

NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | FEBRUARY 21, 2020

WEEK SIX OVERVIEW

This week House and Senate committees concentrated on completing their work before turnaround. Monday is the last day for non-exempt committees to consider their bills prior to the House of Origin deadline on Thursday, Feb. 27. It is also commonly referred to as turnaround day for non-exempt bills to pass from their originating chamber. This week the House and Senate both started debate on some relatively non-controversial bills to start clearing their calendars before turnaround.

On Monday, the House Insurance Committee approved HB 2480, amending provisions of the Long-term Care Insurance Act to modify the definition of “long-term care insurance” (LTC) and to allow the Kansas Insurance Department (Department) to regulate LTC policies that provide coverage for fewer than 12 months. Current law requires LTC policies to have a duration of at least 12 consecutive months. The bill would also make technical changes and was requested by the Department. The committee also held hearings on HB 2598, providing for enhanced regulation of pharmacy benefits managers (PBMs) and requiring PBM licensure.

The House Taxation Committee held a hearing on HB 2553, providing income tax modifications for global intangible low-taxed income, business interest, capital contributions, and FDIC premiums.

The Senate Federal and State Affairs Committee amended and passed SB 283, authorizing sports wagering in Kansas. The House Federal and State Affairs committee held a hearing on HB 2385, designating the polka as the official state dance. Another proposal would have made the square dance the state’s official dance. Obviously, the committee must step carefully in deciding the issue.

On Thursday, the Senate Agriculture and Natural Resources Committee rejected a bill outlawing the sale of raw milk. Instead, the Committee endorsed a bill regulating the advertising and labeling of unpasteurized goat or cow milk sold directly to consumers by farmers.

OCCUPATIONAL AND PROFESSIONAL LICENSING

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The Senate Commerce Committee held two days of hearings on SB 366. SB 366 would amend the occupational and professional licensing standards for regulatory agencies to receive and review applications from military spouses, military service members (on active duty or honorably discharged), or any individual who has established or plans to establish residency in Kansas. Effectively, the bill would apply to any individual applicant for licensure, reciprocity, or reinstatement. The bill would allow agencies to maintain their current processes if reciprocity standards contained within existing law are more favorable. However, if current processes are less favorable to an applicant or there are no current processes, the agency would be required to issue a license if the applicant has a valid license in another state with substantially similar licensing requirements or if the applicant has met work or experience requirements if no similar license is issued by the other state. Architects, medical professionals, and peace officers' association were among the opponents to the bill.

TRANSPORTATION PLAN

House Appropriations Committee and Senate Ways and Means Committee conducted hearings on the Gov. Kelly's FORWARD transportation program addressing the need for highway preservation and modernization of Kansas roads.

ERO AND MEDICAID EXPANSION UPDATE

On Thursday, the Senate Public Health and Welfare Committee debated Medicaid expansion and Gov. Kelly's ERO 44 (Executive Reorganization Order) reorganizing several agencies into the Department of Human Services. The committee recommended disapproval of ERO 44 and approved introducing of a resolution of disapproval.

The committee also debated SB 252, addressing Medicaid Expansion, on Thursday. Among the amendments added were a ban on state funded abortions, a part-time work requirement, and a severability clause. A motion to move the bill out of committee without recommendation failed. A motion to recommend SB 252 favorable for passage as amended failed on a 4-5 vote. The bill remains stalled in the Senate Public Health and Welfare Committee, and Senators opposed to expansion have additional amendments to offer. SB 252 is a non-exempt bill subject to the House of Origin deadline, which is next Thursday, Feb. 27. If it fails to pass the Senate by next Thursday, it will die unless it is blessed by the Senate leadership. Senate President Susan Wagle has indicated she is unlikely to do so.

BILL INTRODUCTIONS

COURTS, LAWS, AND REGULATIONS

SB 434 – Would limit what a governmental agency may charge for staff time and copying fees under the Kansas Open Records Act. Referred to the Senate Committee on Ethics, Elections, and Local Government, Sen. Elaine Bowers, Chair.

HB 2689 – Would amend the angel-investor tax credit law. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair. A hearing has been scheduled for this matter on Feb. 20, 2020.

SB 305 – Would increase the bond requirement for licensure as a dealer of used or new vehicles from \$30,000 to \$50,000. The bill would take effect Jan. 1, 2021. The Committee has recommended the bill be passed as amended by the Senate Committee on Transportation, Sen. Mike Peterson, Chair.

SB 435 – Would provide for the use of personal package delivery devices on sidewalks and crosswalks. The devices would be exempt from motor vehicle regulation and additional municipal regulation would be preempted. A personal delivery device is essentially a small autonomous vehicle designed to carry items the "last mile" to delivery points. The vehicles are designed for use on sidewalks, etc. Referred to the Senate Committee on Commerce, Sen.

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Julia Lynn, Chair.

HB 2682 – Would permit private individual rights of action under the Kansas False Claims Act. Referred to the House Committee on Appropriations. Rep. Troy Waymaster, Chair.

HB 2432 – Would establish the Kansas Pesticide Waste Disposal Program, which would be administered by the Secretary of Agriculture for the collection and disposal of pesticide waste in the state. The bill would also create in the State Treasury the Kansas Pesticide Waste Disposal Fund with the purpose of funding the program. The Committee has recommended the bill be passed as amended by the House Committee on Agriculture, Rep. Ron Highland, Chair.

HB 2671 – Would authorize sports wagering under the Kansas Expanded Lottery Act. The proposed legislation is significant and extensive. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

SB 451 – Would create the right to appeal an involuntary discharge or transfer from an adult residential-care facility. Referred to the Senate Committee on Public Health and Welfare, Sen. Gene Sullentrop, Chair.

SB 450 – Would require adult-care home employees to receive annual dementia-care training. Referred to the Senate Committee on Public Health and Welfare, Sen. Gene Sullentrop, Chair.

SB 447 – Would amend the Code of Civil Procedure to provide for joint liability for costs and sanctions where third-party funding litigation is involved. Third-party funding is, generally speaking, the practice of hedge funds or other investors financing litigation. Referred to the Senate Committee on Judiciary, Sen. Rick Wilborn, Chair.

SB 446 – Would place limits on certain contingency-fee arrangements. Referred to the Senate Committee on Judiciary, Sen. Rick Wilborn, Chair.

SB 449 – Would remove cannabis products containing no more than 0.3% THC from the Schedule 1 list of controlled substances under the Uniform Controlled Substance Act. Referred to the Senate Committee on Agriculture and Natural Resources, Sen. Dan Kerschen, Chair.

SB 444 – Would create the Public Litigation Coordination Act intended to restrict public entities from entering into contingent-fee agreements for legal services unless the proposed agreement is approved by the Attorney General. Referred to the Senate Committee on Judiciary, Sen. Rick Wilborn, Chair.

SB 445 – Would define and prohibit certain deceptive lawsuit advertising practices and place other restrictions in lawsuit solicitations. Referred to the Senate Committee on Judiciary, Sen. Rick Wilborn, Chair.

SB 441 – Would create a distracted-driving violation and fully prohibit the physical holding or supporting, with any part of the driver's body, of a wireless telecommunication device while operating a motor vehicle. Referred to the Senate Committee on Transportation, Sen. Mike Peterson, Chair.

SB 438 – As a companion to a House bill (see HB 2631), would provide for increased regulation of pharmacy benefit managers and would require licensure of PBMs rather than simple registration. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Robert Olson, Chair.

SB 440 – Would provide an additional means of fulfilling the work participation requirements for cash public assistance. Referred to the Senate Committee on Public Health and Welfare, Sen. Gene Sullentrop, Chair.

HB 2709 – Would, as a companion to SB 449, remove cannabis products that contain up to 0.3% THC from the list of controlled substances. Referred to the House Committee on Agriculture, Rep. Ron Highland, Chair.

HB 2700 – Would amend existing law regarding abused or neglected adults and expand the list of persons compelled to report neglected persons. The reportable events now include financial exploitation. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

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HB 2693 – Would create a specific civil cause of action in favor of a person injured as a result of the acts of an intoxicated person. The victim would be empowered to sue the person or licensee who sold or provided alcoholic liquor or cereal malt beverage to the intoxicated person and who caused the intoxication in whole or in part. In any action brought under this section, a plaintiff may recover economic, noneconomic, and exemplary damages. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2705 – Would exempt petroleum landmen – working on contract – from the Kansas employment security law. The term “petroleum landmen” is generally defined as an individual working on contract engaged in land and minimal rights purchases and title review. Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair. A hearing has been scheduled for this matter on Feb. 18, 2020.

HB 2703 – Would preempt local building and construction codes that are more stringent than national model codes. A “national model code” means any model or standard published in a compilation of rules, in book or pamphlet form, that has been prepared by a nationally recognized technical association or organization. Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair. A hearing has been scheduled for this matter on Feb. 19, 2020.

SB 452 – Would enact the Massage Therapist Licensure Act. Referred to the Senate Committee on Federal and State Affairs, Sen. Bud Estes, Chair.

SB 454 – Would create new exemptions in the Kansas Open Records Act pertinent to election and cybersecurity. Referred to the Senate Committee on Ethics, Elections and Local Government, Sen. Elaine Bowers, Chair

HB 2718 – Would prohibit municipal zoning ordinances excluding federally licensed firearm manufacturers, importers, or dealers. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

HB 2715 – Would prohibit the Kansas Secretary of Health and Environment from amending or enacting regulations that would create new or increased air quality control fees. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

HB 2717 – Would create the Kansas Firearm Industry Nondiscrimination Act. The proposal would make it unlawful for any person to refuse to provide any goods or services of any kind or to refrain from continuing an existing business relationship, or terminating an existing business relationship with, or otherwise discriminating against a person or trade association, solely because a person, licensed pursuant to chapter 44 of title 18 of the United States code, is engaged in the lawful commerce in firearms or ammunition or is a related trade association. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

SB 456 – Would make the Sunday retail liquor store opening hours from 12:00 pm to 9:00 am. Referred to the Senate Committee on Federal and State Affairs, Sen. Bud Estes, Chair.

TAXATION

HB 2685 – Would impose sales tax on digital property and subscription services. Referred to the House Committee on Taxation, Rep. Steven Johnson, Chair.

HB 2490 – Would allow Kansas income taxpayers to carry forward net operating losses for 20 years, beginning with such losses incurred in tax year 2018. Current law provides for net operating losses to be carried forward for 10 years. The bill was withdrawn from Consent Calendar and placed on General Orders.

HB 2698 – Would, as a companion to a Senate bill (see SB 400), authorize counties to impose an earnings tax. Referred to the House Committee on Taxation, Rep. Steven Johnson, Chair.

HB 2702 – Would, among other things, enhance the workplace training tax credit. Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair. A hearing has been

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scheduled for this matter on Feb. 19, 2020.

HB 2721 – Would extend the time period for the Rural Opportunity Zone repayment program and income tax credit (2021 to 2023). Referred to the House Committee on Taxation, Rep. Steven Johnson, Chair. A hearing has been scheduled for this matter on Feb. 24, 2020.

HB 2720 – Would provide for a refundable income tax credit for certain food purchases and would discontinue the nonrefundable food sales tax credit. Referred to the House Committee on Taxation, Rep. Steven Johnson, Chair.

HB 2722 – Would impose on employees additional withholding tax requirements when certain employees (as that term is delineated in the proposal) work in multiple states. Referred to the House Committee on Taxation, Rep. Steven Johnson, Chair.

UTILITIES

SB 431 – Would permit public utilities to implement demand-side programs for energy efficiency enhancement purposes. Referred to the Senate Committee on Utilities, Sen. Ty Masterson, Chair.

SB 437 – Would establish the Kansas Electricity Bill Reduction Bonds Act. The purpose of the Act is to authorize the issuance of low-cost securitized ratepayer-backed bonds, the proceeds of which must be used (1) to lower rates paid by electric utility customers by reducing financing costs of certain property of Kansas electric utilities and related costs; (2) to provide transition assistance to Kansas communities and electric generation facility workers that are directly impacted by the retirement of electric generation facilities; (3) to make available capital investment for new, cost-effective facilities and services needed to reliably serve electric utility customers. This enabling legislation is necessary in order for Kansas electric utilities to take advantage of the trend toward using securitization of assets as a financing technique. The proposal is intended to benefit ratepayers and would be in the public interest. Referred to the Senate Committee on Utilities, Sen. Ty Masterson, Chair.

HB 2679 – Would, as a companion to SB 393, allow public utilities to implement demand-side programs to increase energy efficiency. Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Joe Seiwert, Chair.

HB 2710 – Would require petrochemical manufacturing facilities and petroleum refineries to use a skilled and trained workforce. Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Joe Seiwert, Chair.

HB 2691 – Would, as a House companion to SB 437, authorize the state corporation commission to issue securitized ratepayer-backed bonds for electric generation facilities and enact the Kansas Electricity Bill Reduction Bonds Act. Referred to the House Committee on Taxation, Rep. Steven Johnson, Chair.

HEALTHCARE

HB 2680 – Would update and modify provisions of the Kansas law regulating optometric practices. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2677 – Would establish primary health centers (generally hospitals) as a rural healthcare provider type and would enact the Primary Health Center Pilot Program Act contingent upon the acceptance of Kansas into a demonstration program under the applicable centers for Medicare and Medicaid federal program. Referred to the House Committee on Rural Revitalization, Rep. Adam Smith, Chair. A hearing was scheduled for this matter on Feb. 17, 2020.

SB 443 – Would enact an interstate compact intended to facilitate interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services.

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Referred to the Senate Committee on Public Health and Welfare, Sen. Gene Sullentrop, Chair.

SB 439 – Would provide medical assistance reimbursement to a medical care facility for medically necessary administration of human breast milk and human breast milk fortifier. Referred to the Senate Committee on Public Health and Welfare, Sen. Gene Sullentrop, Chair.

HB 2712 – Would update the Kansas Pharmacy Act and would amend the law applicable to the Board of Pharmacy. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair

HB 2714 – Would increase state financial assistance to local health departments. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

HB 2711 – Would expand medical assistance eligibility and implement a health insurance and reinsurance program. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

INSURANCE

SB 453 – Would update the National Association of Insurance Commissioners (NAIC) credit for reinsurance model law, and for Kansas purposes, insert the NAIC model reinsurance regulation into statute. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Robert Olson, Chair.

AGRICULTURE

SB 457 – Would, as an additional provision intended to make property valuation for tax purposes more objective, require county appraisers to utilize the Web Soil Survey version dated Sept. 16, 2019, of the United States Department of Agriculture's Natural Resources Conservation Service for purposes of identification and delineation of soil map units within the county for land devoted to agricultural services. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

Kansas Legislative Insights is a publication developed by the Governmental Relations & Public Policy Law practice group of Foulston Siefkin LLP. It is designed to inform business executives, human resources and governmental relations professionals, and general counsel about current developments occurring in current Kansas legislation. Published regularly during the Kansas legislative session, it focuses on issues involving health care, insurance, public finance, taxation, financial institutions, business & economic development, energy, real estate & construction, environmental, agribusiness, employment, and workers compensation. Bill summaries are by necessity brief, however, for additional information on any issue before the Kansas Legislature, contact Foulston Siefkin's Governmental Relations & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or jrankin@foulston.com.

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PRACTICE AREAS

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