

**2021 Legislative Review  
and Budget Update**

**Presented By:**

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**PRELIMINARY SUMMARY OF LEGISLATION  
2021 KANSAS LEGISLATURE**

**KL RD**

*Providing objective research and fiscal  
analysis for the Kansas Legislature*

This publication contains summaries of selected bills enacted by the Legislature as of the end of the legislative day on March 31, 2021. Bills that have not yet been signed by the Governor and select resolutions are included.

A supplement containing summaries of major bills that were enacted after that date will be distributed during the week of April 12, 2021. An additional supplement will be mailed after the wrap-up session in May.

*Highlights*, a summary of major legislation, will be prepared after the Legislature adjourns and will be mailed to legislators as soon as possible. *The Summary of Legislation*, which accounts for all bills enacted by the 2021 Legislature, will be distributed at a later date.

These documents are available on the Kansas Legislative Research Department's website: [kslegislature.org/klrd](https://kslegislature.org/klrd) (under "Publications").

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## ABORTION

### “Value Them Both” Constitutional Amendment; HCR 5003

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

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

## AGRICULTURE AND NATURAL RESOURCES

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

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

#### ***Sunset Date Extensions***

The bill extends the following sunset dates:

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

#### ***Increase of Fund Limitations***

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

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

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

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

## **Pollutant Releases and Cleanup; HB 2155**

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

### ***Definitions***

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

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

### ***Pollutant Releases and Cleanup***

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

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

The bill also permits the Secretary to:

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



### ***Cleanup Responsibilities***

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

### ***Costs and Penalties***

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

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

The bill permits the Secretary to impose a penalty only after notice of the violation and an opportunity for a hearing has been issued in writing to the individual who committed the violation. The bill requires any request for a hearing to be in writing and directed to and filed with the Secretary within 15 days after service of the order. Any hearing will be conducted in accordance with the Kansas Administrative Procedure Act.

### ***Funds***

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

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

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

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

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

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

- Groundwater is the authorized source of water supply, and

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

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

- Excludes from the definition of “base average usage” any amount of water applied to the unauthorized place of use from:
  - Any amount diverted in any year that exceeded the amount authorized by the base water right;
  - Any amount applied to an unauthorized place of use; and
  - Diversions in calendar years when water was diverted under a multi-year allocation with an expansion of the authorized place of use due to a change approval;
- Provides the chief engineer of the Division of Water Resources of the Department of Agriculture (chief engineer) may calculate the base average usage with less than all ten calendar years of 2000 to 2009 if water usage records are inadequate to accurately determine actual water use or upon application of good cause by the applicant; and
- Specifies if the chief engineer is satisfied with the base water right holder’s showing that water conservation reduced water usage under the base water right during 2000 to 2009, then the base average usage must be calculated with the five calendar years immediately before when the water conservation began.

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

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

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

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

**SB 283** amends law regarding the governmental response to the COVID-19 pandemic in Kansas. The bill takes effect upon publication in the *Kansas Register*.

#### ***Telemedicine***

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

#### ***Temporary Licensure***

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

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

##### ***Business Immunity Extension***

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

##### ***Health Care Provider Immunity***

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

##### ***Retroactivity***

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

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

### ***Expiration of Other Provisions***

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

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

### **Self-service Storage Agreements; HB 2112**

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

- Limits claims of damage or loss of personal property to the maximum value of personal property as specified in the rental agreement;
- Requires self-service storage rental agreements to ask the occupant if such occupant wishes to designate an alternative contact and permits them to do so. Alternative contacts are not given rights to the rental space or its contents merely by virtue of being designated as such;
- Permits the online sale of stored personal property in the event of default by the occupant, as currently defined by the Act; and
- Grants discretion to the operator to give seven days' notice of the sale by any commercially reasonable manner. Currently, the Act requires such notice to be made by newspaper only:
  - The manner of advertising a sale would be deemed not commercially reasonable and a sale would be canceled and subsequently rescheduled and re-advertised if fewer than three independent bidders were present in person or online.

## ECONOMIC DEVELOPMENT

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

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

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

### **Angel Investor Tax Credit; SB 66**

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

#### ***Angel Investor Tax Credit***

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

#### ***Program Sunset***

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

#### ***Definitions***

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

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

### *Tax Credit Limits*

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

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

### *Restrictions on Investments and Investors*

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

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

### *Clawback Provision*

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

### **Home Renovation Tax Credit for Disabled Family Members**

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

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

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

### **Rural Housing Incentive Districts; SB 90**

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

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

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

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

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

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

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

### ***Restriction on Financial Benefits***

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

The bill defines a “state or local government official” as:

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

### ***Definitions***

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

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

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

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

### ***Eligibility***

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



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

### ***Project Proposal***

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

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

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

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

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

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

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

### ***Financing***

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

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

### ***Reporting and Website Links***

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

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

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

### ***Sale of Land***

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

### ***Sunset***

The program is authorized until July 1, 2026.

## EDUCATION

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

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

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

### **Private and Out-of-State Postsecondary Education; SB 64**

**SB 64** amends the Kansas Private and Out-of-State Postsecondary Education Institution Act (Act) to clarify the State Board of Regents' (Board) authority over private and out-of-state institutions.

#### ***Certificate of Approval Application***

The bill allows an institution exempt from the Act to apply to the Board for a certificate of approval if it is required for the institution to be eligible to receive student financial aid under Title IV of the federal Higher Education Act of 1965. Any institution that applies for and receives a certificate of approval is subject to the jurisdiction of the Board. The institution can return to exempt status by not renewing the certificate of approval.

The bill requires a certificate of approval be issued to the owner of an institution, and such a certificate is not transferable. If the institution has a change of ownership due to the death of the owner, a court order, or the operation of law, the new owner is required to immediately apply for a new certificate of approval. If a change of ownership occurs for any other reason, the new owner is required to apply for a new certificate of approval 60 days prior to the change of ownership. The bill authorizes the Board to adopt rules and regulations to ensure an orderly transition to a new owner, including requirements regarding the maintenance of all student records.

The bill requires a court-appointed receiver of an institution with a certificate of approval to provide the Board with notice of appointment and copies of all documents required from the receiver by the court. The receiver must comply with the provisions of the Act.

The bill allows the Board to assess a civil fine against an institution for violations of the Act. For the first violation, the fine is limited to up to 1.0 percent of the institution's tuition revenue, with a minimum fine of \$125 and a maximum fine of \$15,000. For subsequent violations, the fine is limited to up to 2.0 percent of the institution's tuition revenue, with a minimum fine of \$250 and a maximum fine of \$20,000. These fines are subject to judicial review.

#### ***Definitions***

The bill amends the definitions of "distance education," "out-of-state postsecondary educational institution," "owner of an institution," "physical presence," and "private postsecondary educational institution." The bill also adds a definition for "provisional certificate,"

which means a certificate of approval that can be granted to a degree-granting institution that is not yet accredited but is seeking to establish a physical presence in Kansas.

### ***Exempt Courses and Institutions***

The bill amends law exempting certain types of education and certain institutions from the provisions of the Act. The bill exempts education offered as a review course designed solely to prepare students for graduate or professional school entrance exams or professional licensure exams. Institutions actively regulated by another agency under another statute are also exempt and receive an affirmative approval to operate in Kansas. The bill also lists the institutions exempted from the Act:

- Baker University, Baldwin City;
- Barclay College, Haviland;
- Benedictine College, Atchison;
- Bethany College, Lindsborg;
- Bethel College, North Newton;
- Central Baptist Theological Seminary, Kansas City;
- Central Christian College of Kansas, McPherson;
- Cleveland University–Kansas City, Overland Park;
- Donnelly College, Kansas City;
- Friends University, Wichita;
- Hesston College, Hesston;
- Kansas Christian College, Overland Park;
- Kansas Wesleyan University, Salina;
- Manhattan Christian College, Manhattan;
- McPherson College, McPherson;
- MidAmerica Nazarene University, Olathe;
- Newman University, Wichita;
- Ottawa University, Ottawa;
- Southwestern College, Winfield;
- Sterling College, Sterling;
- Tabor College, Hillsboro; and
- University of Saint Mary, Leavenworth.

### ***Rules and Regulations, Standards***

The bill requires the Board to adopt rules and regulations governing the closure of any institution subject to the provisions of the Act. These may include notice requirements, teach-out plans, maintenance of academic records, refund requirements, and transcript requests. Additionally, the bill requires degree-granting institutions that are not yet accredited to make progress toward accreditation. Once accreditation is achieved, an institution is required to maintain accreditation. The bill allows the Board to set additional standards for institutions that receive federal Title IV student financial aid, including requiring audited financial statements.

### ***Physical Presence of Institution in Kansas***

The bill prohibits an institution from establishing a physical presence in Kansas without obtaining a certificate of approval from the Board.

### ***Notification Requirement and Provisional Certificate of Approval***

The bill requires any institution planning on opening a branch campus in Kansas to notify the Board of its intent at least 60 days prior to the opening of the branch campus.

The bill allows the Board to issue a provisional certificate to a degree-granting institution that is not yet accredited and wishes to establish a physical presence in Kansas. The provisional certificate can be renewed annually as long as the institution continues to progress toward accreditation. The bill requires an institution with a provisional certificate to submit to the Board a plan for achieving accreditation and quarterly updates on the institution's progress toward accreditation. The bill also allows the Board to adopt rules and regulations imposing additional surety bond requirements for the indemnification of any student for any loss suffered as a result of a failure to achieve full accreditation.

### ***Certificate of Approval Minimum Standards***

The bill adds the following to the list of minimum standards an institution must meet to be awarded a certificate of approval:

- An institution is not allowed to award a certificate or degree based solely on the payment of tuition or fees, credit earned at another institution, credit for life experience, testing out, or research and writing;
- An institution is not allowed to award an honorary degree if it does not award that same degree and is not allowed to charge a fee for an honorary degree;
- An institution must maintain adequate financial records, which include financial aid information and loan default rates for institutions receiving federal Title IV student financial aid;
- An institution must protect students' personally identifiable information and promptly address any breach of that information; and
- An institution must publish graduation rates, placement rates, and loan default rates as required by the Board.

### ***Certificate of Approval Renewal***

The bill states an application for the renewal of a certificate of approval will be deemed late if it is not submitted at least 60 days prior to the expiration of the institution's certificate. When an application for renewal is deemed late, the Board may require the institution to begin the closure procedure. The bill also requires any institution that is closing, either voluntarily or

involuntarily, to follow the closure requirements until notified by the Board that all requirements are satisfied.

### ***Board Refusal to Issue Certificate of Approval and Appeal Process***

The bill updates and clarifies language regarding refusals by the Board to issue a certificate of approval and the process to request a hearing to contest such a refusal.

### ***Conditional Certificate of Approval***

The bill allows the Board to condition a certificate of approval if the Board has reasonable cause to believe additional information is necessary, a violation of the Act occurred, or it is in the students' best interests for the institution to continue operating while completing closure requirements. The conditions imposed by the Board may include reporting requirements, performance standard requirements, securing new or additional bonds, and limiting the period of time to operate during change or ownership, or be for the purpose of teaching out students. The Board may require an institution with a conditional certificate of approval to suspend or cease institutional activities, including enrolling students and advertising or delivering certain classes or programs. The Board-imposed conditions remain in effect until all the circumstances causing the conditional status are corrected and the Board has completed all reviews related to the institution's conditional status.

### ***Revocation of Certificate of Approval***

The bill amends language related to the revocation of certificates of approval. The bill prohibits any institution that has had a certificate of approval revoked from applying for a new certificate for 12 months after the final order of revocation. After that 12-month period, an institution may apply for a certificate of approval only if the Board agrees the institution has cured all deficiencies. Prior to revoking an institution's certificate of approval, the Board is required to give written notice to the holder of the certificate. Such written notice must include the grounds for the revocation and notification that the institution may request a hearing on the revocation of the certificate of approval. If a hearing is requested, it must be conducted within 30 days after the written notice was sent.

### ***Requirements of Institution and Employees***

The bill requires an institution, including its officers, agents, representatives, and employees, to comply with the provisions of the Act and any rules and regulations adopted by the Board, including, but not limited to, the protection of students' personally identifiable information.

### ***Prohibited Actions under the Act***

The bill prohibits the use of fraud or misrepresentation to obtain a certificate of approval. The Board can revoke or condition a certificate of approval for any violation of the Act.

### **Civil Fines**

The bill increases the maximum civil penalty for an intentional violation from \$5,000 to \$20,000.

### **Statewide Data Collection**

The bill specifies an institution is in violation of the Act for failure to submit complete and accurate data on a timely basis when requested by the Board.

### **Permitting Credit Card Surcharges for Private Not-for-Profit Postsecondary Institutions; HB 2070**

**HB 2070** allows private, not-for-profit postsecondary educational institutions in Kansas to collect a surcharge on credit card payments. The Kansas Uniform Consumer Credit Code does not allow sellers to collect a surcharge on credit card payments, with certain exceptions that also include Kansas public institutions, municipal universities, community colleges, technical colleges, and vocational schools.

### **Kansas State Department of Education Degree Information; HB 2085**

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

- The State Board of Regents degree prospectus information;
- The placement and salary report of the Kansas Training Information Program; and
- Any other information relevant to students' understanding of potential earnings as determined by the Department of Labor and each branch of the armed services of the U.S. military.

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

### **University Engineering Initiative Act; HB 2101**

**HB 2101** extends the current transfer of the first \$10.5 million credited to the Expanded Lottery Act Revenues Fund (ELARF) from ELARF to the Kan-grow Engineering Fund – KU, the Kan-grow Engineering Fund – KSU, and the Kan-grow Engineering Fund – WSU with each fund receiving equal amounts of \$3.5 million in each fiscal year, for FY 2023 through FY 2032. The transfer first occurred in FY 2013 and is currently scheduled to end with the transfer in FY 2022.

The bill amends the goal of the University Engineering Initiative Act (Act) to continue to generate the same number of engineering graduates per year as is currently set for 2021—

1,365 graduates—to meet the needs of the engineering workforce for as long as the Act is financed with annual transfers from the ELARF.

The bill adds requirements for the educational institutions, the State Board of Regents, and the Secretary of Commerce to report to the House Committee on Appropriations and Senate Committee on Ways and Means. The reports will include how many engineering graduates remain in the state over the previous three years, what efforts are taken to increase retention of graduates and opportunities for graduates in the state, and information regarding the number of engineering graduates from each state educational institution that were initially enrolled as in-state or out-of-state students.

### **Healing Arts School Clinics; HB 2124**

**HB 2124** clarifies the authority of healing arts school clinics to provide healing arts services. The bill allows schools statutorily exempted from State Board of Regents (Board) approval requirements to be exempted from the prohibition on the corporate practice of medicine. Current law requires that for a school clinic to be exempted from the prohibition on the corporate practice of medicine, the school must be approved by the Board.

The bill allows off-site clinics owned or operated by a school in partnership with other providers to engage in the practice of healing arts.



## ELECTIONS AND ETHICS

### Census Population Data; Repeal Outdated Statutes; HB 2162

**HB 2162** adds and amends law related to data used in adopting representative and senatorial district boundaries. It also repeals law related to data used in adopting senatorial and representative district boundaries, election-related contributions by certain corporations and stockholders, and a presidential preference primary.

#### ***Population Data***

The bill adds law to specify the population data used in adopting Kansas legislative districts must be identical to the data collected by the U.S. Bureau of the Census (Census) and used for the apportionment of the U.S. House of Representatives. The bill prohibits use of any other Census counts, including the use of statistical sampling, to add or subtract population.

#### ***Repealed Statutes***

The bill repeals provisions in the *Kansas Statutes Annotated*, Chapter 11, Census, and in Chapter 25, Elections.

**State census.** The bill repeals provisions related to an enumeration of Kansas residents as of January 1, 1988. The bill also repeals a requirement for the Secretary of State to adjust the Census numbers for military personnel and postsecondary students for purposes of reapportioning senatorial and representative districts and provisions related to obtaining and using data for that adjustment.

**Elections.** The bill repeals a prohibition on political contributions from certain types of government-regulated corporations, such as banks and railroads, and the penalties for violating that prohibition. The bill also repeals statutes related to the presidential preference primary, on the topics of the state canvass of the votes, certification of results, payment of election expenses, eligibility to vote, the form of the ballot, county canvasses of votes, and transmitting results to the Secretary of State.

#### ***Other Provisions***

The bill amends law to remove references to the 1988 state census; in law regarding data used for grant applications and for certain credit union field-of-membership determinations, refers to the law added by the bill rather than to a section to be repealed; and removes a reference to a section that is repealed by the bill from exceptions to the Kansas Open Records Act.

### Federal For the People Act of 2021; HCR 5015

**HCR 5015** states each state legislature should have the freedom and flexibility to determine election practices that best meet the needs of their state. The concurrent resolution states the authority to legislate changes to the election process should be left to the states.

The concurrent resolution contains whereas clauses related to the federal For the People Act of 2021, contained in H.R. 1 and S. 1.

The concurrent resolution requires the Secretary of State to send enrolled copies of the resolution to the President of the United States, the Majority Leader and Minority Leader of the U.S. Senate, the Speaker of the U.S. House of Representatives, the Minority Leader of the U.S. House of Representatives, and each member of the U.S. Senate and U.S. House of Representatives serving Kansas.

## FINANCIAL INSTITUTIONS AND INSURANCE

### **Kansas Economic Recovery Loan Deposit Program; Credit Unions, Field of Membership; Privilege Tax, Deductions; SB 15**

**SB 15** establishes the Kansas Economic Recovery Loan Deposit Program (Program); amends law governing linked deposit programs and related investment procedures; amends field-of-membership requirements placed on state-chartered credit unions to increase the permissible geographic area for a credit union's field of membership; and permits national banking associations, state banks, trust companies, and savings and loan associations, for all taxable years commencing after December 31, 2022, to deduct from net income the net interest income received from qualified agricultural real estate loans and the net interest income received from single-family residence loans to the extent such interest is included in the Kansas taxable income of a corporation.

### ***Kansas Economic Recovery Loan Deposit Program (New Sections 1-7; Section 9)***

#### *Program Citation; Definitions (New Sections 1-2)*

The bill designates sections 1 through 7 of the bill as the Kansas Economic Recovery Loan Deposit Program and further provides the Program shall be part of and supplemental to Article 42, Chapter 75 of the *Kansas Statutes Annotated* (Article 42 pertains to state moneys including the investment of state moneys, activities of the Pooled Money Investment Board, and the administration of certain loan deposit programs).

#### *Definitions (New Section 2)*

The bill defines terms, including the following:

- “Economic recovery loan deposit” means an investment account placed by the Director of Investments under the provisions of statutes pertaining to investment of state moneys with an eligible lending institution for the purpose of carrying out the intent of the Program;
- “Economic recovery loan deposit loan” or “loan” means a loan made by an eligible lending institution to an eligible borrower from the eligible lending institution's economic recovery loan deposit as part of the Program;
- “Economic recovery loan deposit program” or “program” means a state-administered program in which eligible lenders are charged less than the market rate of interest and eligible borrowers receive a reduction in interest charged on a loan in the amount of the deposit;
- “Eligible borrower” means any individual or entity operating a business primarily for commercial or agricultural purposes with no more than 200 full-time employees maintaining offices or operating facilities and transacting business in the state of Kansas and is not an individual obtaining a loan primarily for personal, family, or household purposes; and

- “Eligible lending institution” means a financial institution that is:
  - A bank, as defined in KSA 75-4201, that agrees to participate in the Program and is eligible to be a depository of state funds;
  - A credit union, as defined in the State Credit Union Code, that agrees to participate in the Program and provides securities acceptable to the Pooled Money Investment Board (PMIB) pursuant to statutes pertaining to investment of state moneys; or
  - An institution of the Farm Credit System organized under the federal Farm Credit Act of 1971, as amended, having at least one branch in the state of Kansas that agrees to participate in the Program and provides securities acceptable to the PMIB pursuant to statutes pertaining to investment of state moneys.

The bill also defines the terms “director of investments” and “economic recovery loan deposit loan package.”

### ***Program Administration and Purpose (New Section 3)***

The bill authorizes the State Treasurer to administer the Program and states the Program shall be for the purpose of providing incentives for the making of business loans. The bill further specifies the total aggregate amount of loans made under the Program must not exceed \$60.0 million of unencumbered funds pursuant to statutes pertaining to investment of state moneys.

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

The bill requires the State Treasurer to adopt all rules and regulations necessary to enact and administer the provisions of the Program. Such rules and regulations must be adopted no later than February 1, 2022.

### ***Annual Report; Legislative Review***

The bill requires the State Treasurer to submit an annual report to the Legislature and the Governor identifying the eligible lending institutions participating in the Program and the eligible borrowers who have received an economic recovery loan deposit loan. The bill also requires the annual report to provide the aggregate amount of moneys loaned and the amount of moneys still available for loan, if any. The report will be due on or before January 1, 2023, and each January 1 thereafter. The bill requires the Legislature perform a review of the Program as part of the State Treasurer’s annual report on or after January 1, 2024.

### ***Program Loan Package Requirements and Loan Information (New Section 4)***

The bill authorizes the State Treasurer to disseminate information and provide economic recovery loan deposit loan packages (loan packages) to the eligible lending institutions.

### *Eligible Borrowers, Applications, Loan Limitations*

The bill provides the following requirements and other criteria for participation in the Program:

- The loan package must be completed by the eligible borrower before being forwarded to the lending institution for consideration;
- An eligible lending institution that agrees to receive an economic recovery loan deposit must accept and review applications for loans from eligible borrowers;
- The lending institution must apply all usual lending standards to determine the credit worthiness of eligible borrowers;
- No single economic recovery loan deposit loan can exceed \$250,000;
- Only one economic recovery loan deposit loan can be made and be outstanding at any one time to any eligible borrower; and
- No loan may be amortized for a period of more than ten years.

### *Certification and Loan Approval*

The bill requires an eligible borrower to certify on the loan application that the reduced rate loan will be used exclusively for the expenses involved in operating the borrower's business in Kansas. The eligible lending institution will be permitted to approve or reject a loan package based on the institution's evaluation of the eligible borrowers included in the package, the amount of the individual loan in the package, and other appropriate considerations. The eligible lending institution is required to forward to the State Treasurer an approved loan package in the prescribed form and manner. The bill requires the package to include a certification by the applicant that such applicant is an eligible borrower.

### ***Evaluation of the Economic Recovery Loan Deposit Loan Package; Interest and Market Rates; Loan Agreement (New Section 5)***

The bill permits the State Treasurer to either accept or reject the loan package based on the State Treasurer's evaluation of whether the loan meets the Program requirements. The bill would further provide, if sufficient funds are not available for a loan deposit, then the applications may be considered in the order received when funds are once again available, subject to a review by the lending institution.

Upon acceptance of a loan package, the State Treasurer will be required to certify to the Director of Investments (Director) the required amount for the package and the Director will be required to place an economic recovery loan deposit in the amount certified with the eligible lending institution at an interest rate that is 2.0 percent below the market rate provided in KSA 75-4237 (a floating rate). The bill requires such rate to be recalculated on the first business day of January each year using the market rate then in effect. The bill further specifies the minimum

interest rate (or floor) would be 0.25 percent if the market rate is below 2.25 percent. The bill permits the State Treasurer to request the Director place an economic recovery loan deposit with the eligible lending institution prior to acceptance of a loan package when necessary.

An eligible lending institution is required to enter into an economic recovery loan deposit agreement with the State Treasurer. Such agreement will include requirements necessary to implement the purposes of the Program. The bill specifies requirements must include an agreement by the eligible lending institution to lend an amount equal to the loan deposit to eligible borrowers at an interest rate that is not more than 3.0 percent greater than the interest rate made available to the lending institution (effectively capping the interest rate spread at 3.0 percent). The borrower's rate must be recalculated on an annual basis. The bill provides the loan agreement will include provisions for the loan deposit to be placed for a time not to exceed a period of ten years and that is considered appropriate in coordination with the underlying loan. The bill also requires the agreement to include provisions for the reduction of the loan deposit in an amount equal to any payment of loan principal by the eligible borrower.

#### ***Funding of the Loan by the Lending Institution (New Section 6)***

The bill requires, upon placement of a loan deposit with an eligible lending institution, the institution to fund the loan to each approved eligible borrower listed in the loan package in accordance with the agreement between the institution and the State Treasurer. The bill requires the loan to be at the rate established in the agreement and established pursuant to requirements of this bill.

#### ***Liability for Default or Delay in Payments (New Section 7)***

The bill states the State and the State Treasurer shall not be liable to any eligible lending institution in any manner for payment of the principal or interest on any economic recovery loan deposit loan to an eligible borrower. The bill also states any delay in payments or default on the part of the eligible borrower does not in any manner affect the economic recovery loan deposit agreement between the eligible lending institution and the State Treasurer.

#### ***Amendments to Linked Deposit Loan Program Law (Section 9)***

The bill amends law governing the investment of state moneys, which also includes previously authorized linked deposit programs, to add those loan deposits made under the Program and applicable interest rates established by the bill.

#### ***Field of Membership—Credit Unions (Section 8)***

The bill also amends geographic area criteria associated with defining field of membership for state-chartered credit unions in the State Credit Union Code (Code). Continuing law requires credit union members to be linked by one of three fields of membership: geographic area, occupation, or association.

Under current law, a geographic area is permitted to include a single political jurisdiction or multiple contiguous political jurisdictions, until the aggregate total of the population of the geographic area reaches 500,000. The law further provides, however, if the headquarters of the

credit union is located within a metropolitan statistical area (MSA) of more than one county, a different maximum population limit would apply. That limit is determined by a formula:

Multiply the population of the most populous MSA within Kansas (*i.e.*, the population of the Kansas City MSA counties within Kansas) by the fraction having 1.0 million as the numerator and 750,000 as the denominator. [*Note:* Current population numbers are those of the adjusted federal census information presented to the Legislature by the Secretary of State.]

The bill permits a single political jurisdiction (continuing law) but modifies other criteria to:

- Increase the permitted maximum for multiple contiguous political jurisdictions for an aggregate of the total population from 500,000 to 2.5 million, as determined by official state population figures, or any portion thereof, which are identical to the decennial census data from the enumeration conducted by the U.S. Census Bureau (language attributable to the Census data is located in the definition of “population data” in the current field-of-membership requirements); and
- Remove language that separately applied to credit unions with headquarters located within an MSA of more than one county (allowed for a different maximum population limit).

The bill also modifies a requirement that provides, from and after July 1, 2008, no geographic area shall consist of any congressional district or the entire state of Kansas to instead state no geographic area shall consist of the entire state of Kansas.

The bill removes definitions within the Code for “MSA,” “population data,” and “overt act.” Some of the requirements within the definitions had been specific to operations of credit unions, including branch locations, construction of new buildings, and membership of occupation or association groups on or before either February 1, 2008, or June 30, 2008.

### ***Kansas Financial Institutions Privilege Tax—Definitions (Section 10)***

The bill permits a deduction from net income, beginning in tax year 2023, for financial institutions subject to the Kansas Financial Institutions Privilege Tax (privilege tax) equal to the net interest income received from qualified agricultural real estate and single family residence loans attributable to Kansas to the extent such interest is included in the Kansas taxable income. The bill creates definitions for the terms “interest,” “qualified agricultural real estate,” and “single family residence” and also creates a calculation methodology for “net interest income received from qualified agricultural real estate loans” and for “net interest income from single family residence loans” as follows:

- “Interest” means interest on indebtedness attributed to Kansas and incurred in the ordinary course of the active conduct of any business and interest on indebtedness incurred that is secured by a single family residence;

- “Qualified agricultural real estate loans” means loans made on real property that is substantially used for the production of one of more agricultural products and that:
  - Have maturities of not less than 5 years and not more than 40 years;
  - Are secured by a first lien interest in real estate, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property; and
  - Have an outstanding loan balance when made that is less than 85 percent of the appraised value of the real estate, except that a loan for which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate to the extent the loan amount in excess of 85 percent is covered by such insurance;
- “Net interest income received from qualified agricultural real estate loans attributed to Kansas” means the product of the ratio of the interest income earned on qualified agricultural real estate loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company, or savings and loan association without regard to this deduction;
- “Net interest income received from single family residence loans attributed to Kansas” means the product of the ratio of the interest income earned on single family residence loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company, or savings and loan association without regard to this deduction; and
- “Single family residence” means a residence that is:
  - The principal residence of its occupant;
  - Located in Kansas in a rural area, as defined by the U.S. Department of Agriculture, that is not within an MSA and has a population of 2,500 or less as determined by the most recent census for which data is available; and
  - Purchased or improved with the proceeds of the loan.

### **Insurance Producer Licensing Requirements; SB 37**

**SB 37** amends provisions governing agent licensing and renewal licensure requirements in the Uniform Agents Licensing Act and in the Public Adjusters Licensing Act and also amends a statute governing the examination of applicants for agent licensure. The bill also provides for an exemption and extension in complying with the continuing education requirements of licensed insurance agents serving on active duty in the National Guard or armed services of the United States for a specified period of time. The bill further requires certification by pre-need-only insurance agents that the agent transacted no other insurance business.



### ***Examination for Applicant Agent Licensure***

The bill modifies the requirement of examination for applicants and prospective applicants for an agent's license to remove a six-month waiting period for the retaking of an examination after a third or subsequent failure.

### ***Uniform Insurance Agents Licensing Act***

#### *Definitions*

The bill modifies the definition of "biennial due date" as the term applies to both agents (the last day of the agent's birth month) and to registered businesses (the last day of the month of the business' initial licensure).

#### *Biennial Renewal Fee and Continuing Education Requirements for Licensure*

**Biennial renewal fee.** In addition to the current criteria specified for residential agents to meet educational requirements in the biennial license period, the bill requires agents to submit an application for renewal on a form prescribed by the Commissioner of Insurance (Commissioner) and, on and after January 1, 2022, to pay a \$4.00 biennial renewal application fee.

**Continuing education credits.** Under current law, licensed agents holding only a property and casualty (P&C) or a life, accident, and health (L&H) qualification are required to obtain biennially a minimum of 12 continuing education credits (CECs), including at least 1 hour in insurance ethics and no more than 3 CECs in insurance agency management. If an agent holds both the P&C and L&H certifications, the agent is required to obtain a minimum of 24 CECs biennially.

On and after January 1, 2022, the bill amends the CEC requirement for agents to require each licensed agent to earn 18 CECs biennially, permit at least 3 hours of instruction in ethics, and remove the required insurance agency management hours.

The bill updates the CEC requirements for specified lines of insurance to add exemptions for insurance agents licensed to hold only a qualification in either self-service storage unit or travel insurance.

**Pre-need agent reporting requirement.** The bill requires that, at the biennial due date, a licensed insurance agent, who is an individual and holds a life insurance license only for the purpose of selling pre-need funeral insurance or annuity products, provide certification from an officer of each insurance company that has appointed such agent that the agent transacted no other business during the period covered by the report. Under current law, the certification is required only upon request of the Commissioner.

**Exemption and extension for licensed agents in active duty armed services.** The bill exempts a licensed agent who is a member of the National Guard or any reserve component of the armed services of the United States who serves on active duty for at least 90 consecutive days from continuing education requirements during the time such insurance agent is on active duty. The bill requires the Commissioner to grant an extension to any such licensed agent until

the biennial due date that occurs in the year next succeeding the year in which such active duty ceases.

### *Appointment of Agents; Notification*

**Appointment of agents.** The bill removes affiliation requirements for business entities (insurance companies). Under current law, each officer, director, partner, and employee of the business entity who acts as an insurance agent must be licensed as an insurance agent. The business entity is required to disclose to the Kansas Insurance Department (Department) the names of all of its officers, directors, partners, and employees, regardless of whether such persons are licensed as insurance agents. The current notification requirement and licensure of the business entity's representatives include an associated time frame for notification to the Department and penalties for failure to notify. The bill removes the notification time frames and penalties.

The bill, on and after January 1, 2022, also removes a required annual certification and related certification fee for a licensed insurance agent who is an officer, director, partner, or employee or is otherwise legally associated with a corporation, association, partnership, or other legal entity appointed by an insurance company. Under current law, an annual certification fee must be paid for each licensed agent certified by the company at the time the company files its premium tax returns.

**Notification.** The bill creates reporting requirements on each person or entity licensed in the state as an insurance agent. The bill requires the following information to be reported to the Commissioner within 30 calendar days of an occurrence:

- Each disciplinary action on the agent's license or licenses by the regulatory agency of another state or territory of the United States;
- Each disciplinary action on an occupational license held by the licensee, other than an insurance agent's license;
- Each judgment or injunction entered against the licensee on the basis of conduct involving fraud, deceit or misrepresentation, or a violation of any insurance law;
- All details of any conviction of a misdemeanor or felony (details are specified in the bill; minor traffic violations may be omitted);
- Each change in name (if the change is effected by court order, a copy of such order must be provided to the Commissioner);
- Each change in residence or mailing address, email address, or telephone number;
- Each change in the name or address of the agency with which the agent is associated; and

- Each termination of a business relationship with an insurer if the termination is for cause, including the reason for the termination.

In addition, each person or entity licensed in Kansas as an insurance agent is required to provide to the Commissioner, upon request, a current listing of company affiliations and affiliated insurance agents. Business entities licensed in Kansas as insurance agents are required to report each change in legal or mailing address, email address, and telephone number to the Commissioner within 30 days of occurrence. These entities also are required to report each change in the name and address of the licensed agent who is responsible for the business entity's compliance with the insurance laws of Kansas to the Commissioner within 30 days of occurrence.

*Commissioner—Licenses and Renewals; Permissible Considerations*

Under continuing law, the Commissioner is permitted to deny, suspend, revoke, or refuse renewal of licenses if the Commissioner finds violation of several listed actions of the applicant or license holder (e.g., providing incorrect, misleading, incomplete, or untrue information; violations of insurance law; a misdemeanor or felony conviction). The bill adds “failed to respond to an inquiry from the Commissioner within 15 business days” to this list of actions.

In addition, the bill requires the Commissioner to consider the following criteria when determining whether to grant or renew a license:

- Applicant's age at the time of the conduct;
- Recency of the conduct;
- Reliability of the information concerning the conduct;
- Seriousness of the conduct;
- Factors underlying the conduct;
- Cumulative effect of the conduct or information;
- Evidence of rehabilitation;
- Applicant's social contributions since the conduct;
- Applicant's candor in the application process; and
- Materiality of any omissions or misrepresentations.

Separately, the Commissioner is required to consider when determining whether to reinstate or grant to an applicant a license that has been revoked:

- Present moral fitness of the applicant;

- Demonstrated consciousness by the applicant of the wrongful conduct and disrepute that the conduct has brought to the insurance profession;
- Extent of the applicant's rehabilitation;
- Seriousness of the original conduct;
- Applicant's conduct subsequent to discipline;
- Amount of time that has elapsed since the original discipline;
- Applicant's character, maturity, and experience at the time of the revocation; and
- Applicant's present competence and skills in the insurance industry.

The bill provides that an applicant to whom a license has been denied after a hearing may not apply for a license again until after the expiration of a period of one year from the date of the Commissioner's order. A licensee whose license was revoked cannot reapply until after two years from the date of the order.

#### *Renewal Application—Penalties*

The bill amends provisions applying to the renewal of licensure for an insurance agent to create corresponding penalty provisions when the required renewal application is not received by the Commissioner by the agent's biennial due date. The bill provides, if the required renewal application is late:

- Such individual insurance agent's qualification and each corresponding license shall be suspended automatically for a period of 90 calendar days or until such time as the agent satisfactorily submits a completed application, whichever occurs first; and
- The Commissioner shall assess a penalty of \$100 for each license suspended:
  - If such agent fails to provide the required renewal application and the monetary penalty within 90 calendar days of the biennial due date, the agent's qualification and each corresponding license will expire on such agent's biennial due date;
  - If, after more than 3 but less than 12 months from the date the license expired, the agent desires to reinstate his or her license, the agent must provide the required renewal application and pay a reinstatement fee in the amount of \$100 for each license suspended; and
  - If, after more than 12 months have passed since license expiration, the agent desires to reinstate the license, this agent is required to apply for an insurance agent's license, provide the required proof of CEC completion, and pay a reinstatement fee in the amount of \$100 for each license suspended.

The bill permits, upon receipt of a written application from an agent claiming extreme hardship, the Commissioner to waive any penalty associated with renewal of an agent's license.

### ***Public Adjusters Licensing Act***

The bill amends the Public Adjusters Licensing Act to add fingerprinting and criminal history record checks of applicants. Under the bill, the Commissioner is allowed to:

- Require a person applying for a public adjuster license to be fingerprinted and submit to a state and national criminal history record check, to submit a background check, or both:
  - The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The Commissioner is required to submit the fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national history record check. Local and state law enforcement officers and agencies are required to assist the Commissioner in the taking and processing of fingerprints of applicants and to release all records of an applicant's arrests and convictions to the Commissioner; and
- Conduct or have a third party conduct a background check on a person applying for a public adjuster license.

The bill requires the applicant to pay any associated costs whenever the Commissioner requires fingerprinting or a background check, or both. The Commissioner is permitted to use the information obtained from a background check, fingerprinting, and the applicant's criminal history only for purposes of verifying the identity of the applicant and in the official determination of the applicant's fitness to be issued a license as a public adjuster.

The bill also amends the biennial renewal provisions for licensure as a public adjuster to clarify the term "biennial due date" and increase, from 12 to 18 hours, the biennial minimum continuing education courses for licensees and to specify such education include 3 hours of ethics. The bill removes a requirement that such education include 11 hours of P&C or general continuing education courses.

### **City Utility Low-Interest Loan Program; House Sub. for SB 88**

**House Sub. for SB 88** creates the City Utility Low-Interest Loan Program (Program), which provides loans to cities for extraordinary electric or natural gas costs incurred during the extreme winter weather event of February 2021. The total aggregate amount of loans issued under the Program, which will be administered by the State Treasurer, cannot exceed \$100.0 million of unencumbered funds. The bill also amends law governing the investment of state moneys to add Program loans and applicable interest rates.

The bill took effect upon publication in Issue 9A of the *Kansas Register* on March 4, 2021.

### ***City Utility Low-Interest Loan Program (New Section 1)***

The bill designates its provisions and amendments thereto as the Program. The Program is part of and supplemental to Article 42 of Chapter 75 of the *Kansas Statutes Annotated* (Article 42 pertains to state moneys, including the investment of state moneys, activities of the Pooled Money Investment Board, and the administration of certain loan deposit programs).

### ***Program Definitions (New Section 2)***

The bill establishes definitions for terms including:

- “City” to mean a city organized and existing under the laws of Kansas; and
- “Loan” to mean a deposit of unencumbered state funds to a city pursuant to the Program.

The bill also defines the terms “director of investments” and “program.”

### ***Program Administration; Report and Legislative Review (New Section 3)***

The bill authorizes the State Treasurer to administer the Program. The bill states the Program’s purpose is to provide loans to cities for extraordinary electric or natural gas costs incurred during the extreme winter weather event of February 2021. The bill restricts the total amount of loans under the Program to an amount not to exceed \$100.0 million of unencumbered funds pursuant to statutes pertaining to investment of state moneys.

The State Treasurer is required to adopt all rules and regulations necessary to administer the Program, including the development of a streamlined application process, no later than January 1, 2022, except the streamlined application process must be established within 14 days from the effective date of the act (*Kansas Register* publication). The bill further specifies the adoption of such rules and regulations is not be a prerequisite for the approval of Program loans by the State Treasurer. The bill states the State Treasurer shall approve loans under the Program in the most expeditious manner possible on or after the effective date of this act.

The State Treasurer is required to submit an annual report to the Governor and Legislature identifying the cities participating in the Program. The report must provide the aggregate amount of moneys loaned and the amount of moneys available for loan. The report is due on or before January 1, 2022, and each January 1 thereafter. The Legislature is required to perform a review of the Program as part of the State Treasurer’s annual report on or after January 1, 2024.

### ***Program Loan Applications (New Section 4)***

The bill authorizes the State Treasurer to disseminate information and to provide loan applications as soon as practicable on or after the effective date of this act to cities for Program participation.

A city must forward an application to the State Treasurer in a form and manner prescribed by the State Treasurer. The application is required to:

- Include information regarding the amount of the loan requested by the city and such information the State Treasurer may require, including, but not limited to, the specific fund or account of the city in which loan proceeds will be deposited; and
- Contain a certification by the governing body of the city that, if the city receives any federal moneys related to the extreme winter weather event of February 2021, the first priority for expenditure of such moneys is for the payment of any outstanding balance of a loan made to the city under the Program.

The bill further specifies a Program loan can be used only for those extraordinary electric or natural gas costs incurred during the extreme weather event of February 2021, as certified by the city's governing body, and not for any other utility costs previously budgeted for by the city.

The bill also provides that no loan can be amortized for a period of more than ten years. Payments on such loan will not be required to be more frequently than annually but can be made more frequently upon agreement between the city and State Treasurer.

#### ***Certification of Program Loans; Interest Rate (New Section 5)***

The bill authorizes the State Treasurer to accept or reject an application based on the State Treasurer's evaluation of whether the city meets the Program requirements. If sufficient funds are not available for a Program loan, the applications may be considered in the order received when funds become available.

Upon the acceptance of an application, the bill requires the State Treasurer to certify to the Director of Investments the amount required for the loan, and the Director will place a deposit of this certified amount in the specific fund or account of the city indicated in the loan application and approved by the State Treasurer.

The bill provides the interest rate on a loan must be 2.0 percent below the market rate provided in KSA 75-4237 (a floating rate). The bill requires such rate to be recalculated on the first business day of January each year using the market rate then in effect. The bill further specifies the minimum interest rate (or floor) will be 0.25 percent if the market rate is below 2.25 percent. The bill authorizes the State Treasurer to request the Director of Investments to place such deposit with the city prior to approval of an application when necessary.

The bill requires all moneys received by the State Treasurer from cities for payments of the Program loans to be deposited in the State Treasury to the credit of the Pooled Money Investment Portfolio.

***Conflict of Provisions with Other Law Governing State Moneys; Exemption from Bonded Indebtedness (New Section 6)***

The bill provides, in the event a conflict arises between provisions of this bill and provisions statutes pertaining to investment of state moneys, or any other provision of law, the provisions of the bill shall control.

The bill also provides that any Program loan made to a city shall not be considered bonded indebtedness for the purposes of KSA 10-308 (pertaining to bonded indebtedness of cities) or any other statute imposing a limitation on indebtedness of a city.

***Program Interest Rates, Investment in State Moneys (Section 7)***

The bill amends law governing the investment of state moneys to add those loan deposits made under the Program and applicable interest rates established by the bill.

***Fire Insurance Premium Levy Distribution; HB 2270***

**HB 2270** places a limit of \$100,000 on deposits into the State General Fund (SGF) each fiscal year from moneys from a levy placed on each fire insurance company doing business in Kansas for the purpose of maintaining the Office of State Fire Marshal. Continuing law requires the State Treasurer to credit 10.0 percent of moneys from the levy to the SGF.

The bill directs the remainder of this levy to be distributed as specified in the bill: 64.0 percent to a fee fund of the Office of State Fire Marshal, 20.0 percent to the Emergency Medical Services Operating Fund, and 16.0 percent to Fire Service Training Program Fund of the University of Kansas Fire and Rescue Training Institute.



## HEALTH

### **Audiology and Speech-Language Pathology Interstate Compact; SB 77**

**SB 77** enacts the Audiology and Speech-Language Pathology Interstate Compact (Compact). The Compact's uniform provisions are outlined below.

#### ***Purpose***

The purpose of the Compact is to facilitate the interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services.

#### ***Definitions***

The Compact defines various terms used throughout the Compact.

#### ***State Participation in the Compact***

The Compact provides licensure requirements for states participating in the Compact. Licenses issued by a home state to an audiology or speech-language pathologist are recognized by each member state as authorizing the practice of audiology or speech-language pathology in each member state. States are required to implement criminal history record checks of license applicants. The privilege to practice audiology or speech-language pathology is derived from the home state license. Member states are authorized to charge a fee for granting a compact privilege and are required to comply with bylaws and rules of the Audiology and Speech-Language Pathology Compact Commission (Compact Commission).

#### ***Compact Privilege***

The Compact requires audiologists and speech-language pathologists to comply with certain requirements to exercise compact privilege and state audiologists and speech-language pathologists can hold only one home state license at a time. The Compact establishes the requirements to restore an encumbered license.

#### ***Compact Privilege to Practice Telehealth***

The Compact requires member states to recognize the right of an audiologist or speech-language pathologist licensed in a member state to practice in another member state *via* telehealth.

#### ***Active Duty Military Personnel or Their Spouses***

The Compact allows active duty military personnel or their spouses to designate a home state where such service member or spouse has a license in good standing and allows such military personnel or spouse to retain that home state designation during the period of time the service member is on active duty.

### ***Adverse Actions***

The Compact allows a member state to take adverse action against an audiologist's or speech-language pathologist's privilege to practice in such member state and to issue subpoenas. Only the licensee's home state has the power to take adverse action against the audiologist's or speech-language pathologist's license issued by such home state. The Compact allows joint investigations of licensees by member states.

### ***Establishment of the Audiology and Speech-Language Pathology Compact Commission***

The Compact creates the Compact Commission and includes provisions relating to the membership, voting, powers and duties, and financing of the Compact Commission.

### ***Data System***

The Compact requires the Compact Commission to develop, maintain, and utilize a coordinated database and reporting system on all licensed individuals in member states. Additionally, the Compact Commission is required to promptly notify all member states of an adverse action taken against a licensee or applicant. Any information contributed to the database can be designated by a member state as not for the public.

### ***Rulemaking***

The Compact authorizes the Compact Commission to exercise rulemaking powers. The bill requires notice of proposed rules to be filed at least 30 days prior to the meeting where the Compact Commission will consider such rule. Additionally, the Compact Commission is required to grant the opportunity for a public hearing if certain conditions are met. However, the Compact provides for emergency rulemaking procedures.

### ***Oversight, Dispute Resolution, and Enforcement***

The Compact requires the Commission, upon member request, to resolve disputes arising among member states and between member states and nonmember states. In addition, the Compact Commission is allowed to enforce the provisions of the Compact and, by majority vote, could initiate legal action in federal court against a member state.

### ***Date of Implementation of the Interstate Commission for Audiology and Speech-Language Pathology Practice and Associated Rules, Withdrawal, and Amendment***

The Compact is effective on the date on which the Compact statute is enacted into law in the tenth member state. Any member state is allowed to withdraw from the Compact by enacting a statute that repeals the Compact, but this does not take effect until six months after the enactment of the repealing statute. Member states can amend the Compact, but any amendment is not effective until it is enacted by all member states.

### ***Construction and Severability***

The Compact is to be liberally construed and the provisions of the Compact are severable.

### ***Binding Effect of Compact and Other Laws***

The Compact does not prevent the enforcement of any other law of a member state that is not inconsistent with the Compact. Laws in conflict with the Compact are superseded to the extent of the conflict and all lawful actions of the Compact Commission are binding upon member states.

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

### **COVID-19 Vaccination Plan; SR 1707**

**SR 1707** recognizes the COVID-19 pandemic and acknowledges the work of developing a vaccine for distribution to combat the disease. The resolution acknowledges the vaccination and distribution plan by the Governor and the data provided by the U.S. Centers for Disease Control and Prevention regarding Kansas and its ranking among other states in vaccine distribution. The resolution states the current vaccination plan submitted by the Governor of Kansas prioritizes the COVID-19 vaccination of healthy, incarcerated individuals over Kansans between the ages of 16 to 64 who have severe medical risks.

The resolution calls upon the Governor to revise the current COVID-19 vaccination plan by removing prisoners from the front of the line in Phase 2 and instead prioritize the vaccination of the elderly, teachers, and Kansans aged 16 to 64 who have severe medical risks.

### **Urging the Legislative Coordinating Council to Revoke Any Executive Order Mandating Face Coverings; HR 6015 and SR 1717**

**HR 6015** and **SR 1717** urge the Legislative Coordinating Council (LCC) to revoke any executive order issued by the Governor pursuant to the Kansas Emergency Management Act establishing a face coverings protocol, if such executive order is issued by the Governor while the Legislature is not in Session or is adjourned for three or more days during the Legislative Session. The resolution directs the Chief Clerk of the House to send an enrolled copy of the resolution to the chairperson of the LCC.

## JUDICIARY

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

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

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

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

The bill requires the Office of Judicial Administration to prepare and submit a report to the Senate Committee on Judiciary and the House Committee on Judiciary on or before January 17, 2022, and January 16, 2023, containing information by judicial district regarding the number of criminal cases that are pending, resolved, or newly filed and the number of jury trials conducted in criminal cases.

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

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

### **Adult Care Homes; Covered Facilities; COVID-19; Immunity from Civil Liability; HB 2126**

**HB 2126** amends the COVID-19 Response and Reopening for Business Liability Protection Act by replacing the definition of "adult care facility" with the following definition of "covered facility":

- An adult care home, as defined in the Adult Care Home Licensure Act, except that "covered facility" would include a center approved by the Centers for Medicare and Medicaid Services as a Program for All-inclusive Care for the Elderly (PACE) that provides services only to PACE participants;
- A community mental health center and a crisis intervention center, as defined elsewhere in statute; and

- A community service provider, a community developmental disability organization, and an institution, as defined in the Developmental Disabilities Reform Act.

The bill replaces an affirmative defense available in certain circumstances for an adult care facility in a civil action for damages, administrative fines, or penalties for a COVID-19 claim with immunity from liability for a covered facility in a civil action for damages for a COVID-19 claim if such facility was in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.

For purposes of this immunity provision, “public health directives” means any of the following required by law to be followed related to COVID-19:

- State statutes or rules and regulations; or
- Federal statutes or regulations from federal agencies, including the U.S. Centers for Disease Control and Prevention and the Occupational Safety and Health Administration of the U.S. Department of Labor.

The bill states this immunity provision shall not apply to civil liability when it is established the act, omission, or decision giving rise to the cause of action constituted gross negligence or willful, wanton, or reckless conduct.

The bill states the amendments replacing the affirmative defense with an immunity provision apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to termination of the state of disaster emergency related to the COVID-19 public health emergency.

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

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

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

The bill became effective March 30, 2021, upon its publication in Issue 12B of the *Kansas Register*.

### ***State of Disaster Emergency Suspension Orders***

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

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

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

### ***Operation of Deadlines or Time Limitations Upon Termination of Order***

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

### ***Audio-visual Communication***

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

### ***Sunset Provision***

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

## RETIREMENT

### **KP&F Service-connected Benefits; Michael Wells Memorial Act; HB 2063**

**HB 2063** revises the benefits for members of the Kansas Police and Firemen's Retirement System (KP&F) who are Tier II members, meaning those employees hired since July 1, 1989, who are disabled and ultimately die due to a "service-connected" condition, as that term is defined by law. The bill will apply to deaths that occurred on and after January 1, 2017, and designates these amendments to law as the Michael Wells Memorial Act.

Assuming no death benefits are payable, the new benefit will be the greater of:

- A monthly benefit equal to 50.0 percent of the member's final average salary at the time of the disability, plus 10.0 percent for each dependent child who is under the age of either 18 years or 23 years, if a full-time student; or
- The retirement benefit the deceased member would have received if the member had been able to retire, if there are no dependent children.

The total amount of benefits payable can not exceed 75.0 percent of the member's final average salary.

Under the current benefit structure, when a Tier II KP&F member becomes disabled and later dies due to a service-connected condition before reaching eligibility, the spouse receives both a one-time, lump-sum payment equal to 50.0 percent of the member's final average salary, which is the average of the three highest of the previous five years of employment, and a monthly benefit equal to 50.0 percent of the member's disability benefit. If there is no spouse, dependent children receive the benefit in equal shares.

## STATE AND LOCAL GOVERNMENT

### **Division of Tourism; ERO 48**

**ERO 48** Executive Reorganization Order (ERO) No. 48 establishes the Division of Tourism (Division) within the Department of Commerce, effective July 1, 2021, rather than continue it within the Kansas Department of Wildlife, Parks and Tourism (KDWPT). The ERO states the head of the Division shall be the Director of Tourism (Director) and is to be appointed by the Secretary of Commerce. The position of Director will be an unclassified position and will receive an annual salary set by the Secretary of Commerce.

The ERO states the Director will appoint employees as necessary to carry out the powers and duties of the Division. Such employees will act for and exercise the powers of the Director if the Director delegates such powers. The Director may organize the Division in the most efficient manner.

### ***Changes to the Department of Wildlife, Parks and Tourism***

The ERO abolishes the Division of Tourism and the Office of the Director of Tourism within the KDWPT.

The ERO states all KDWPT powers, duties, and functions related to the Division are transferred to and imposed upon the Division and the Director within the Department of Commerce.

The ERO renames the KDWPT as the Kansas Department of Wildlife and Parks and the Secretary of Wildlife, Parks and Tourism (Secretary) as the Secretary of Wildlife and Parks. The ERO states the Kansas Department of Wildlife and Parks and the Secretary of Wildlife and Parks will be the successor in every way to the powers, duties, and functions of the KDWPT and of the Secretary granted prior to the effective date of the ERO. Every act performed under the powers, duties, and functions by or under the authority of the Kansas Department of Wildlife and Parks or the Secretary of Wildlife and Parks will have the same force and effect as if performed by the KDWPT or the Secretary.

The ERO states that whenever the KDWPT is referred to or designated by a statute, contract, or other document regarding the KDWPT's powers, duties, or functions related to the KDWPT, such reference shall apply to the Kansas Department of Wildlife and Parks. The ERO states that whenever the Secretary is referred to or designated by a statute, contract, or other document regarding the Secretary's powers, duties, or functions related to the Secretary, such reference shall apply to the Secretary of Wildlife and Parks. All rules, regulations, orders, and directives of the Secretary that are in effect on July 1, 2021, shall continue to be effective and shall be deemed the rules, regulations, orders, and directives of the Secretary of Wildlife and Parks until revised, amended, revoked, or nullified by law.

The ERO states the Secretary of Wildlife and Parks will appoint an assistant secretary for operations. The position of assistant secretary for operations will be an unclassified position with a salary set by the Secretary of Wildlife and Parks. The Secretary of Wildlife and Parks will assign powers, duties, and functions to the assistant secretary for operations. The assistant secretary for operations will act for and exercise the powers of the Secretary of Wildlife and Parks, if the Secretary delegates such powers.



The ERO abolishes the positions of assistant secretary for parks and tourism and the assistant secretary of wildlife, fisheries, and boating within the KDWPT.

### ***Division of Tourism within the Department of Commerce***

The ERO states the Division and the Director will be the successor in every way to the powers, duties, and functions of the Division of Tourism and the Director of Tourism of KDWPT granted prior to the effective date of this ERO and transferred as part of this ERO. Every act performed under the powers, duties, and functions by or under the authority of the Division and Director will have the same force and effect as if performed by the Division of Tourism or the Director of Tourism of KDWPT.

The ERO states that whenever the Division of Tourism of the KDWPT is referred to or designated by a statute, contract, or other document regarding the Division of Tourism of the KDWPT and such document is related to the Division of Tourism of the KDWPT, such reference shall apply to the Division.

The ERO states that whenever the Director of Tourism of KDWPT is referred to or designated by a statute, contract, or other document regarding the Director of Tourism of KDWPT's powers, duties, or functions and such document is related to the Director of Tourism of the KDWPT, such reference shall apply to the Director.

All rules, regulations, orders, and directives of the Secretary that are in effect on July 1, 2021, and that relate to the functions, powers, or duties of the Director of Tourism of the KDWPT shall continue to be effective and shall be deemed the rules, regulations, orders, and directives of the Secretary of Commerce until revised, amended, revoked, or nullified by law.

All orders or directives of the Division of Tourism or the Director of Tourism of the KDWPT that are in effect on July 1, 2021, and that relate to any function, power, or duty of the Division of Tourism or the Director of Tourism of the KDWPT shall continue to be effective and shall be deemed the orders and directives of the Division and Director until revised, amended, revoked, or nullified by law.

### ***Transfers of Funds, Accounts, Liability, Property, and Records***

The ERO transfers the balances of all funds and accounts appropriated or reappropriated to the KDWPT for activities related to the Division from the KDWPT to the Department of Commerce.

The ERO states liability for all accrued compensation or salaries of officers and employees who are transferred to the Division shall be paid by the Department of Commerce.

The ERO transfers all property, property rights, and records relating to the powers, duties, or functions transferred to the Division to the Department of Commerce. Any conflict that arises regarding the transfers described above will be resolved by the Governor, whose decision will be final.

The ERO states lawsuits, criminal actions, or other proceedings by or against any state agency or program or by or against any officer of the State in such officer's official duties will not be affected by reason of governmental reorganization.

### ***Transfer of Employees***

The ERO states officers and employees that are engaged in duties relating to the Division and are necessary to perform those duties, in the opinion of the Secretary of Commerce, are transferred to the Division. All classified employees will retain their status as classified employees.

The ERO states all retirement benefits and leave balances and rights that are accrued or granted prior to the date of transfer of such officers and employees transferred by this order shall be retained. The service of each transferred officer or employee will be declared continuous. The ERO will not affect the classified status of any transferred person employed by KDWPT prior to the date of transfer. The ERO states any subsequent transfer, layoff, or abolition of classified service positions will be made in accordance with the civil service laws and any related rules and regulations. The date of transfer of each transferred officer or employee shall commence at the start of a payroll period.

### **COVID-19; Extension of State of Disaster Emergency; Extension of Related Provisions; Closure or Cessation of Business Activity; SB 14**

**SB 14** amends law regarding the governmental response to the COVID-19 pandemic in Kansas. The bill became effective upon publication in Issue 3A of the *Kansas Register* on January 25, 2021.

### ***Ratification and Extension of State of Disaster Emergency***

The bill amends the statute ratifying and continuing the COVID-19-related state of disaster emergency declared by the Governor on March 12, 2020, to reflect the September 15, 2020, ratification and continuation of the state of disaster emergency by 2020 Special Session HB 2016 and subsequent extensions and continuations by the State Finance Council, and ratifies and continues in existence the state of disaster emergency through March 31, 2021. The bill also amends this statute to extend from 2020 through 2021 a provision prohibiting the Governor from proclaiming any new state of disaster emergency related to the COVID-19 health emergency without approval by at least six legislative members of the State Finance Council.

### ***Extension of Provisions***

The bill amends statutory provisions regarding the following to extend their expiration from January 26, 2021, until March 31, 2021:

- Removal of alcohol from premises of a licensed club or drinking establishment;
- In the section of the Kansas Emergency Management Act (KEMA) governing declaration of a state of disaster emergency, provisions regarding extension of the COVID-19 state of disaster emergency when the Legislature is not in session by application of the Governor to the State Finance Council. This section is also amended to permit this procedure when the Legislature is adjourned during session for three or more days;

- In the section of KEMA governing powers of the Governor during a state of disaster emergency, extending provisions regarding the powers of the Governor and boards of county commissioners enacted in 2020 Special Session HB 2016. [Note: This section appears to make substantive amendments to the statute. However, these apparent substantive amendments reflect current statutory language as of the date of enactment of SB 14 and appear as amendments only to continue the then-effective language beyond the original January 26, 2021, expiration date.] Effective March 31, 2021, the bill returns this section to the version effective before enactment of 2020 Special Session HB 2016, removing the amendments made by 2020 Special Session HB 2016 and this bill;
- Telemedicine;
- Temporary emergency licensure by the State Board of Healing Arts;
- Temporary licensure measures for additional health care providers and provision of certain health care services; and
- Business immunity from liability for a COVID-19 claim.

### ***Closure or Cessation of Business Activity***

The bill amends the KEMA statute limiting the Governor's closure or cessation of business activity.

Under previous law, this statute prohibited the Governor from ordering, during any state of disaster emergency, the closure or cessation of any for-profit or nonprofit business or commercial activity for more than 15 days, required the Governor to consult with the State Finance Council prior to issuing such an order, and required approval of six legislative members of the State Finance Council for additional closure or cessation beyond 15 days. The bill amends these provisions to instead prohibit the Governor, during any state of disaster emergency related to COVID-19, from issuing an order that substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business, or commercial activity, whether for-profit or not-for-profit.

The expiration date of this statute is also extended from January 26, 2021, until March 31, 2021.

### **COVID-19; Kansas Emergency Management Act; State of Disaster Emergencies; Legislative Coordinating Council; SB 40**

**SB 40** creates and amends law regarding the Kansas Emergency Management Act (KEMA), state of disaster emergencies, the Legislative Coordinating Council, and the COVID-19 health emergency. The bill became effective March 25, 2021, upon publication in Issue 12A of the *Kansas Register*.

***Local School Board Actions during COVID-19 State of Disaster Emergency (New Section 1)***

The bill creates a section of law providing that, during the COVID-19 state of disaster emergency, only the board of education responsible for the maintenance, development, and operation of a school district (local school board) shall have the authority to take any action, issue any order, or adopt any policy made or taken in response to such disaster emergency that affects the operation of any school or attendance center of the school district, including, but not limited to, any action, order, or policy that:

- Closes or has the effect of closing any school or attendance center of such school district;
- Authorizes or requires any form of attendance other than full-time, in-person attendance at a school in the school district, including, but not limited to, hybrid or remote learning; or
- Mandates any action by any students or employees of a school district while on school district property.

Any such action, order, or policy shall only affect the operations of schools under the jurisdiction of the local school board and shall not affect the operation of nonpublic schools.

During any such disaster emergency, the State Board of Education, the Governor, the Department of Health and Environment, a local health officer, a city health officer, or any other state or local unit of government may provide guidance, consultation, or other assistance to the local school board but may not take any action related to such disaster emergency that affects the operation of any school or attendance center of the school district.

Any meeting or hearing of a local school board discussing an action taken, order issued, or policy adopted shall be open to the public and may be conducted by electronic audio-visual communication when necessary to secure the health and safety of the public, the board, and employees.

***Grievance Process for Actions Taken by School Boards; Request for Hearing***

The bill provides that an employee, a student, or the parent or guardian of a student aggrieved by an action taken, order issued, or policy adopted by a local school board under the above provisions or by an action of any employee of a school district violating any such action, order, or policy may request a hearing by such board to contest the action within 30 days of the action, and such request shall not stay or enjoin the action, order, or policy.

Upon receipt of a request for a hearing, the local school board must conduct a hearing within 72 hours of receiving such request for the purposes of reviewing, amending, or revoking such action, order, or policy. The board must issue a decision within seven days after the hearing is conducted. The board may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing requested under these provisions, including, but not limited to, rules for consolidation of similar hearings.

The bill allows any party aggrieved by such decision of the local school board to file a civil action, within 30 days after the issuance of the decision, in the district court of the county where the party resides or in Shawnee County District Court. Notwithstanding any order issued by the Chief Justice regarding deadlines or time limitations during a state of disaster emergency, the bill requires the court to conduct a hearing within 72 hours of receiving a petition in such action. The court must grant the request for relief unless the court finds the action, order, or policy is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to do so. The bill requires the court to issue an order on such petition within seven days after the hearing. If the court does not do so, the relief requested in the petition shall be granted. Relief under these provisions may not include a stay or injunction concerning the contested action, order, or policy that applies beyond the county in which the petition was filed, and the Supreme Court may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing under these provisions, including rules for consolidation of similar hearings.

### ***Community College and Technical College Actions during COVID-19 State of Disaster Emergency (New Section 2)***

The bill creates a section of law, in substantially similar form to Section 1, regarding the authority of and actions taken by the governing body of a community college or technical college during the COVID-19 state of disaster emergency, with the following adjustments:

- Provisions regarding schools affected by local school board actions and nonpublic schools are not included;
- Some of the entities and officials who may offer guidance, consultation, or other assistance are changed; and
- Parents are not included in those who may request a hearing.

### ***Legislative Coordinating Council Membership (Section 3)***

The bill amends the statute establishing the Legislative Coordinating Council (LCC) to add the Vice President of the Senate as a member, increasing the total number of LCC members to eight.

### ***Amendments to KEMA (Sections 4-9)***

#### ***Responsibilities during State of Disaster Emergency (Section 4)***

The bill provides the LCC, instead of the State Finance Council, has the authority to extend a state of disaster emergency beyond the initial 15-day state of disaster emergency period, for specified periods not to exceed 30 days each. The bill requires an affirmative vote of five LCC members for such extension and removes a limit of one such extension.

The bill similarly replaces the State Finance Council with the LCC in extension provisions for a state of disaster emergency regarding domestic animals, plants, raw agricultural

commodities, animal feed, or processed food, and changes the vote required from a unanimous vote to an affirmative vote of five LCC members.

The bill amends a specific provision regarding the COVID-19 state of disaster emergency to reflect an extension of the state of disaster emergency in Section 3, to reflect the replacement of the State Finance Council with the LCC in the extension procedure, and to remove a prohibition on such extensions past March 31, 2021.

*Ratification and Extension of COVID-19 State of Disaster Emergency; Executive Orders  
(Section 5)*

The bill ratifies and continues in existence the COVID-19 state of disaster emergency originally declared by the Governor on March 12, 2020, through May 28, 2021.

The bill amends a prohibition on proclamation of new state of disaster emergencies related to the COVID-19 health emergency during 2020 or 2021 to specify the prohibition includes state of disaster emergencies related in whole or in part to the COVID-19 health emergency, including, but not limited to, any economic, financial, or other crisis caused by such emergency, and to reflect the replacement of the State Finance Council with the LCC in the extension procedure.

The bill states, notwithstanding any other provision of law to the contrary, all executive orders (EOs) issued during the COVID-19 state of disaster emergency will be revoked on March 31, 2021, and shall be null and void. The bill provides that any new EOs issued during the COVID-19 state of disaster emergency or during a new state of disaster emergency related to the COVID-19 health emergency are subject to revocation by the Legislature or by the LCC, pursuant to procedures provided in Section 6 of the bill.

*Powers during State of Disaster Emergency (Section 6)*

The bill adds the term “executive” to those orders issued by the Governor under its provisions and replaces the State Finance Council with the LCC in provisions regarding review and revocation of EOs related to state of disaster emergency. The bill requires the chairperson of the LCC to call a meeting of the LCC to occur within 24 hours of the issuance of such EO for purposes of reviewing the order, and allows the LCC, when the Legislature is not in session or is adjourned during session for three or more days, to revoke such EOs with the affirmative vote of five members. This section is amended to reflect the specific limitations placed on EOs related to the COVID-19 state of disaster emergency by Section 4 of the bill.

The bill amends a provision restricting the Governor’s power or authority to take certain actions regarding firearms or ammunition during a state of disaster emergency to state the Governor shall not have the power or authority to limit or otherwise restrict the sale, purchase, transfer, ownership, storage, carrying, or transporting of firearms or ammunition, or any component or combination thereof, including any components or combination thereof used in the manufacture of firearms or ammunition, or seize or authorize the seizure of any firearms or ammunition, or any component or combination thereof, except as otherwise permitted by state or federal law.

The bill removes an expired provision regarding restrictions on business operations and movement or gathering of individuals.

The bill allows any party aggrieved by an EO issued under this section that has the effect of substantially burdening or inhibiting the gathering or movement of individuals or the operation of any religious, civic, business, or commercial activity (whether for-profit or not-for-profit) to file a civil action, within 30 days after the issuance of the EO, in the district court of the county where the party resides or in Shawnee County District Court. Notwithstanding any order issued by the Chief Justice regarding deadlines or time limitations during a state of disaster emergency, the bill requires the court to conduct a hearing within 72 hours of receiving a petition in such action. The court must grant the request for relief unless the court finds the EO is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to do so. The bill requires the court to issue an order on such petition within seven days after the hearing. If the court does not do so, the relief requested in the petition shall be granted. Relief under these provisions may not include a stay or injunction concerning the contested EO that applies beyond the county in which the petition was filed, and the Supreme Court may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing under these provisions, including rules for consolidation of similar hearings.

The bill amends provisions regarding the powers of a board of county commissioners to issue an order relating to public health that includes provisions less stringent than a statewide EO to state that such orders shall operate in the county in lieu of the Governor's EO.

#### *Business Activity; Gathering or Movement of Individuals (Section 7)*

The bill amends the KEMA section prohibiting the issuance of an order during a COVID-19 state of disaster emergency that substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business, or commercial activity, to remove the section's expiration date of March 31, 2021, allowing the section to remain effective past that date.

#### *State of Local Disaster Emergency (Section 8)*

The bill amends the KEMA section governing states of local disaster emergency to add provisions allowing a party aggrieved by specified actions taken by a local unit of government pursuant to the section to file a civil action in the district court of the county where the action was taken. The parameters and procedures for such action are otherwise be substantially similar to those provided by Section 5 of the bill regarding EOs.

#### *Violations (Section 9)*

The bill provides an exception to continuing civil penalties for violations of KEMA or related rules and regulations or lawful orders or proclamations. The exception makes a knowing violation of an executive order issued pursuant to Section 5 that mandates a curfew or prohibits public entry into an area affected by a disaster a class A nonperson misdemeanor.

***Kansas Intrastate Emergency Mutual Aid Act (Section 10)***

The bill amends the definition of “emergency responder” in the Kansas Intrastate Emergency Mutual Aid Act to include 911 call center public safety telecommunicators and physician assistants.

***Revocation of Orders of the Secretary of Health and Environment (Section 11)***

The bill amends a statute governing the powers of the Secretary of Health and Environment (Secretary) to provide that, in the event of a state of disaster emergency declared by the Governor or a state of local disaster emergency, the Legislature may revoke, by concurrent resolution, an order issued by the Secretary to take action related to such disaster emergency. The bill allows the LCC, when the Legislature is not in session or is adjourned during session for three or more days, to revoke such orders with the affirmative vote of five members.

***Authority of County Health Board and Local Health Officers (Section 12)***

The bill amends a statute governing the powers of the board of county commissioners acting as the county board of health (board) and local health officers (officers) to provide, if an officer determines it is necessary to issue an order mandating the wearing of face masks, limiting the size of gatherings of individuals, curtailing the operation of business, controlling the movement of the population of the county, or limiting religious gatherings, the officer must propose such order to the board. At the next regularly scheduled meeting of the board or at a special meeting of the board, the board must review the proposed order and may take any action related to the proposed order the board determines is necessary. The proposed order shall become effective if approved by the board or, if the board is unable to meet, if approved by the chairperson of the board or the vice chairperson of the board in the chairperson’s absence or disability.

The bill allows any party aggrieved by an order issued under the above provisions to file a civil action in the district court of the county in which the order was issued. The procedures for such action are substantially similar to those provided elsewhere in the bill regarding EOs and states of local disaster emergency.

***Amendment and Repeal of Additional Statutes (Sections 13 and 15)***

The bill amends a statute regarding the State Finance Council to remove a reference to the KEMA statute regarding responsibilities during a state of disaster emergency to reflect the other amendments made by the bill.

The bill repeals a version of the KEMA statute regarding the powers of the Governor during a state of disaster emergency that would have gone into effect on March 31, 2021, and a KEMA section prohibiting closure of schools without the approval of the State Board of Education.



### ***Severability Clause (New Section 14)***

The bill provides the provisions of this act are severable and, if any portion of the act or application to any person or circumstance is held unconstitutional or invalid, the invalidity shall not affect other portions of the act that can be given effect without the invalid portion or application, and the applicability of such other portions of the act to any person or circumstance shall remain valid and enforceable.

### **Sedgwick County Nuisance Abatement; SB 52**

**SB 52** establishes the Sedgwick County Urban Area Nuisance Abatement Act (Act).

The bill authorizes the Board of County Commissioners (Board) to order the removal or abatement of any nuisance from any property in the unincorporated area of Sedgwick County (County). All costs associated with the abatement are the responsibility of the property owner. Before the abatement process can begin, the bill requires the County to first obtain a conviction for a county code violation regarding the nuisance no more than 12 months before the issuance of the abatement order.

The bill states the Act shall not apply to any land, structures, machinery, equipment, or vehicles used for agricultural activity as defined in continuing law to include the growing or raising of horticultural and agricultural crops, hay, poultry, and livestock and the handling, storage, and transportation of agricultural commodities. The Act also excludes all real and personal property, machinery, equipment, stored grain, and agricultural input products that are owned or maintained by commercial grain elevators and agribusiness facilities.

### ***Abatement Process***

To begin the abatement process, the bill requires the Board, or an agency designated by the Board, to file a statement with the Sedgwick County Clerk describing the nuisance and declaring it a menace and health risk to county residents. The bill authorizes the Board to issue an order requiring the nuisance to be removed or abated. The bill requires the order to provide a minimum of ten days (as specified in the order) for the owner to remove and abate the nuisance; the Board is empowered to grant extensions to the time period in question. The property owner is also provided the right to request a hearing before the Board if the request is made prior to the end of the waiting period or any extension. The bill subjects any decision made by the Board or its designated representative on this matter to review under the Kansas Judicial Review Act (KSA 77-601 *et seq.*).

The abatement order is to be sent to the owner of record by personal service. [*Note: Methods of service of process are provided in KSA 2020 Supp. 60-303.*] The bill, if the owner fails to accept delivery or effectuate receipt during a preceding 24-month period, authorizes the Board to use alternative notification methods such as, but not limited to, door hangers, telephone communications, or first-class mail. Telephone communication or first-class mail is required if the property is unoccupied and the owner is a nonresident.

If the owner of the property fails to abate the nuisance before the time limit stated in the abatement order, the Board is authorized to order the repair or demolition of any structure, have items described in the order removed, and provide notice to the owner by certified mail, with

return receipt requested, that the abatement has occurred and include the total cost of the abatement incurred by the County. The bill requires the notice to state payment for the abatement to the County would be due and payable no later than 60 days after the mailing of the notice. If payment is not made within the 60-day period, the County is authorized to assess the cost of the abatement to the lot or parcel of land on which the nuisance was located. The bill requires the county clerk to certify the costs and extend the cost on the tax roll against the lot or parcel of land.

The bill requires all orders and notices to be served on the owner of record for the property. In the event of more than one owner of record, the County is required to notify at least one of the owners of record.

### ***County Abatement Costs***

The bill states, when assessing the cost of removal or abatement of a nuisance, the County shall subtract the value of the property that was removed or abated from the total cost of the abatement or removal. If the value of the property removed or abated is greater than the total cost of the removal or abatement, the bill requires the County to pay the property owner the difference.

A property owner who contests the value of the property is allowed to request a hearing before the Board or its designated representative prior to the deadline for payment of removal or abatement costs to the County.

### ***Motor Vehicles***

The bill states the County is authorized to remove a motor vehicle determined to be a nuisance, except when the vehicle is on public property or property open to the public. The County is authorized to impound and auction vehicles removed by this process following provisions of continuing law applicable to removing a vehicle from public property or property open to the public. The bill states an individual who purchases a vehicle in this manner may file proof of purchase with the Division of Vehicles (Division) in order to receive the title to the vehicle purchased. If no responsible bid is received during the auction, the County is authorized to file proof with the Division and be issued the title in the County's name.

Any individual whose vehicle is sold *via* this process is eligible for a refund of motor vehicle tax imposed, and the amount of the refund will be determined as provided in continuing law.

### ***Policies and Procedures***

The Board may adopt a resolution to establish policies, procedures, a designated body, or other matters for hearings that property owners or their agents may request pursuant to the Act.

### ***Sunset***

The Act expires on July 1, 2024.

## City or County Assumption of Special District Duties; SB 118

**SB 118** establishes a procedure by which a city or county may assume the powers, responsibilities, and duties of a special district within the city's corporate boundary or the county's boundaries.

The bill defines a "special district" to include airport authorities, cemetery districts, drainage districts, fire districts, industrial districts, library districts, port authorities, rural water districts, sewer districts, and rural watershed districts.

### ***Procedure***

The bill requires the city or county and the special district to reach an agreement regarding the city or county assuming the powers, responsibilities, and duties of the special district and to pass a joint resolution stating their intent to dissolve the special district into the city or county. The joint resolution must also contain the time and location for a joint public hearing on the issue of dissolution.

Upon both the special district and the city or county governing body passing the joint resolution, the special district is prohibited from issuing new debt without notifying and receiving approval from the city or county governing body.

The joint resolution must be published once a week for two consecutive weeks in a newspaper of general circulation in the county or counties where the city or county and special district are located.

The bill requires that, after the public hearing has been held, the governing bodies of the city or county and the special district decide whether to proceed with consolidation or abandon the proposed dissolution. If both agree to proceed, the governing body of the city or county adopt a city ordinance or county resolution stating the special district is dissolved and the city or county is assuming all powers, responsibilities, and duties of the special district.

The special district is considered dissolved on the effective date of the ordinance or resolution.

### ***Results of Consolidation***

Upon the dissolution of the special district, the city or county is the successor to all powers, duties, and responsibilities of the special district. The city or county would:

- Acquire the property of the special district subject to any lease or agreement;
- Pay or retire district debts or obligations;
- Be vested with all property, funds, and assets of the district; and
- Have legal custody of records, memoranda, writings, entries, prints, representations, and electronic data of the special district.

References to the special district in a contract or other document that are in regard to any of the powers, duties, and functions transferred to the city or county would be deemed to apply to the city or county as the context requires.

All legal action, judicial or administrative, pending against the special district or an officer of the special district would abate by reason of this governmental reorganization, but the court would be authorized to allow any such suit, action, or other proceeding to be maintained by or against the successor.

### **Attorney General Coordination of Training Regarding Missing and Murdered Indigenous Persons; HB 2008**

**HB 2008** authorizes the Attorney General to coordinate training regarding missing and murdered indigenous persons for law enforcement agencies throughout Kansas, in consultation with Native American Indian tribes, the Kansas Bureau of Investigation, the Kansas Law Enforcement Training Center, and other appropriate state agencies.

### **Public Agency Fee Prohibition; Legislative Division of Post Audit; Sub. for HB 2049**

**Sub. for HB 2049** amends a statute authorizing the Legislative Post Audit Committee to direct the Post Auditor and Legislative Division of Post Audit (LPA) to audit state agencies and other entities specified in the Legislative Post Audit Act. Specifically, the bill adds a provision prohibiting a public agency that is the subject of an audit pursuant to the statute or any other law from charging a fee for copies of or access to certain records described in the statute.

### **Legislative Division of Post Audit; State Agency Reports; HB 2050**

**HB 2050** amends statutes to remove requirements that the following reports and certifications be provided to the Legislative Division of Post Audit, the Post Auditor, or the Legislative Post Audit Committee:

- An audited statement of actual expenditures incurred by a Kansas nonprofit corporation providing legal services to indigent inmates of Kansas correctional institutions;
- A certified summary of the write-off of any accounts receivable or taxes receivable by the Director of Account and Reports;
- An annual audit of corporations that contract with the Board of Regents (Board) or any state educational institution and are substantially controlled by the Board or such institution; and
- An annual report by the Secretary of Revenue regarding tax abatements that reduce final tax liability by \$5,000 or more.

## **Vacating Lots in the City of Americus; Vacation of City Streets; HB 2178**

**HB 2178** vacates lots in the City of Americus from a dedication and amends law regarding the vacation of streets.

### ***City of Americus***

The bill vacates lots dedicated for a college and a park in the original town plat of the City of Americus from that dedication. The bill also confers fee simple title to the lots to the City of Americus, which the city's governing body can dispose of at its discretion.

### ***Vacation of City Streets***

#### ***Time Limit for Challenge of an Ordinance Vacating Property***

The bill allows any landowner aggrieved by the decision of a city governing body to vacate certain property to bring action in a district court challenging the reasonableness of such decision within 30 days following publication of the vacation ordinance.

#### ***Authorization***

The bill amends a statute to remove redundancy with continuing law and makes conforming changes. Continuing laws (KSA 13-334, 14-423, and 15-427) provide processes for local governments to request street vacations based on a city's classification.

The bill authorizes cities to utilize the process of the bill by following the notice and public hearing requirements established in the bill.

#### ***Public Hearing***

The bill clarifies that, when a resident petitions a city to vacate a street, the governing body must give public notice of the request and, in the notice, specify whether the hearing on the petition will be conducted by the governing body or the planning commission. The bill requires all interested persons to be given an opportunity to be heard on the petition.

If a city chooses to use the same process to deannex land or vacate any public reservation, the bill requires the hearing to be held before the city governing body.

The bill requires the city governing body to enact an ordinance containing an order to vacate if, at the hearing, it is determined the request of the petitioner should be granted.

## **Transferring Department of Corrections Land to the City of Beloit; HB 2214**

**HB 2214** authorizes the Secretary of Administration, on behalf of the Department of Corrections, to convey real estate adjacent to the site of the former Beloit Juvenile Correctional Facility to the City of Beloit. This 6.38-acre tract of land was inadvertently omitted when the

former juvenile correctional facility was transferred to the City of Beloit in 2010 (KSA 76-2221). All costs related to the conveyance will be paid by the City of Beloit.

### **Donation Limit to Benefit Libraries; HB 2238**

**HB 2238** removes the \$500,000 limit on gifts school districts, governing bodies of cities, or both are jointly able to accept for the express purpose of the construction or furnishing of a library.

### **Service of Process; Secretary of State; HB 2298**

**HB 2298** amends law related to the Secretary of State (Secretary) and service of process, as follows.

#### ***Service of Process against Nonresidents in Cases Arising from Motor Vehicle Accidents or Collisions***

The bill clarifies the requirements for service of process on nonresident drivers or their representatives through the Secretary. Current law provides that nonresident drivers or their representatives are deemed to accept the Secretary as their agent for service of process arising from any accident or collision that occurs while operating a vehicle in Kansas and requires a notice to be delivered to the defendant by registered mail or personally outside of the state by a sheriff or deputy sheriff in such state.

The bill provides that a plaintiff may serve a defendant by paying a fee to the Secretary and providing to the Secretary a copy of the summons, petition, and order, and the last known address, residence, or place of abode for each defendant. The Secretary is directed to immediately mail a notice of service and copy of the summons, petition, and order to each defendant by return receipt delivery. The bill requires the notice of service to be signed, dated, and using language substantially in the form specified by the bill.

The bill allows a plaintiff, upon written notification to the Secretary, to personally serve a defendant in a foreign state by an adult person not party to the suit or an officer duly qualified to serve legal process in the state or jurisdiction where the defendant is found, by delivering the appropriate documents, or offering to make such delivery, in the case of refused delivery, on a defendant. The plaintiff is required to provide the Secretary with a copy of the notice of service, summons, petition, and order provided to the defendant. The process server is required to file an affidavit, declaration, or any other competent proof, stating the time, manner, and place of service on or before the return day of process or within a further time the court may allow.

The Secretary is required to keep a record of all process served upon the office pursuant to the bill, showing the day of service of each process.

Compliance with these provisions constitutes sufficient service on the defendant.

### ***Service of Process on Limited Liability Partnerships***

The bill clarifies a domestic limited liability partnership or foreign limited liability partnership authorizes the Secretary, as each entity's agent, to accept service of process on the entity's behalf.

### **Disapproval of ERO 47, Merging Certain Agencies; HR 6009**

**HR 6009** disapproves Executive Reorganization Order (ERO) No. 47, which was issued by the Governor on January 26, 2021.

ERO 47 would have renamed the Department for Children and Families (DCF) as the Kansas Department of Human Services (DHS) and transferred all jurisdiction, powers, functions, and duties for the Kansas Department for Aging and Disability Services (KDADS) to DHS, effective July 1, 2021. Under this merger, all jurisdiction, powers, functions, and duties from DCF and KDADS, as well as all the jurisdiction, powers, functions, and duties for which these agencies are serving as the operating agency or grants manager for another agency, would have been imposed upon DHS and the Secretary of Human Services.

The ERO stated whenever the secretaries of, or names of, these agencies, or predecessor agencies—the Department of Social and Rehabilitation Services or the Department of Aging—are referred to or designated by any statute, rule and regulation, contract, or other document, such reference should be deemed to apply to DHS. The ERO further stated DHS would be the successor to the powers, duties, and functions of these agencies, and any potential remaining rights, titles, or interest belonging to the Department of Social and Rehabilitation Services or Department of Aging in real property. Actions performed by DHS would have had the same force and effect as if performed by the above entities, in which the same powers, duties, and functions were vested prior to July 1, 2021.

Under this merger, the rule and regulation authority, fees, funds, grant funds, advisory group funds, loan repayment funds, account balances, property and property rights, liability, and liability for accrued compensation of salaries of personnel, including officers and employees of both DCF and KDADS, would have been located within DHS.

## TAXATION

### Property Tax; SB 13

**SB 13** repeals the property tax lid law applicable to cities and counties and certain budget requirements applicable to other municipalities, establishes notice and public hearing requirements for certain taxing subdivisions seeking to collect property taxes in excess of the subdivision's revenue-neutral rate, prohibits valuation increases resulting solely from normal maintenance of existing structures, and expands the allowed acceptance of partial payments or payment plans for property taxes. The bill is in effect upon publication in the *Kansas Register*.

#### ***Tax Lid Repeal***

The bill eliminates, effective January 1, 2021, the property tax lid that currently requires a public vote for certain property tax increases by cities and counties. The bill also eliminates a requirement that municipalities, other than cities and counties, that levy at least \$1,000 in property taxes not approve any budget that includes revenue produced by property taxes in excess of the amount produced the preceding year without first publishing notice in the official county newspaper where the municipality is located of the budget and the scheduled vote thereon.

#### ***Notice and Public Hearing Requirements***

The bill establishes new notification and public hearing requirements for all taxing subdivisions seeking to increase property taxes above those provided for by their "revenue-neutral rate." A taxing subdivision is prohibited from levying taxes exceeding its revenue-neutral rate without first approving a resolution or ordinance in accordance with the procedure provided by the bill.

The bill requires county clerks to notify taxing subdivisions of their revenue-neutral rate by June 15. "Revenue-neutral rate" means the tax rate for the current tax year that would generate the same amount of property tax revenue as levied the previous tax year, using the current tax year's total assessed valuation.

Governing bodies of taxing subdivisions are required to publish notice of their intent to exceed the revenue-neutral rate. The bill requires the notice to include the date, time, and location of a public hearing on the resolution or ordinance providing for the levy. The bill requires publication on such governing body's website at least ten days in advance of the hearing and in a weekly or daily newspaper that has general circulation within the county. Taxing subdivisions are required to notify county clerks by July 15 of their intent to exceed the revenue-neutral rate, including information concerning the hearing.

Beginning in tax year 2022, county clerks are required to mail notification of the intent of the taxing subdivision to each taxpayer with property within the taxing subdivision at least ten days in advance of the public hearing. County clerks are required to consolidate the information for all taxing subdivisions relevant to each piece of property on one notice. Notifications may be sent by electronic means with the consent of the taxpayer.

The bill creates the Taxpayer Notification Costs Fund in the State Treasury and provides, for calendar years 2022 and 2023, for any printing and postage costs incurred by county clerks



to be reimbursed by that fund. County clerks are required to notify the Secretary of Revenue of such costs, and the Secretary will certify such amounts to the Director of Accounts and Reports, who will then be required to transfer an equal amount of money from the State General Fund to the Taxpayer Notification Costs Fund.

Any printing and postage costs incurred by county clerks for required notices that are not reimbursed from the Taxpayer Notification Costs Fund will be borne by the taxing subdivisions proposing to exceed their revenue-neutral rates in proportion to the total property tax levied by the subdivisions.

The bill requires the notifications to contain:

- The revenue-neutral rate for each relevant taxing subdivision;
- The proposed tax rate and amount of tax revenue to be levied by each taxing subdivision seeking to exceed its revenue-neutral rate;
- The tax rate and amount of tax from each taxing subdivision for the property from the previous year's tax statement;
- The appraised value and assessed value for the taxpayer's property for the current year;
- The estimated amount of tax for the current year for each subdivision based on the revenue-neutral rate and any tax rate in excess of the revenue-neutral rate and the difference between such amounts for any taxing subdivision seeking to exceed its revenue-neutral rate;
- The date, time, and location of the public hearing for each taxing subdivision seeking to exceed its revenue-neutral rate; and
- Information concerning statutory mill levies imposed by the State of Kansas.

The bill requires the hearing on the resolution or ordinance providing for a taxing subdivision to exceed its revenue-neutral rate to be held by September 10 and to include an opportunity for interested taxpayers to present testimony within reasonable limits and without unreasonable restrictions on the number of individuals allowed to comment. The governing body of each taxing subdivision is required to approve exceeding the revenue-neutral rate by a majority vote at the public hearing.

Taxing subdivisions failing to comply with the notice and hearing procedures are required to refund any property taxes collected in excess of the revenue-neutral rate.

The bill requires information regarding the revenue-neutral rate and taxing subdivision's decision to levy taxes in excess of the rate to be published in the taxing subdivision's annual budget form prescribed by the Division of Accounts and Reports.

### ***Prohibited Valuation Increases***

The bill prohibits an increase in the appraised value of real property solely as a result of normal repair, replacement, or maintenance of existing structures, equipment, or other improvements on the property.

### ***Partial Payments and Payment Plans***

The bill authorizes county treasurers to accept partial payments and establish payment plans for all property taxes. Current law allows county treasurers to accept partial payments for delinquent property taxes.

### **Cherokee County Sales Tax Authority; SB 21**

**SB 21** retroactively ratifies the results of a November 2020 election in Cherokee County that would impose a 0.5 percent retail sales tax for the purpose of financing ambulance services, renovation and maintenance of county buildings and facilities, or other projects within the county approved by the governing body of Cherokee County. The bill provides that the entire proceeds of the tax will be retained by the county and will not be subject to apportionment to other municipalities. The bill requires the tax to terminate prior to January 1, 2033. The bill will be in effect upon publication in the *Kansas Register*.

### **Marketplace Facilitators and Income Tax Deductions and Exemptions; SB 50**

**SB 50** requires the collection and remittance of certain taxes by marketplace facilitators. The bill also amends income tax law regarding fraudulent unemployment benefits, itemized and standard deductions, business income related to 2017 federal legislation, corporation return filing, net operating losses, and the business expensing deduction.

### ***Marketplace Facilitators Tax Collection and Remittance***

The bill requires the collection and remittance of sales and compensating use tax by most marketplace facilitators beginning July 1, 2021. Such entities with annual gross receipts from sales sourced into Kansas in excess of \$100,000 are subject to the requirement, which also applies to out-of-state retailers with annual receipts from sales sourced into Kansas exceeding \$100,000.

The bill requires marketplace facilitators that reach the \$100,000 threshold for the first time in the current calendar year to collect and remit the tax on cumulative gross receipts from sales into the state in excess of \$100,000 during the current calendar year.

The bill defines “marketplace facilitators” to include entities that contract with sellers to facilitate the sale of products or lodgings through a physical or electronic marketplace operated, owned, or otherwise controlled by the entity and either directly or indirectly collect the payment from the purchaser and transmit all or part of the payment to the seller. The definition excludes platforms that exclusively provide advertising services, principally provide payment processing, or are a certain type of commodity futures trading organization.

The bill authorizes the Department of Revenue (KDOR) to waive the obligation of a marketplace facilitator to collect and remit taxes upon a showing by the marketplace facilitator that substantially all of its marketplace sellers are already collecting and remitting all applicable taxes. The bill also allows marketplace facilitators to contract with marketplace sellers with at least \$1.0 billion of annual gross sales in the United States to require the marketplace seller to collect and remit all applicable taxes and fees.

The bill further clarifies that, in addition to state and local sales and use tax, marketplace facilitators also are responsible for collecting and remitting local transient guest taxes beginning January 1, 2022, and certain prepaid wireless 911 fees beginning April 1, 2022.

KDOR is authorized to require marketplace facilitators to provide any information necessary to assure implementation of the bill's provisions, including the documentation of sales.

The Director of Taxation, KDOR, is required to remove the line for reporting compensating use tax from individual income tax returns beginning January 1, 2022.

The Secretary of Revenue is required to adopt any rules and regulations for purposes outlined in the bill.

The bill repeals the "click-through" nexus provisions for affiliated persons related to sales and use tax collections.

### ***Fraudulent Unemployment Benefits***

The bill clarifies that victims of identify theft do not owe Kansas individual income tax on unemployment compensation that was fraudulently obtained by another individual.

### ***Itemized Deductions***

Beginning in tax year 2021, the bill provides individual income taxpayers the option to take Kansas itemized deductions regardless of whether deductions are itemized or the standard deduction is claimed for federal income tax purposes.

### ***Standard Deductions***

The bill, beginning in tax year 2021, increases the standard deduction amounts to \$3,500 for single filers, \$6,000 for single head-of-household filers, and \$8,000 for married filers filing jointly. These amounts are currently set at \$3,000, \$5,500, and \$7,500, respectively.

### ***Business Income***

#### ***Global Intangible Low Tax Income (GILTI)***

The bill provides, beginning in tax year 2021, a subtraction modification exempting GILTI, as defined in section 951A of the federal Internal Revenue Code (IRC), before any deductions allowed under section 250(a)(1)(B) of the IRC.

### *Business Interest*

The bill provides, beginning in tax year 2021, a subtraction modification exempting certain business interest, to the extent such business interest is currently disallowed as a deduction pursuant to the IRC but was deductible under the IRC as in effect on December 31, 2017.

### *Capital Contributions*

The bill, beginning in tax year 2021, specifies for Kansas corporation income tax purposes that the exemption from federal taxable income for capital contributions shall be the exemption as it existed in section 118 of the IRC as in effect on December 31, 2017.

### *Federal Deposit Insurance Corporation Premiums*

The bill provides, beginning in tax year 2021, a subtraction modification for the amount disallowed as a deduction by section 162(r) of the IRC, as in effect on January 1, 2018, for Federal Deposit Insurance Corporation (FDIC) premiums paid by the taxpayer.

### *Business Meal Expenses*

The bill provides, beginning in tax year 2021, a subtraction modification exempting certain meal expenditures, to the extent such expenditures are currently disallowed as a deduction pursuant to the IRC but were deductible under the IRC as in effect on December 31, 2017.

### *Expensing Deduction*

The bill allows individual income taxpayers to claim the expensing deduction (provided by KSA 79-32,143(a)) for the costs of placing certain tangible property and computer software into service in the state beginning in tax year 2021. A second change, also effective with tax year 2021, requires all taxpayers claiming the Kansas expensing deduction to offset the amount of federal expensing deduction claimed pursuant to Section 179 of the IRC.

### *Corporation Income Tax Return Filing Deadline*

The bill extends the deadline for the filing of Kansas corporation income tax returns to one month after the due date established under federal law. The bill also provides that no late-filing penalty will be assessed on taxpayers filing state corporation income tax returns when the return is filed within one month after the taxpayer has received an extension to file a federal return by the Internal Revenue Service.

The provisions of this section are applicable to returns for tax year 2020 and all future years.

***Net Operating Loss Carry Forward Extension***

The bill allows Kansas income taxpayers to carry forward net operating losses indefinitely, beginning with such losses incurred in tax year 2018. Current law provides for net operating losses to be carried forward for ten years.

## TRANSPORTATION AND MOTOR VEHICLES

### Permit for a Motor Vehicle Display Show; SB 33

**SB 33** authorizes the Director of Vehicles (Director), Kansas Department of Revenue, to issue a temporary display show license to a sponsor of a motor vehicle display show. A display show sponsor, which the bill requires to be a licensed new vehicle dealer, will be responsible for organizing and operating the display show under such terms and conditions as the Director may reasonably require. The sponsor will pay a fee of \$100 upon application, and each show participant displaying vehicles will pay \$35 to the sponsor. All fees will be remitted to the Director.

The bill authorizes new vehicle dealers, first stage manufacturers, second stage manufacturers, first stage converters, second stage converters, and distributors (manufacturers and distributors) to attend and participate in the display of new motor vehicles at a temporary display show without regard to geographical territorial assignment or relevant market area. The bill requires participating new vehicle dealers to be licensed motor vehicle dealers, but manufacturers and distributors will not be required to be licensed to participate. The bill authorizes participation by new motor vehicle dealers without the approval of any manufacturer or distributor, and it prohibits a manufacturer or distributor from barring or treating a new vehicle dealer adversely for participating in a display show.

The bill prohibits sales or lease transactions at a display show but authorizes test drives for purposes other than sale or lease, to demonstrate the vehicle and its features.

The bill also adds leases and test drives to sales transactions as activities that can not occur at the temporary location of a new vehicle dealer that is not a display show.

### Vehicle Dealer Bonding; Permit for Motor Vehicle Display Show; House Sub. for SB 99

**House Sub. for SB 99** amends law regarding vehicle dealer license requirements and vehicle display shows.

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

#### ***Dealer License Requirements***

The bill increases the bond required for licensure as a dealer of used or new vehicles from \$30,000 to \$50,000, on and after January 1, 2022.

#### ***Vehicle Display Show***

The bill authorizes the Director of Vehicles (Director), Kansas Department of Revenue, to issue a temporary display show license to a sponsor of a motor vehicle display show. A display show sponsor, which the bill requires to be a licensed new vehicle dealer, will be responsible for organizing and operating the display show under such terms and conditions as the Director may reasonably require. The sponsor will pay a fee of \$100 upon application, and each show participant displaying vehicles will pay \$35 to the sponsor. All fees will be remitted to the Director.

The bill authorizes new vehicle dealers, first stage manufacturers, second stage manufacturers, first stage converters, second stage converters, and distributors (manufacturers and distributors) to attend and participate in the display of new motor vehicles at a temporary display show without regard to geographical territorial assignment or relevant market area. The bill requires participating new vehicle dealers to be licensed motor vehicle dealers, but manufacturers and distributors will not be required to be licensed to participate. The bill authorizes participation by new motor vehicle dealers without the approval of any manufacturer or distributor, and it prohibits a manufacturer or distributor from barring or treating a new vehicle dealer adversely for participating in a display show.

The bill prohibits sales or lease transactions at a display show, but authorizes test drives for purposes other than sale or lease to demonstrate the vehicle and its features.

The bill also adds leases and test drives to sales transactions as activities that can not occur at the temporary location of a new vehicle dealer that is not a display show.

[*Note:* Provisions regarding vehicle display shows are the same of those of SB 33 except that they become effective upon publication in the *Kansas Register*.]

### **Military Surplus Vehicles; HB 2014**

**HB 2014** defines “military surplus vehicle” in the Uniform Act Regulating Traffic on Highways and in law regarding vehicle registration.

The bill defines such a vehicle as one that meets the following requirements:

- Has three or fewer axles;
- Meets size and weight limits in continuing law;
- Is less than 35 years old; and
- Was manufactured for use in the U.S. military forces or the military force of any country that was a member of the North Atlantic Treaty Organization at the time the vehicle was manufactured and that is subsequently authorized for sale to civilians.

The definition excludes a tracked vehicle. The bill adds references to military surplus vehicles in definitions of “collector” and “parts car.”

The bill authorizes the owner of a military surplus vehicle to register it upon payment of an annual fee of \$26. A special interest vehicle license plate will be furnished upon payment of a one-time fee of \$20; the bill requires a decal to be displayed on the license plate to identify the vehicle as a military surplus vehicle.

The bill authorizes a military surplus vehicle to be used as are other vehicles of the same type, but prohibits the use of a military surplus vehicle to transport passengers for hire. The bill specifies special interest vehicles, including street rod vehicles, are prohibited from hauling material weighing more than 500 pounds.

The bill prohibits a military surplus vehicle from being registered until a vehicle identification number inspection has been completed by the Kansas Highway Patrol.

### **Exempting Municipal Motor Grader Operators from CDL Requirements; HB 2295**

**HB 2295** exempts municipal motor grader vehicles from requirements of the Kansas Uniform Commercial Driver's License Act.

Under current law, five types of vehicles are listed as exempt from the Act: farm vehicles, vehicles operated by firefighters, military vehicles operated by military personnel, commercial vehicles used solely for private noncommercial use, and certain farm tractors moved by implement dealers. The bill adds a sixth exemption for motor grader vehicles operated by an employee of a municipality, if such employee is operating the motor grader vehicle within the boundaries of such municipality.

"Municipality" is defined under continuing law referenced by the bill to mean any county, township, city, school district, or other political or taxing subdivision of the state, or any agency, authority, institution, or other instrumentality thereof.

### **Peer-to-Peer Vehicle Sharing Program Act; HB 2379**

**HB 2379** enacts the Peer-to-Peer (P2P) Vehicle Sharing Program Act.

The bill is effective and in force from and after January 1, 2022, and its publication in the statute book.

### ***Definitions***

The bill establishes several definitions associated with P2P vehicle sharing, including:

- "Peer-to-peer vehicle sharing," meaning the authorized use of a shared vehicle by an individual other than the shared vehicle's owner through a P2P program:
  - P2P vehicle sharing does not mean rental or lease of a motor vehicle for the purposes of law regarding an excise tax on certain lease or rental vehicles; and
  - Does not include the use of a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Vehicle Dealers and Manufacturers Licensing Act (Act);
- "Peer-to-peer vehicle sharing program," meaning a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration:
  - The term does not mean a rental car company; a lessor; or a service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle; and



- Does not include the use of a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- “Vehicle sharing program agreement,” meaning the terms and conditions applicable to a shared vehicle owner, a shared vehicle driver, and a P2P vehicle sharing program that govern the use of a shared vehicle through a P2P vehicle sharing program:
  - Vehicle sharing program agreement does not include a rental agreement; and
  - Does not include a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- “Shared vehicle,” meaning a vehicle that is available for sharing through a P2P vehicle sharing program:
  - Shared vehicle does not mean a rental car or rental commercial-type vehicle; and
  - Does not include a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- “Shared vehicle driver,” meaning the individual authorized to drive the shared vehicle by the shared vehicle owner under a vehicle sharing program agreement:
  - Shared vehicle driver does not include a lessee; and
  - Does not include the operator of a vehicle that is used for demonstration purposes or the operator of a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- “Shared vehicle owner,” meaning the registered owner, or person or entity designated by the owner, of a vehicle made available for sharing to shared vehicle drivers through a P2P vehicle sharing program:
  - Shared vehicle owner does not include a person or entity in the business of providing rental vehicles to the public, a leasing company, or a rental car company; and
  - Does not include an owner of a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- “Vehicle sharing delivery period,” meaning the period of time during which a shared vehicle is being delivered to the location of the vehicle sharing start time, if applicable, as documented by the governing vehicle sharing program agreement;

- “Vehicle sharing period,” meaning the period of time that commences with the vehicle sharing delivery period or, if there is no vehicle sharing delivery period, that commences with the vehicle sharing starting time and, in either case, that ends at the vehicle sharing termination time; and
- “Vehicle sharing termination time,” meaning the earliest of the following:
  - Expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the vehicle sharing program agreement if the shared vehicle is delivered to the location agreed upon in the vehicle sharing program agreement;
  - When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner (owner) and shared vehicle driver (driver) as communicated through a P2P vehicle sharing program and the alternatively agreed upon location is incorporated into the vehicle sharing program agreement; or
  - When the registered shared vehicle owner or the shared vehicle owner’s authorized designee takes possession and control of the shared vehicle.
- **Liability Coverage**

The bill requires, with exceptions specified in the bill, a P2P vehicle sharing program to assume liability of an owner for bodily injury or property damage to third parties for uninsured and underinsured motorist or personal injury protection losses during the vehicle sharing period in amounts stated in the P2P vehicle sharing program agreement. The bill requires coverage to be not less than the coverage required in the Kansas Automobile Injury Reparations Act (KAIRA).

Notwithstanding the definition of “vehicle sharing termination time,” a P2P vehicle sharing program does not assume owner liability when the owner:

- Makes an intentional or fraudulent material misrepresentation or omission of fact to the P2P vehicle sharing program before the vehicle sharing period in which the loss occurred; or
- Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the vehicle sharing program agreement.

However, the assumption of liability applies to bodily injury, property damage, uninsured and underinsured motorist, or personal injury protection losses by damaged third parties as required by the KAIRA.

The bill requires a P2P vehicle sharing program to ensure that, during each vehicle sharing period, the owner and the driver are insured under a motor vehicle liability insurance policy that provides coverage in amounts no less than those prescribed in KAIRA. The policy must:

- Recognize that the vehicle insured under the policy has been made available as a shared vehicle and is used through a P2P vehicle sharing program; or
- Not exclude the use of the vehicle by a shared vehicle driver.

The bill provides the requirement for motor vehicle liability insurance can be satisfied by such insurance maintained by an owner, as driver, a P2P vehicle sharing program, or a shared vehicle owner or a shared vehicle driver and a P2P vehicle sharing program.

Insurance satisfying this requirement is considered as primary during each vehicle sharing period and, if a claim occurs in another state with insurance policy coverage amounts that exceed the minimum amounts set forth in state law during the vehicle sharing period, the coverage described in the bill satisfies the difference in minimum coverage amounts, up to the applicable policy limits.

The insurer or P2P vehicle sharing program assumes primary liability for a claim when it is, in whole or in part, providing the insurance required by the bill and in these additional instances:

- A dispute exists as to who was in control of the shared vehicle at the time of the loss or as to whether the shared vehicle was returned to the alternatively agreed-upon location; and
- The P2P vehicle sharing program does not have available, did not retain, or fails to provide information required under recordkeeping provisions in the bill.

The bill also requires, if the insurance maintained by an owner or driver has lapsed or does not provide the required coverage, insurance maintained by the P2P vehicle sharing program to provide such coverage beginning with the first dollar of the claim and to have the duty to defend such claim. The bill states coverage under the P2P vehicle sharing program insurance shall not be dependent on another motor vehicle insurer first denying a claim nor shall another motor vehicle insurance policy be required to first deny a claim.

The bill states nothing in the section pertaining to liability coverage shall be construed to:

- Limit the liability of the P2P vehicle sharing program for any act or omission of the program itself that results in injury to any person as a result of using a shared vehicle through the program; or
- Limit the ability of the P2P vehicle sharing program to contractually seek indemnification from the owner or the driver for economic loss sustained by the program resulting from a breach of the terms and conditions of the vehicle sharing program agreement.

### ***Lienholder Notice***

The bill requires, between the time that a vehicle owner registers as a shared vehicle owner on a P2P vehicle sharing program and the time the owner makes a vehicle available as a shared vehicle on the program, the program to notify the owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through such program, including use without physical damage coverage, could violate the terms of the contract with the lienholder.

### ***Exclusions; Liability Coverage***

The bill permits an authorized insurer writing motor vehicle liability insurance in Kansas to exclude any and all coverage and the duty to defend or indemnify for any claim afforded under an owner's motor vehicle liability insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage, as defined in KAIRA;
- Uninsured and underinsured motorist coverage;
- Medical benefits coverage, as defined in KAIRA;
- Comprehensive physical damage coverage; and
- Collision physical damage coverage.

The bill further states nothing in this section (coverage exclusions) invalidates or limits an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, hire, or any business use; invalidates, limits, or restricts an insurer's ability to underwrite any insurance policy; or invalidates, limits, or restricts an insurer's ability to cancel and non-renew insurance policies.

### ***Recordkeeping***

The bill requires P2P vehicle sharing programs to collect and verify records pertaining to the use of a vehicle, including, but not limited to:

- The times used;
- Vehicle sharing period pick up and drop off locations;
- Fees paid by the shared vehicle driver; and
- Revenues received by the shared vehicle owner.

The bill also requires the program to provide this information, upon request, to the owner, the owner's insurer, or the driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation. The bill requires the program to retain the records for a time period not less than the applicable personal injury statute of limitations.

### ***Vicarious Liability; Exemption***

The bill exempts a P2P vehicle sharing program and a shared vehicle owner from vicarious liability in accordance with 49 USC § 30106 (provisions of the 2005 Safe, Accountable,

Flexible, Efficient Transportation Equity Act: A Legacy for Users – applying to rented or leased motor vehicle safety and financial responsibility) and under any state or local law that imposes liability solely based on vehicle ownership.

### ***Indemnification***

The bill provides that a motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy shall have the right to seek recovery against the insurer of the P2P vehicle sharing program if the claim is:

- Made against the owner or the driver for loss or injury that occurs during the vehicle sharing period; and
- Excluded under the terms of its policy.

### ***Insurable Interest***

The bill provides, notwithstanding any any other law, statute, rule, or regulation to the contrary, a P2P vehicle sharing program shall have an insurable interest in a shared vehicle during the vehicle sharing period. The bill further states nothing in this section (insurable interest) shall be construed to require a P2P program to maintain the coverage mandated by provisions of the bill relating to liability coverage.

The bill permits a P2P vehicle sharing program to own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides coverage for:

- Liabilities assumed by the P2P program under a P2P vehicle sharing program agreement;
- Any liability of the owner;
- Damage or loss to the shared vehicle; or
- Any liability of the driver.

### ***Disclosures to Shared Vehicle Owner; Driver***

The bill requires every vehicle sharing program agreement made in Kansas to disclose the following information to the owner and driver, as appropriate:

- Any right of the P2P vehicle sharing program to seek indemnification from the owner or driver for economic loss sustained by the P2P program resulting from a breach of the terms and conditions of the P2P vehicle sharing program agreement;

- A motor vehicle liability insurance policy issued to the owner for the shared vehicle or to the driver does not provide a defense or indemnification for any claim asserted by the P2P vehicle sharing program;
- The P2P vehicle sharing program's insurance coverage on the owner and the driver is in effect only during each vehicle sharing period and that, for any use of the shared vehicle by the driver after the vehicle sharing termination time, the driver and the owner may not have insurance coverage;
- The daily rate, fees and, if applicable, any insurance or protection costs that are charged to the shared vehicle owner or the shared vehicle driver;
- The owner's motor vehicle liability insurance may not provide coverage for a shared vehicle; and
- If there are conditions under which a driver must maintain a personal motor vehicle liability insurance policy with certain applicable coverage limits on a primary basis in order to reserve a shared motor vehicle.

The bill also requires every vehicle sharing program agreement made in Kansas to provide an emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.

### ***Driver's License; Data Retention***

The bill prohibits a P2P vehicle sharing program from entering into a P2P vehicle sharing program agreement with a driver unless the driver who will operate the shared vehicle:

- Holds a driver's license issued by the state of Kansas to drive vehicles of the class of the shared vehicle;
- Is a nonresident who:
  - Has a driver's license issued by the state or country of the driver's residence that authorizes the driver to drive vehicles of the class of the shared vehicle;
  - Is at least the legal age required of a resident to drive in Kansas; or
  - Otherwise is specifically authorized by the State of Kansas to drive vehicles of the class of the shared vehicle.

The bill also requires P2P vehicle sharing programs to maintain a record of the name, address, driver's license number, and place of issuance of the driver's license of the driver and any other person who will also drive the shared vehicle.

### ***Equipment Responsibility***

The bill places sole responsibility on a P2P vehicle sharing program for any equipment, such as a GPS system or other special equipment, that is installed in or on the shared vehicle to monitor or facilitate the vehicle sharing transaction. The bill also requires the P2P program to agree to indemnify and hold harmless the owner for any damage to or theft of such equipment during the vehicle sharing period the owner did not cause. The P2P program has the right to seek indemnity from the driver from any loss or damage to such equipment that occurs during the sharing period.

### ***Safety Recalls***

Between the time a vehicle owner registers as a shared vehicle owner on a P2P vehicle sharing program and when the owner makes a vehicle available as a shared vehicle on the P2P program, the bill requires the P2P program to verify there are no outstanding safety recalls on the shared vehicle and notify the shared vehicle owner of the following requirements:

- If a vehicle owner receives an actual notice of a safety recall, the owner may not make such vehicle available as a shared vehicle on a P2P vehicle sharing program until the safety recall repair has been made;
- If an owner receives actual notice of a safety recall on a shared vehicle while the shared vehicle is available on the P2P vehicle sharing program, the owner must remove the shared vehicle from the P2P program as soon as practicable after receiving the notice and must not replace it on the program until the safety recall repair has been made; and
- If an owner receives an actual notice of a safety recall while the shared vehicle is being used and is in the possession of a driver, as soon as practicable after receiving such notice, the owner shall notify the P2P vehicle sharing program about the safety recall, so the shared vehicle owner may address the repair.

### ***Definition Amendments***

The bill amends the definitions section of the Kansas Collision Damage Waiver Act to add the following exclusions:

- “Lessor” does not include a P2P vehicle sharing program or a shared vehicle owner;
- “Lessee” does not include a shared vehicle driver;
- “Rental agreement” does not include a vehicle sharing program agreement; and
- “Rental motor vehicle” does not include a shared vehicle.

## UTILITIES

### **Kansas Energy Choice Act; SB 24**

**SB 24** creates the Kansas Energy Choice Act.

The bill defines the terms “municipality” and “utility service” for the purpose of prohibiting a municipality from imposing any ordinance, resolution, code, rule, provision, standard, permit, plan, or any other binding action that prohibits, discriminates against, restricts, limits, impairs, or has a similar effect on an end-use customer’s use of a utility service, defined as the retail provision of natural gas or propane.

The bill states it should not be construed in its interpretation to restrict the ability of a municipality, as defined in the bill, to limit an end use customer’s use of a utility service if that end use customer is the municipality.

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

### **Crimes Related to Critical Infrastructure Facilities; SB 172**

**SB 172** amends the Kansas Criminal Code regarding crimes involving property by eliminating the crime of tampering with a pipeline and establishing four new crimes: trespassing on a critical infrastructure facility (CIF), aggravated trespassing on a CIF, criminal damage to a CIF, and aggravated criminal damage to a CIF. The bill also allows a judge to order restitution for property damage to any victim of the four new crimes.

### ***Right to Peacefully Protest***

The bill includes a “whereas” clause that states the provisions of the bill protect the right to peacefully protest for all Kansans and citizens of the four sovereign nations within the state’s borders while also protecting the critical infrastructure located within the state.

### ***Definition of Critical Infrastructure Facility***

The bill defines a CIF, as used in the bill, as any:

- Petroleum or alumina refinery;
- Electric generation facility, substation, switching station, electrical control center, electric distribution or transmission lines, or associated equipment infrastructure;
- Chemical, polymer, or rubber manufacturing facility;
- Water supply diversion, production, treatment, storage, or distribution facilities and appurtenances, including, but not limited to, underground pipelines and a wastewater treatment plant or pump station;



- Natural gas compressor station;
- Liquid natural gas or propane terminal or storage facility;
- Facility that is used for wireline, broadband, or wireless telecommunications or video services infrastructure, including backup power supplies and cable television headend;
- Port, railroad switching yard, railroad tracks, trucking terminal, or other freight transportation facility;
- Gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas, propane, or natural gas liquids;
- Transmission facility used by a federally licensed radio or television station;
- Steelmaking facility that uses an electric arc furnace to make steel;
- Facility identified and regulated by the U.S. Department of Homeland Security Chemical Facility Anti-Terrorism Standards program, facility operated by the Office of Laboratory Services under the supervision of the Secretary of Health and Environment, or the National Bio and Agro-Defense Facility or Biosecurity Research Institute at Kansas State University;
- Dam that is regulated as a hazard class B or class C dam by the state or federal government;
- Natural gas distribution utility facility, or natural gas transmission facility, including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, belowground or aboveground piping, a regular station, or a natural gas storage facility;
- Crude oil, including Y-grade or natural gas liquids, or refined products storage and distribution facility, including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, belowground or aboveground pipeline or piping, and truck loading or offloading facility; or
- Portion of any belowground or aboveground oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or any other storage facility that is enclosed by a fence or other physical barrier or clearly marked with signs prohibiting trespassing that are obviously designed to exclude intruders.

### ***Crimes Related to Critical Infrastructure Facilities***

The bill eliminates the crime of tampering with a pipeline and creates four new crimes.

### *Trespassing on a Critical Infrastructure Facility*

Under the bill, trespassing on a CIF means, without consent of the owner or the owner's agent, knowingly entering or remaining in:

- A CIF; or
- Any property containing a CIF, if such property is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or is clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization.

The bill classifies trespassing on a CIF as a class A nonperson misdemeanor.

### *Aggravated Trespassing on a Critical Infrastructure Facility*

Under the bill, aggravated trespassing on a CIF means, with the intent to damage, destroy, or tamper with a CIF or impede or inhibit operations of the facility, knowingly entering or remaining in:

- A CIF; or
- Any property containing a CIF, if such property is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or is clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization.

The bill classifies aggravated trespassing on a CIF as a severity level 7 nonperson felony.

### *Criminal Damage to a Critical Infrastructure Facility*

Under the bill, criminal damage to a CIF means knowingly damaging, destroying, or tampering with a CIF. The bill classifies criminal damage to a CIF as a severity level 6 nonperson felony.

### *Aggravated Criminal Damage to a Critical Infrastructure Facility*

Under the bill, aggravated criminal damage to a CIF means knowingly damaging, destroying, or tampering with a CIF with the intent to impede or inhibit operations of the facility. The bill classifies aggravated criminal damage to a CIF as a severity level 5 nonperson felony.

## ***Damages***

The bill declares nothing in the bill would prevent an owner or operator of a CIF that has been damaged from pursuing any other remedy in law or equity and a person who commits these crimes may also be prosecuted for, convicted of, and punished for any other offense regarding crimes involving property (current law) or criminal trespass on a nuclear generating facility (current law). The bill allows a judge to order restitution for damages associated with these crimes.

## **Plugging of Abandoned Wells; HB 2022**

**HB 2022** amends law concerning the filing of complaints and investigations pertaining to abandoned wells, responsible parties for plugging abandoned wells, and funds used by the Kansas Corporation Commission (KCC) for plugging abandoned wells.

## ***Definitions***

The bill amends the definition of “well” to include “penetration of the surface of the earth.” In that definition, the bill also amends the purpose of drilling a well to include providing cathodic protection to prevent corrosion to tanks or structures.

With regard to KCC investigations of abandoned wells, the bill defines “abandoned well” as a well that is not claimed on an operator’s license that is active with the KCC and is unplugged, improperly plugged, or no longer effectively plugged.

## ***Filing of Complaints***

The bill amends the reasons to file a complaint with the KCC secretary to include abandoned wells that are causing or likely to cause:

- Loss of any usable water;
- Pollution of any usable water strata;
- Imminent loss of any usable water; or
- Imminent pollution of any usable water.

The bill requires the KCC to investigate such complaints and also authorizes the KCC to take appropriate action or issue any order according to the Kansas Administrative Procedure Act (KAPA).

## ***Responsibility for Plugging Abandoned Wells***

The bill requires the KCC to hold proceedings in accordance with KAPA if the KCC determines a well is abandoned and has reason to believe a person is legally responsible for the proper care and control of such well. After such proceedings, the bill allows the KCC to issue

orders obligating a person to plug the well or to cause the well to be brought into compliance, if the KCC finds that such person is legally responsible.

The bill limits persons that could be held legally responsible for proper care and control of an abandoned well to one or more of the following:

- Any person, including any operator, causing pollution or loss of usable water through the well;
- The most recent operator to produce from or inject or dispose into the well; however, if no production or injection has occurred, the person that caused the well to be drilled;
- The person that most recently accepted responsibility for the well through written documentation that adequately identifies the well and expressly transfers responsibility for such well;
- The operator that most recently filed a completed transfer report with the KCC in which such operator accepted responsibility for the well;
- The operator that most recently plugged the well if no KCC funds were used; and
- Any person that does any of the following to an abandoned well without KCC authorization:
  - Tampers with or removes surface or downhole equipment attached to the well;
  - Intentionally destroys, buries, or damages the well;
  - Intentionally alters the physical status of the well in such a way that will result in an increase in plugging costs; or
  - Conducts any physical operations upon the well.

The bill also allows any person who has no obligation to plug, replug, or repair a well to seek reimbursement for plugging a well from the Abandoned Oil and Gas Well Fund, if such well has been abandoned for five or more years. The bill requires the KCC to promulgate rules and regulations for the reimbursement process.

The bill states a person who plugs, replugs, or repairs an abandoned well shall not become legally responsible for the care and control of that well. The bill allows any abandoned well to be plugged by any person if such person has written consent from a surface owner of the land upon which the well is located and if such person is licensed by the KCC in accordance with the KCC's rules and regulations.

The bill also clarifies individuals would not be entitled to reimbursement for plugging of an abandoned well unless approved by the KCC.

### ***Abolishing the Well Plugging Assurance Fund***

The bill amends law concerning funds used by the KCC to plug abandoned wells.

The bill allows for the deposit of all moneys previously credited to the Well Plugging Assurance Fund to be credited to the Abandoned Oil and Gas Well Fund, and the bill removes the limitation of the Abandoned Oil and Gas Well Fund to be used only for investigating abandoned wells and well sites of which the drilling began before July 1, 1996.

The bill transfers all moneys in and liabilities of the Well Plugging Assurance Fund to the Abandoned Oil and Gas Well Fund and abolishes the Well Plugging Assurance Fund on July 1, 2021.

The bill also removes requirements for the transfers from the Conservation Fee Fund and the State General Fund to the Abandoned Oil and Gas Well Fund.

### ***Repealing an Interagency Agreement***

The bill repeals KSA 55-163, which pertains to an interagency agreement between the KCC and the Secretary of Health and Environment for a management plan for integrating field operations for the regulation of oil and gas operations.

### **Utility Financing and Securitization Act; Senate Sub. for HB 2072**

**Senate Sub. for HB 2072** creates the Utility Financing and Securitization Act (UFSA), which allows for the securitization of utility assets to recover energy transition costs for electric public utilities whose retail rates are subject to the jurisdiction of the Kansas Corporation Commission (KCC). The UFSA also allows electric and natural gas public utilities whose retail rates are subject to the KCC to pursue securitization to help finance qualified extraordinary expenses, such as fuel costs incurred during extreme weather events. The bill amends the provisions of the Kansas Energy Security Act and the Uniform Commercial Code to conform to the new provisions created in the UFSA.

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

### ***Utility Financing and Securitization Act***

#### ***Definitions***

The bill defines various terms used throughout the UFSA, including these key terms.

**“Electric public utility”** means the same as defined in KSA 66-101a and includes a for-profit electric utility whose retail rates are subject to the jurisdiction of the KCC. The definition does not include a cooperative that has opted to deregulate or an electric public utility owned by one or more such cooperatives.

**“Energy transition costs”** includes, at the option of and upon application by an electric public utility, and as approved by the KCC, any of the pretax costs that the electric public utility

has incurred or will incur that are caused by, associated with, or remain as a result of a retired, abandoned, to-be-retired, or to-be-abandoned electric generating facility that is the subject of an application for a financing order filed under the UFSA where such early retirement or abandonment is deemed reasonable and prudent by the KCC through a final order issued by the KCC.

As used in this definition, pretax costs, if determined reasonable by the KCC and not inconsistent with a KCC order granting predetermination regarding retirement or abandonment of the subject generating facility, include, but are not limited to, the undepreciated investment in the retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses. Such pretax costs are reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, and scrap and salvage proceeds, and include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.

Energy transition costs also include pretax costs that an electric public utility has previously incurred related to the retirement of such an electric generating facility occurring before the effective date of the UFSA.

**“Financing order”** means an order from the KCC pursuant to the UFSA that authorizes:

- The issuance of securitized utility tariff bonds in one or more series;
- The imposition, collection, and periodic adjustments of a securitized utility tariff charge;
- The creation of securitized utility tariff property; and
- The sale, assignment, or transfer of securitized utility tariff property to an assignee.

**“Public utility”** means an electric or natural gas public utility whose rates are subject to the jurisdiction of the KCC.

**“Qualified extraordinary costs”** include, at the option of and upon application by a public utility and as approved by the KCC, costs of an extraordinary nature that the public utility has incurred before, on, or after the effective date of the UFSA that would cause extreme customer rate impacts if recovered through customary rate-making, including, but not limited to, purchases of gas supplies, transportation costs, and fuel and power costs including carrying charges incurred during anomalous weather events.

**“Securitized utility tariff bonds”** means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a scheduled maturity date as determined reasonable by the KCC, but not later than 32 years from the issue date, that are issued by an electric public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance KCC-approved energy transition costs and financing costs and that are secured by or payable from securitized utility tariff property, or an electric or

natural gas public utility or assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance KCC-approved qualified extraordinary costs and financing costs that are secured by or payable from securitized utility tariff property.

**“Securitized utility tariff charge”** means the amounts authorized by the KCC to provide a source of revenue solely to repay, finance, or refinance securitized utility tariff bonds and financing costs and that are nonbypassable charges imposed on and part of all retail customer bills, including bills to special contract customers collected by an electric or natural gas public utility or its successors or assignees, or a collection agent, in full, separate and apart from the electric or natural gas public utility’s base rates.

Such charges are to be paid by all existing or future retail customers receiving electrical or natural gas service from the public utility or its successors or assignees under KCC-approved rate schedules or special contracts, even if a retail customer elects to purchase electricity or natural gas from an alternative electricity or natural gas supplier following a fundamental change in regulation of public utilities in Kansas.

**“Securitized utility tariff costs”** means either energy transition costs or qualified extraordinary costs.

**“Securitized utility tariff property”** includes all rights and interests of a public utility, its successor, or assignee under a financing order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized under the financing order and to obtain periodic adjustments to such charges authorized under the bill and as provided in the financing order.

The definition also includes all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

**“Special contract”** means the terms of a contract governing the supply of electricity that has been approved by the KCC that is not included in generally applicable rate schedules.

### *Financing Order*

**Application schedule for recovery of energy transition costs.** The bill allows an electric public utility, in its sole discretion, to apply to the KCC for a financing order for the recovery of energy transition costs. In applying for the financing order, the electric public utility can file an application to issue securitized utility tariff bonds in one or more series; impose, charge, and collect securitized utility tariff charges; and create securitized utility tariff property related to the recovery of energy transition costs.

Within 25 days after a complete application is filed, the bill requires the KCC to establish a procedural schedule that requires the KCC to issue a decision on the application no later than 135 days from the date a completed application is filed.

The KCC is required to take final action to approve, approve subject to conditions the KCC considers appropriate and authorized by the bill, or deny any application for a financing

order in a final order, within 135 days of receiving a complete application as authorized by the UFSA. Such final order is subject to judicial review and deemed as arising from a rate hearing.

As a prerequisite of filing an application, the bill requires an electric public utility to obtain an order from the KCC under the KCC process for predetermination under KSA 66-1239 finding retirement or abandonment of the subject generating facility to be reasonable.

**Application schedule for recovery of qualified extraordinary costs.** The bill allows a public utility, in its sole discretion, to apply to the KCC for a financing order for the recovery of qualified extraordinary costs.

In applying for the financing order, the public utility can file an application to issue securitized utility tariff bonds in one or more series, charge and collect securitized utility tariff charges, and create utility tariff property related to the recovery of qualified extraordinary costs.

Within 25 days after a complete application is filed, the bill requires the KCC to establish a procedural schedule that requires the KCC to issue a decision on the application no later than 180 days from the date a complete application is filed.

The KCC is required to take final action to approve, approve subject to conditions the KCC considers appropriate and that are authorized by the bill, or deny any application for the recovery of qualified extraordinary costs and a financing order in a final order within 180 days of receiving a complete application as authorized by the UFSA. The final order is subject to judicial review and deemed as arising from a rate hearing.

**Contents of financing order application.** The bill outlines the requirements of the application, including these key elements:

- A description:
  - Of the electric generating facility or facilities that the electric public utility has retired or abandoned, or proposes to retire or abandon, prior to the date that all undepreciated investment relating thereto has been recovered through rates and the reasons for undertaking such early retirement or abandonment. If the electric public utility is subject to a separate KCC order or proceeding relating to such retirement or abandonment (predetermination under KSA 66-1239), the bill requires that application to include a description of the order or other proceeding; or
  - Of the qualified extraordinary costs that the public utility proposes to recover and how customary rate-making treatment of such costs would result in extreme customer rate impacts;
- A description of the securitized utility tariff costs the applicant proposes to recover with the proceeds of the securitized utility tariff bonds;
- An indicator of whether the public utility proposes to finance all or a portion of the securitized utility tariff costs using securitized utility tariff bonds. If the public utility proposes to finance a portion of the securitized utility tariff costs, the public utility is required to identify the specific portion in the application;



- By electing not to finance all or any portion of such securitized utility tariff costs using securitized utility tariff bonds, a public utility is not deemed to waive its right to recover or request recovery of such costs pursuant to a separate proceeding with the KCC;
- An estimate of the financing costs related to the securitized utility tariff bonds;
- An estimate of the securitized utility tariff charges necessary to recover the securitized utility tariff costs and all financing costs, the period for recovery of such costs, and a description of the proposed financing structure, including the proposed scheduled final payment dates and final maturity of the securitized utility tariff bonds; and
- A comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become energy transition costs from customers. The bill requires the comparison to demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide net quantifiable rate benefits to customers or will avoid or mitigate rate impacts on customers.

**Review and findings by the KCC.** After notice and hearing on an application for a financing order, the KCC is authorized to issue a financing order if the KCC finds:

- Securitized utility tariff costs described in the application are just and reasonable; and
- Proposed issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges are expected to provide net quantifiable rate benefits to customers when compared to the costs that would result from the application of the traditional method of financing and recovering the securitized utility tariff costs with respect to energy transition costs or avoid or mitigate rate impacts on customers.

The bill details the elements that must be contained in a financing order issued by the KCC in response to an application filed by a public utility, including these key elements:

- An approved customer billing mechanism for securitized utility tariff charges, including a specific methodology for allocating the necessary securitized utility tariff charges among the different customer classes, including special contract customers, and a finding that the resulting securitized utility tariff charges will be just and reasonable; provided that the amount of securitized utility tariff charges allocated to special contract customers in connection with the securitization of energy transition costs does not exceed the benefits from the retirement or abandonment of the subject electric utility generating assets that are assigned or allocated to special contract customers. The bill requires the securitized utility charges allocated to special contract customers as a result of a financing order regarding a retirement or abandonment be offset by net quantifiable rate benefits of at least the same amount. The initial allocation of securitized utility tariff

- charges remains in effect until the public utility files a general rate base proceeding;
- Once the KCC's order regarding the general base rate proceeding becomes final, the bill requires all subsequent applications of an adjustment mechanism regarding securitized utility tariff charges to incorporate changes in the allocation of costs to customers, as detailed in the KCC's order from the public utility's most recent general base rate proceeding;
  - A finding the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are expected to provide net quantifiable rate benefits to customers as compared to the traditional methods of financing and recovering securitized utility tariff costs from customers or to avoid or mitigate rate impacts to customers;
  - An approved plan for the public utility, by means other than on the monthly bill, to provide information regarding the benefits of securitization obtained for customers through the financing order;
  - A finding that the structuring, pricing, and financing costs of the securitized utility tariff bonds are expected to result in the lowest securitized utility tariff charges, consistent with market conditions at the time the securitized tariff bonds are priced and the terms of the financing order;
  - A statement specifying a future rate-making process to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the utility or assignee provided that any such reconciliation shall not affect the amount of securitized utility tariff bonds or the associated security tariff charges by customers;
  - In a financing order granting authorization to recover energy transition costs by issuing securitized utility tariff bonds, a procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned, or to-be-retired or -abandoned, electric generating facility. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from the rate base in future rate cases, and the net tax benefits relating to amounts that will be recovered through issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that would otherwise be issued. The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization, including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitization utility tariff bonds;
  - In the case of securitized utility tariff bonds issued to recover energy transition costs, provisions that specify the timing of rate-making and regulatory accounting

actions required by the financing order to protect the interests of customers and the electric public utility, which shall be limited to the following requirements, to the extent that the KCC:

- Has issued an order granting predetermination and prescribing rate-making parameters or regulatory accounting for retirement or abandonment of the subject electric public utility generating assets, then the electric public utility shall be permitted to implement and effectuate such rate-making parameters or regulatory accounting mechanisms; and
- Has not issued an order granting predetermination prescribing rate-making parameters or regulatory accounting to credit customers with the benefits from retirement of the subject electric public utility generating assets, then the KCC shall address such matters in the financing order and customers shall receive the benefits as determined by KCC order simultaneously with the inception of the collection of securitized utility tariff charges; and
- Any other conditions the KCC deems appropriate that are consistent with the bill.

A financing order issued to a public utility must permit, and may require the creation of, the public utility's securitized utility tariff property that is conditioned upon the sale or other transfer of the securitized utility tariff property to an assignee and the pledge of the securitized utility tariff property to secure securitized utility tariff bonds.

**Annual filing.** The bill requires a public utility that has been issued a financing order to file with the KCC, at least annually, an application or letter applying the adjustment mechanism based on estimates of consumption for each rate class and other mathematical factors and requesting administrative approval to make the applicable adjustments. The KCC's review of the filing is limited to determining if any mathematical or clerical errors are present in the application of the adjustment mechanism relating to the appropriate amount of any over-collection or under-collection of securitized utility tariff charges and the amount of an adjustment.

The adjustments ensure the recovery of revenue is sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges with respect to the securitized utility tariff bonds approved under the financing order. Within 30 days after receiving a public utility's application or letter, the KCC is required to either approve the application or letter or inform the public utility of any mathematical or clerical errors present in its calculation, and, if there are errors, the public utility may correct its error and refile its request. The time frames previously described apply to the refiled request.

**Irrevocability and KCC requirements.** Upon the transfer of the securitized utility tariff property to an assignee or the issuance of securitized utility tariff bonds, whichever occurs first, a financing order becomes irrevocable. The KCC is prohibited from amending, modifying, or terminating the financing order by a subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized utility tariff charges approved in the financing order, with the exception of changes made *via* the adjustment mechanism.

The public utility retains sole discretion on whether securitized utility tariff bonds should be issued after the issuance of a financing order. The KCC is required to afford the public utility flexibility in establishing the terms and conditions for the securitized tariff bonds to accommodate changes in market conditions.

**Issuance advice letter.** The public utility is required to provide to the KCC, to the extent requested and prior to the issuance of each series of bonds, an issuance advice letter following the determination of the final terms of such series of bonds no later than one day after the pricing of the securitized utility tariff bonds. The KCC has the authority to designate a representative from KCC staff to observe all facets of the process undertaken by the public utility to place the securitized utility tariff bonds to market so the KCC's representative can be prepared, if requested, to provide the KCC with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis. The form of such issuance advice letter must be included in the financing order and must indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs.

The issuance advice letter reports the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the KCC may require. Unless an earlier date is specified in the financing order, the public utility may proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth business day after the KCC receives the issuance advice letter, the KCC issues a disapproval letter directing that the bonds as proposed not be issued and including the basis for that disapproval.

In performing the responsibilities regarding the issuance advice letter, the KCC may engage a financial adviser and counsel as the KCC deems necessary.

An adversely affected party may petition for judicial review of the financing order.

**Refinancing, retiring, or refunding securitized utility tariff bonds.** The bill describes the process the KCC may commence for issuing a subsequent financing order regarding refinancing, retiring, or refunding securitized utility tariff bonds or any subsequent issue of a financing order.

### *KCC Powers and Duties*

In exercising its powers and carrying out its duties regarding any matter within its authority, the KCC cannot consider:

- Securitized utility tariff bonds issued pursuant to a financing order to be the debt of the public utility other than for federal and state income tax purposes;
- Securitized utility tariff charges paid under the financing order to be the revenue of the public utility for any purpose; or
- Securitized utility tariff costs or financing costs specified in the financing order to be the costs of the public utility.

The bill states no public utility is required to file an application for a financing order. The KCC does not have the power to order or otherwise directly or indirectly require a public utility to use securitized utility tariff bonds to recover securitized utility tariff costs or to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure.

The bill outlines additional elements the KCC may not consider in the securitization application process. The KCC cannot approve an application for a financing order associated with an asset retirement or abandonment if the application does not establish that the securitization of the specified retired or abandoned generating facility provides net quantifiable rate benefits to customers as required under the UFSA.

### *Customer Energy Bills*

The bill requires the customer bills of a public utility that has obtained a financing order and caused securitized utility tariff bonds to be issued to explicitly reflect that a portion of the charges on the customer bill represents securitized utility tariff charges approved in a financing order issued to the public utility, and, if the securitized utility tariff property has been transferred to an assignee, a customer bill must include a statement that the assignee is the owner of the rights to the securitized utility tariff charges and the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to the customer must indicate the securitized utility tariff charge and the ownership of the charge. The public utility is required to also include on the bill the securitized utility tariff charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.

Failure to meet these requirements by the public utility does not invalidate, impair, or otherwise affect any financing order, securitized utility tariff property, securitized utility tariff charge, or securitized utility tariff bond.

### *Property Rights and Procedures*

The bill states all securitized utility tariff property specified in the financing order constitutes an existing, present, intangible property right or interest, notwithstanding that the imposition and collection of securitized utility tariff charges depends on the public utility to which the financing order is issued performing its servicing functions relating to the collection of securitized utility tariff charges and on future electricity or natural gas consumption.

The bill describes the nature of securitized utility tariff property and the powers of a public utility to transfer, sell, convey, or assign the securitized utility tariff property. The bill describes the process of payment if a public utility defaults on any required remittance of securitized utility tariff charges and the process if a public utility reorganizes, becomes insolvent, files for bankruptcy, or is sold or merged with another entity.

### *Security Interest*

The bill describes the timeline for creation, perfection, and enforcement of a security interest in the securitized utility tariff property and the conditions in which a security interest may be created. The bill states the security interest attaches without physical delivery of collateral or other act and is perfected upon the filing of a financing statement with the Office of the Secretary of State.

### *Sale, Assignment, or Other Transfer*

The bill describes the requirements and process for any sale, assignment, or other transfer of securitized utility tariff property, the conditions under which a transfer of an interest in

securitized utility tariff property may occur, and when the transfer of an interest in securitized utility tariff property may be enforced.

#### *Description of Securitized Utility Tariff Property*

The bill outlines the description of a securitized utility tariff property that must be included when such property is transferred to an assignee in a sales agreement, purchase agreement, or other transfer agreement; granted or pledged to a pledgee in a security agreement, pledge agreement, or other security document; or indicated in any financing statement. The bill requires the description to indicate or describe the financing order that created the securitized utility tariff property and state the agreement or financing statement covers all or part of the property described in the financing order.

#### *Financing Statements*

The Secretary of State is required to maintain all financing statements filed to perfect a sale or other transfer of securitized utility tariff property and any security interest in securitized utility tariff property. All financing statements are governed by the Uniform Commercial Code.

#### *Choice of Laws*

The bill requires the laws of Kansas to govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of security interest in any securitized utility tariff property.

#### *Liability of Securitized Utility Tariff Bonds*

The bill provides securitized utility tariff bonds shall not be considered debts of the State; neither the State nor any political subdivisions, agencies, or instrumentalities of the State shall be liable for such bonds; and all securitized utility tariff bonds shall have on the face thereof the statement: "Neither the full faith and credit nor the taxing power of the State of Kansas is pledged to the payment of the principal of, or interest on, this bond."

#### *Investment in Securitized Utility Tariff Bonds*

The bill lists the entities that may legally invest in securitized utility tariff bonds.

#### *Prohibited Actions*

The bill lists the actions the State may not engage in, including impairing the value of the securitized utility tariff property and the securitized utility tariff bonds or the rights and remedies of bondholders, assignees, or other financing parties.

### *Discretion of Public Utility*

A public utility has sole discretion to determine the method by which it expends or invests the proceeds received from the issuance of securitized utility tariff bonds.

### ***Kansas Energy Security Act***

The bill amends the Kansas Energy Security Act regarding the KCC procedure for rate-making and predetermination to add that, prior to retiring or abandoning a generating facility, or within a reasonable time after retirement or abandonment if filing before retirement or abandonment is not possible under the circumstances, a public utility may file with the KCC an application for a determination of rate-making principles and treatment. That determination will apply to recovery in wholesale or retail rates for the costs to be incurred by the public utility to acquire such public utility's stake in the generating facility or to reflection in wholesale or retail rates of the costs to be incurred and the cost savings to be achieved by the public utility in retiring or abandoning such public utility's stake in the generating facility, including, but not limited to, the reasonableness of such retirement or abandonment.

The bill amends certain provisions regarding KCC orders considering the retirement or abandonment of generating facilities.

### ***Uniform Commercial Code***

The bill amends provisions of the Uniform Commercial Code to reflect any new security interests that may be created under the provisions of UFSA.

### **Electric Vehicle Charging; HB 2145**

**HB 2145** exempts from the definition of "public utility" the marketing and sale of electricity purchased through a retail electric supplier in such supplier's certified service territory for the sole purpose of the provision of electric vehicle charging services to an end user.

### **Construction of Urban Electric Transmission Lines; HB 2321**

**HB 2321** requires certain electric utilities—all electric utilities excluding municipal utilities, electric cooperatives, or their subsidiaries—to take steps before exercising eminent domain to acquire an interest in land or beginning work related to the construction of an urban electric transmission line. For the purposes of the bill, "urban electric transmission line" means any line or line extension that is at least 2.5 miles in length; traverses at least 2.5 contiguous miles through a city of at least 300,000 people; and is designed to transfer at least 69, but less than 230, kilovolts of electricity.

Electric utilities are required to:

- Provide notice to the city in which the project is proposed at least six months prior to construction with preliminary plans, including the locations and dimensions of equipment to be installed relative to existing infrastructure, with visual examples;

- Conduct an open house in such city that:
  - Allows affected landowners to provide public comment;
  - Is attended by a commissioner and a staff person of the Kansas Corporation Commission (KCC); and
  - Is held on a weekend day or after 5:00 p.m. on a weekday;
- Provide notice of the proposed construction and open house to:
  - All landowners and tenants of property within 660 feet of proposed improvements;
  - The governing body of the city and its infrastructure planning authority; and
  - The KCC;
- Publish notice of the time, place, and subject of the open house in a local newspaper; and
- Obtain any required permits.

Provisions of the bill do not apply to construction or repair required due to physical damage.

### **Kansas Corporation Commission Regulation of Wire Stringing Activities; HB 2367**

**HB 2367** amends law to clarify the Kansas Corporation Commission has authority to regulate the activities or facilities of an otherwise jurisdictional entity with regard to wire stringing along or across streets, highways, or public places.



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