility project with a cost exceeding \$150 million within its jurisdiction. A project could be a bridge, culvert, highway, road, street, underpass, railroad crossing or combination located within an intermodal transportation area.

Moneys may enter the Fund from appropriations, the sale of bonds, repayments from qualified borrowers, interest, amounts from any public or private entity, amounts the Secretary of Transportation transfers from the State Highway Fund, and any other moneys made available for the purposes of the Fund. The Secretary of Transportation is authorized to issue bonds. Expenditures may be made from the Fund for purposes including paying principal and interest on bonds, providing financial assistance to qualified borrowers to finance qualified projects, assisting qualified borrowers with debt service costs, and transferring money to the State Highway Fund and State General Fund.

Neither the state nor any governmental unit is authorized to pledge its full faith and credit to support the bonds issued through the Fund. A governmental unit's governing body must authorize any agreements with the Secretary.

Distinctive License Plates

HB 2134 makes several changes to law regarding license plates, particularly distinctive license plates.

- The bill authorizes, as of January 1, 2010, the issuance of distinctive “Support Kansas Arts” license plates. The plate could be issued to an owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of not more than 20,000 pounds. The Kansas Arts Commission will design the plate and authorize the use of its logo on a license plate upon payment of a royalty fee of between \$25 and \$100. The royalty payment for each plate will be credited to the Kansas Arts Commission Special Gifts Fund.
- The bill amends the law regarding personalized license plates for passenger vehicles and small trucks to allow a specific combination of letters, numbers, or both on a plate to be assigned to only one vehicle in the state.
- The bill amends the definition of “disabled veteran” for eligibility for receiving a distinctive license plate, from one who is being compensated for a 100.0 percent service-connected disability to one who has a 50.0 percent service-connected disability, a determination made by the U.S. Department of Veterans Affairs.
- The bill exempts “In God We Trust” distinctive license plates from requirements that the person or organization sponsoring a distinctive license plate submit a nonrefundable amount to defray the costs of the Division of Vehicles to develop the plate. The bill delays the manufacturing and issuing of “In God We Trust” plates until the Division has received orders and payment for 1,000 or more of these license plates. Upon certification that those orders have been received, \$40,000 will be transferred from the State Highway Fund to the Distinctive License Plate Fund.
- The bill increases from \$10,000 to \$20,000 the limit on the nonrefundable amount a person or organization sponsoring a distinctive license plate is required to submit to the Division of Vehicles to defray the Division’s costs of developing the distinctive license plate. (As noted above, “In God We Trust” license plates would be exempt from this provision.)

Graduated Driver’s License—Increasing Requirements for Drivers Younger Than 17

Sub. for HB 2143 modifies the requirements for driving permits and drivers’ licenses for drivers younger than 17 years old, for those who first get a driver’s permit or license after January 1, 2010. The changes are explained below.

Instruction permit. The minimum age for application will continue to be 14. The bill requires the adult who has a valid driver's license and is accompanying the holder of an instruction permit to be at least 21 years old. (The law does not list a specific age for the adult.) The bill adds that an instruction permit can be suspended or revoked like any other driver's license.

Farm permit. A farm permit will be available from age 14 until age 17 (changed from age 16). The bill will continue to allow farm permit holders to drive in connection with any farm work and to drive to and from school. The bill allows permit holders who are 16 or older also to drive at any time from 5 a.m. to 9 p.m. and while going to or from authorized school activities.

Restricted license. Under the bill, an applicant for a restricted license must have held an instruction permit for at least one year instead of the current six months. If the applicant is younger than 16, the applicant must have completed driver's education. The bill requires a 16-year-old applicant to have completed at least 50 hours of adult-supervised driving, with 10 of those hours at night; a 15-year-old applicant will continue to be subject to a requirement of 25 hours of adult-supervised driving. The bill allows licensees who are 16 or older also to drive at any time from 5 a.m. to 9 p.m. and while going to and from authorized school activities.

Restrictions on nonsibling passengers. The bill continues to ban nonsibling minor passengers if the holder of the restricted license or farm permit is younger than 16. It allows the holder of a farm permit or a restricted license who is at least 16 years old to have one passenger younger than 18 who is not a member of the permit holder's or licensee's immediate family.

Restrictions on use of wireless devices. The bill bans those with instruction permits, farm permits, and restricted licenses from operating wireless communication devices while driving except to report illegal activity or to summon emergency help. The bill defines "wireless communication device" as "any wireless electronic communication device that provides for voice or data communication between two or more parties."

Lifting of restrictions possible at age 16 1/2. The bill lifts restrictions, such as limits on nonsibling passengers and time of day when driving would be allowed, on holders of farm permits and restricted licenses who are at least 16 years old and who have not violated any of the restrictions for at least six months.

Full licensure at 17. Under the bill, a first-time applicant for a full license must be at least 17 years old; prior law allowed for full licensure at 16. The applicant for a full license who is younger than 18 must have completed at least 50 hours of supervised driving, with 10 of those hours at night, as in current law.

Penalties. The bill makes several changes to penalties for violations of driving restrictions:

- The bill requires—rather than allows as in current law—suspension of a farm permit or restricted license for any violation of restrictions or if the holder has two or more accidents chargeable to the holder.
- Under the terms of the bill, a suspended restricted license or farm permit can not be reinstated for one year if two or more accidents are charged to the holder. Current law stipulates a suspended license cannot be reinstated for one year or until the license holder reaches 16, whichever is longer.
- Under current law, the holder who is younger than 16 and convicted of two moving violations committed on separate occasions is not eligible to receive an unrestricted license until age 17. The bill adds that if the holder of a farm permit or restricted license is 16 and is convicted of two or more moving violations committed on separate occasions, the holder may not receive a driver's license that is not restricted until age 18.
- The bill adds required suspensions of driving privileges for those guilty of violating permit or license restrictions: 30 days for a first conviction, 90 days for a second conviction, and one year for a third or subsequent conviction.

Effective date. The bill will become effective January 1, 2010.

Continuation of current requirements. The bill applies the conditions, limitations, and restrictions in place as of December 31, 2009, to those who hold any valid driving license or permit as of January 1, 2010.

Moving Operable Vehicles from the Roadway Following a Crash

HB 2147, the “Move It” law, requires the driver or owner of a vehicle involved in a non-injury, non-fatal accident to make every reasonable effort to move the vehicle out of the roadway, if that vehicle can be moved safely and without causing damage to the vehicle, the roadway, or other vehicles or persons. The bill also authorizes employees or agents of the Kansas Department of Transportation or any law enforcement agency, including the Kansas Highway Patrol, to require or cause the removal of such a vehicle unless the accident involved death, apparent injury of any person, or the movement of hazardous materials.

The bill includes these additional provisions:

Regulating Golf Carts and Work-Site Utility Vehicles; Wrecker Liens; Exemptions from KCC Economic Regulation—HB 2152

- No state, county, or municipal agency or its employees or agent will be liable for any damages resulting from the reasonable exercise of the authority that is granted.
- Violators will receive a warning for the first year the requirement is in effect, until July 1, 2010.

The fine for failing to remove vehicles involved in crashes will be \$60.

Regulating Golf Carts and Work-Site Utility Vehicles; Wrecker Liens; Exemptions from KCC Economic Regulation

HB 2152 defines and regulates the operation of golf carts, regulates the operation of work-site utility vehicles, amends the definitions of “all-terrain vehicle” and “micro utility truck,” amends the law concerning liens on vehicles, and amends state law regarding carriers required to obtain a certificate, license, or permit from or file certain types of information with the Kansas Corporation Commission (KCC).

Golf Carts, Work-Site Utility Vehicles, and All-Terrain Vehicles

The bill provides for the regulation of golf carts and work-site utility vehicles and amends the definition of “all-terrain vehicle.”

Definitions

- The bill defines “golf cart” as a motor vehicle that has not less than three wheels in contact with the ground, has an unladen weight of not more than 1,800 pounds, is designed to be operated at not more than 25 miles per hour, and is designed to carry not more than four persons, including the driver.
- The bill amends the definition of “all-terrain vehicle” to mean a motorized nonhighway vehicle 50 (rather than 48 as in prior law) inches maximum width, having a dry weight of 1,500 (rather than 1,000) pounds, traveling on three or more nonhighway (rather than low-pressure) tires that have a maximum rim diameter of 14 (rather than 12) inches.
- The bill amends the definition of “micro utility truck” to mean certain vehicles with a maximum length of no more than 160 (rather than 144) inches.

Operation Restrictions

The bill makes it unlawful to operate a golf cart:

- On any public highway or street, except as authorized and regulated under the powers granted to local authorities under current law (KSA 8-2002);
- On an interstate highway, U.S. highway, or state highway;
- On any street or highway with a posted speed limit of greater than 30 miles per hour; and
- Except between sunrise and sunset.

The bill makes it unlawful to operate a work-site utility vehicle under these circumstances:

- On any interstate, federal or state highway or within any city unless authorized by that city; and
- Between sunset and sunrise unless the vehicle is equipped with lights as required by law for motorcycles.

(Work-site utility vehicles were authorized for use on certain roads in 2007, but the statute allowing their use on those roads and on city streets with city authorization was repealed in 2008.)

The bill also includes these provisions related to small vehicles:

- It allows a golf cart to cross a federal or state highway that has a posted speed limit greater than 30 miles per hour;
- It sets the fine at \$60 for the unlawful operation of a golf cart or for unlawful operation of a work-site utility vehicle; and
- It exempts golf carts and work-site utility vehicles from registration.

Liens on Vehicles

The bill amends existing law concerning liens on vehicles by allowing a person providing a wrecker or towing service a first and prior lien on a vehicle for which such service has

been provided under a city ordinance or county resolution; formerly such a lien would be allowed if the service had been provided at the direction of a law enforcement officer or the owner. The bill requires that a city ordinance or county resolution authorizing such towing include three types of provisions:

- The maximum rate that may be charged for such wrecker or towing service;
- That the vehicle's owner must have access to personal property in that vehicle within 48 hours after the vehicle is towed; and
- That the wrecker or towing service report the vehicle's location to local law enforcement within two hours of such tow.

Motor Carrier Economic Regulation

The bill amends state law regarding carriers required to obtain a certificate, license, or permit from or file certain types of information with the KCC (KCC motor carrier "economic regulation"). The bill amends definitions of "private motor carrier," "public motor carrier of household goods," "public motor carrier of passengers" and "public motor carrier of property" to change "motor vehicle" to "commercial motor vehicle." This change exempts those motor vehicles not meeting the definition of commercial motor vehicle from the KCC's economic regulation requirements.

The bill makes the following changes in those exempted from the KCC's economic regulation requirements:

- It removes redundant language referring to motor carriers of passengers;
- It removes reference to transporting property when no common carrier is available; deregulation in the mid-1990s allows common carriers to operate anywhere in the state;
- It adds an exemption for motor vehicles owned by Section 501(c) nonprofit organizations when transporting property or materials belonging to the owner of the vehicle;
- It removes the requirement that certain construction mixtures being transported are used for paving; and
- It adds exemptions for transporting cotton modules from field to gin and for commercial motor vehicles used in the custom harvesting of silage.

Full-Privilege License Plates for Use on Trailers

HB 2188 establishes a dealer-hauler full-privilege license plate to be used by a trailer manufacturer or trailer dealer instead of a regular trailer registration and license plate. Such a plate, like an automobile dealer's full-privilege plates, can be moved from one trailer to another. This plate can be used on a trailer used to haul nonhighway equipment for demonstration purposes or delivery if the weight of the trailer and nonhighway equipment does not exceed 85,500 pounds.

The bill sets the fee for a dealer-hauler full-privilege license plate at \$350.50, and it raises the fee for a "regular" full-privilege license plate from \$350.00 to \$350.50. Both types of full-privilege plates expire on January 31.

Surrender Title if a Vehicle is Crushed; License and Regulation of Vehicle Crushers and Other Vehicle Recyclers

HB 2258 requires surrender of a nonrepairable vehicle certificate or title to the Division of Vehicles if a vehicle is crushed. The existing law requires surrender of a nonrepairable vehicle certificate or title only when a vehicle has been dismantled, disassembled or recycled and sold to a scrap processor for recycling.

The bill also licenses and regulates vehicle crushers, vehicle recyclers, scrap metal recyclers, rebuilders, and salvage vehicle pools under the Vehicle Dealers and Manufacturers Licensing Act, with these changes to the Act:

- Adding definitions for "vehicle crusher," "vehicle recycler," "scrap metal recycler," "nonrepairable vehicle," and "rebuilder";
- Adding a \$75 license fee for any vehicle crusher, vehicle recycler, scrap metal recycler, salvage vehicle pool, or rebuilder;
- Adding vehicle crushers, vehicle recyclers, scrap metal recyclers, salvage vehicle pools, and rebuilders to the list of types of businesses required to maintain established places of business that have been inspected and approved by the Division of Vehicles;
- Requiring vehicle recyclers (in addition to salvage vehicle dealers, as in current law) to file, on or before the 20th day of each month, a monthly report listing all vehicles that have been disposed or sold;
- Requiring any of the licensed types of businesses to make their records available to any employee of the Division of Vehicles or any member of law enforcement for the purpose of investigation or inspection;

Surrender Title if a Vehicle is Crushed; License and Regulation of Vehicle Crushers and Other Vehicle Recyclers—HB 2258

- Including vehicle crushers, vehicle recyclers, rebuilders, scrap metal recyclers, and salvage vehicle pools among the types of business that could face misdemeanor charges and a fine not to exceed \$2,500 for doing business without a license; and
- Requiring a salvage vehicle pool to be licensed. (The prior law required only a one-time registration.)

VETERANS AND MILITARY

Vietnam War Era Medallion Program and Changes to the KCVA

HB 2171 creates, within the Kansas Commission on Veterans' Affairs (KCVA), the Vietnam War Era Medallion Program and grants the agency the authority to develop any necessary rules and regulations to administer the Program. Under the Medallion Program, eligible veterans may receive a medallion, medal, and a certificate of appreciation.

To be eligible for participation in the Medallion Program, the veteran must:

- Have served on active duty in the United States Military Service at any time beginning February 28, 1961, and ending May 7, 1975;
- Be a legal resident of Kansas, or have been a legal resident of Kansas, at the time the veteran entered or was discharged from military service or at the time of the veteran's death; and
- Have been honorably separated or discharged from the military or still be on active service in an honorable status, or was in active service at the time of the veteran's death.

The Program is open to veterans meeting the above criteria regardless of whether the veteran served within the United States or in a foreign country, and regardless of whether the veteran was under 18 years of age at the time of enlistment.

The bill creates a fund within the State Treasury consisting of all gifts, donations, and bequests to the fund. The fund will be administered by the KCVA.

HB 2171 adds language into existing law clarifying which employees of the KCVA need to be cross-accredited by veterans service organizations that receive grants under the Veterans Claims Assistance Program (VCAP). The bill also clarifies the continuing education requirements for the employees being cross-accredited.

Additionally, the bill changes the membership composition of the Veterans Claims Assistance Advisory Board from three members appointed by veterans service organizations to a requirement that any veterans' service organization participating in VCAP must appoint one member.

Finally, the bill requires appointees to the Kansas Commission on Veterans' Affairs to have received an honorable discharge from military service via their military discharge papers (Form DD 214).

APPROPRIATIONS BILLS

- House Sub. for Sub. for SB 23** This bill is the rescission appropriations bill passed during the 2009 regular legislative session, containing mainly FY 2009 rescissions of appropriations.
- Senate Sub. for HB 2354** This bill contains FY 2010 appropriations and appropriations for a number of capital improvement projects.
- Senate Sub. for HB 2373** Omnibus appropriations bill for the 2009 Session.

TECHNICAL BILLS

SB 336 This bill is a technical measure that reconciles conflicting statutes and corrects bill drafting errors that have been discovered in 2009 legislation.

The bill also provides authority to the director of the Kansas Bureau of Investigation to promulgate rules and regulations no later than July 1, 2010 under the Kelsey Smith Act.

BILLS VETOED BY THE GOVERNOR

House Sub. for SB 51

The bill would have amended several annexation statutes by doing the following: **Unilateral and Bilateral Annexation** – (1) Service plan-related review and possible deannexation: The bill would have reduced the total time contained in the two-part time frame relating to the review of whether the city has provided the services outlined on the annexation service plan by the city's stated deadlines before deannexation procedures may begin. (2) Restriction related to unplatted agricultural land: The bill would have prohibited the bilateral annexation (i.e., via approval by the board of county commissioners) of any portion of any unplatted agricultural land of more than 65 acres without the written consent of the landowner. (3) Property tax proceeds: The bill would have limited the expenditure of the revenue from the property taxes levied against the annexed land for one year from the date of annexation to provision of municipal infrastructure and municipal services, other than police and fire services, to the annexed area. (4) Narrow corridor annexations: The bill would have prohibited any city from utilizing the unilateral and consent annexation statute beginning July 1, 2009, to annex a narrow corridor of land to gain access to noncontiguous land. **Rural Water District Annexation and Release of District Lands** – (1) The bill would have required a city to give written notice to a rural water district not less than 60 days before the effective date of any ordinance proposing to annex land into the city. If the city designated a different supplier, the city would have been required to purchase the property, facilities, improvements, and going concern value of the rural water district located in the annexed territory. A mediation process would have been established for instances when the agreement for purchase is not executed within 90 days. If mediation was not successful, the bill would have provided for an appraisal process. (2) The bill would have required the rural water district governing body to consider additional factors when reviewing a petition for a release of lands from the district, including whether the lands requested to be released cannot economically or adequately be serviced. If the governing body denied the petition, a process would have been established to determine the compensation sufficient to enable adequate compensation through an appraisal process. (3) The bill also would have amended the definition of "participating member" in the rural water district law to include those individuals, firms, partnerships, associations or corporations which own land located within a district which is charged a franchise fee for water service which is paid, either directly or indirectly through another water provider, to the district.

SB 171 The bill would have addressed several election topics relating to advance ballots and the efficiency of the voting process for military and other federal services voters. It would have expanded the ballot forms for absentee voters living overseas who are called federal service voters under the federal Uniformed Overseas Citizens Absentee Voting Act to include elections involving local questions and political party precinct committee positions, and it would have clarified the ballot must include all officers and any proposition for which the voter otherwise would be entitled to vote. It would have made changes related to the security of advance voting ballots, allowing another person to transmit a voter's advance ballot only if the voter made the designation in writing, both signed and dated, on the ballot envelope.

House Sub. for SB 218 This bill would have revised current law regarding late-term abortions. The Kansas Department of Health and Environment would have been required to adopt new forms as well as rules and regulations to collect information from physicians performing abortions and publish the data collected. The Board of Healing Arts also would have had additional duties.

Senate Sub. for Sub. for HB 2014 The bill would have enacted new law regarding fuel efficiency for state-owned motor vehicles and energy efficiency of state-owned and leased space and equipment; amended existing law to authorize large electric cooperatives to be deregulated under certain circumstances; enacted renewable energy standards; enacted the Net Metering and Easy Connection Act; amended the Kansas Air Quality Act in regard to its relationship to federal law and in regard to appeals from decisions of and emergency powers of the Secretary of Health and Environment; and directed the Joint Committee on Energy and Environmental Policy to study the use of federal stimulus funds allocated for energy issues.

The bill also would have amended the Kansas Electric Transmission Authority Act authorizing collection of fees for certain activities and clarifying other Authority powers; enacted new law establishing a timeframe for the Kansas Corporation Commission's action on certificates of public convenience; amended existing law regarding entities that store hydrocarbons underground; enacted the Compressed Air Energy Storage Act; enacted new law creating access by municipal and cooperative electric utilities to new baseload electric generation capacity; required purchase of Kansas coal by any new coal-fired electricity generating plant in Kansas, under certain circumstances; and enacted new law creating the Kansas Energy Resources Commission.

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- HB 2121** The bill would have enacted modifications and additions to statutes relating to pesticides and fertilizers; adjusted fees dealing with pesticides and fertilizers; extended the current fees imposed to administer the dairy inspection program; enacted new law regarding the labeling of dairy products; and shifted the responsibility for the review of swine nutrient utilizations plans from the Kansas Department of Agriculture to the Kansas Department of Health and Environment.
- HB 2172** The bill would have provided new sales tax exemptions and clarified sales tax exemption law with respect to certain transactions; clarified the estate tax relative to the valuation of agricultural land; clarified statutory deadlines applicable to the filing of certain income tax refund claims; and expanded the Homestead Property Tax Refund program.
- House Sub. for Sub. for SB 23** (Line Item) Section 37(t) would have lapsed \$10,070,000 from the KPERS bond debt service account in the Department of Administration budget in FY 2009.
- (Line Item) Section 53(a) and 53(b) would have eliminated \$27,840,710 of general state aid to school districts and \$4,464,507 from the Special Education Service Fund for school districts in FY 2009.
- (Line Item) Section 66(e) would have provided \$2,900,000 to the Wichita Center for Graduate Medical Education in FY 2009.
- (Line Item) Section 86(b) would have transferred up to \$2,805,000 from the State General Fund to the Health Care Stabilization Fund in FY 2009.
- (Line Item) Section 86(h) would have removed limits on transfers from the State General Fund to the Kansas Bioscience Authority in FY 2009.
- Senate Sub. for HB 2354** (Line Item) Sections 30, 98(l), and 100 would have allowed state agencies to continue to use the Kansas Savings Incentive Program.
- (Line Item) Section 56 would have authorized funding for FY 2010 for the Kansas Technology Enterprise Corporation (KTEC). (KTEC later was funded in Senate Sub. for HB 2373.)

(Line Item) Sections 72(b), 73(b), 74(b), 75(b), 76(b), 77(b), 78(b), 79(b), 80(b), 81(b) would have constrained the following institutions' or areas' use of federal higher education stabilization fund moneys (stimulus funds) to deferred maintenance: Ft. Hays State, Kansas State, Emporia State, Pittsburg State, Kansas University, Wichita State, Washburn University, community colleges, State Board of Regents, and postsecondary technical education in FY 2009 and FY 2010.

(Line Item) Section 93(f) would have transferred \$23,864 from the Animal Health Department's Greensburg Account of Disease Control - Federal Fund to the State General Fund for reimbursement for accounting, auditing, budgeting, legal, payroll, personnel, and purchasing services performed on behalf of the Animal Health Department by other state agencies.

**Senate Sub.
for HB 2373**

(Line Item) Section 36(a) would have appropriated \$1,850,000 for KPERS - employer contributions for FY 2010 in the Department of Education budget in FY 2009.

(Line Item) Section 70c would have lapsed \$4,915 of the appropriation for the Salina Aeronautical Center in FY 2009.

(Line Item) Section 89 would have required the following two priorities be applied to any expenditures or grants made by any state agency providing family planning services financed in whole or in part from federal title X moneys: First priority, to public entities (state county, local health departments, and health clinics) and if any moneys remain, then second priority to non-public entities which are hospitals or federally-qualified health centers that provide comprehensive primary and preventative care in addition to family planning services in FY 2009 and FY 2010.

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