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ATTORNEYS AT LAW

NEWSLETTERS



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A SURGEON'S TOUCH

“As a surgeon, I’m going to deal with problems head on, without rancor and always with compassion. But there are some things that need to change, right here, right now. I like to think of those in three big categories: Reform, Jobs, and Education.”

So said Dr. and now Governor Jeff Colyer in his address to a joint session of the legislature on Wednesday. As expected, he was not long on details as to how big changes were to be accomplished, but legislators, following his speech, seemed willing to give him some time to fill in the policy blanks and get new staff and cabinet members in place.

With the gubernatorial primary just six months away, time is of the essence for him to develop a winning strategy on such key issues as school finance, KanCare, a highway program, a balanced budget, and greater transparency in state government.

He did get a positive response on the issuance of his first Executive Orders relating to the elimination of sexual harassment in the workplace and more openness in the executive branch of state government, but there was no real resistance to any of those issues. Finding cooperation, for example, on school finance and social welfare programs will be much more difficult. Colyer did make it abundantly clear in his speech that he is pro-life on the abortion issue.

LONGER THAN THE COLD WAR

On the school finance issue Governor Colyer pointed out that he is now the 10th consecutive Kansas governor faced with legal battles over the constitutionality of our school finance program for Kansas school districts. He then made the comparison that these battles have lasted for a longer period of time than the Cold War in the second half of the 20th century. He drew one of the strongest rounds of applause during his speech when he said these lawsuits overshadowing education “must stop now!” One sign that there may be some movement on a new finance formula came this week when the House Committee on K-12 Education Budget filed the first comprehensive school finance bill (**HB 2635**) of the session. A hearing date for the bill has not been set.

BILL SUMMARIES

FOULSTON

ATTORNEYS AT LAW

Today is the deadline for the introduction of bills by individuals and non-exempt legislative committees. Listed below are selected bills from the dozens that were introduced or acted on this week. Additional information on any of these bills can be accessed by clicking on the bill number.

AGRIBUSINESS

SB 364 – Provides for a county-wide referendum on the possible establishment of a “poultry confinement facility” if a petition containing the signatures of qualified voters equal to at least 5% of the votes cast for Secretary of State in the last general election is presented to the county election officer. (Referred to the Senate Committee on Agriculture and Natural Resources, Senator Dan Kerschen, chair)

SB 365 – Provides for a county-wide referendum on the possible establishment of “poultry processing facilities and poultry slaughter facilities” if a petition containing the signatures of qualified voters equal to at least 5% of the votes cast for Secretary of State in the last general election is presented to the county election officer. (Referred to the Senate Committee on Agriculture and Natural Resources, Senator Dan Kerschen, chair)

SB 405 – Requires operators of a chicken facility to obtain a federal permit if 125,000 or more broilers or 82,000 or more laying hens are confined. (Referred to the Senate Committee on Agriculture and Natural Resources, Senator Dan Kerschen, chair)

HB 2470 – Allows a microbrewery to contract with one or more microbreweries to manufacture and transfer beer or hard cider for the microbreweries. This can be done on both an intrastate and interstate basis. Such manufacturing must stay within the current gallonage and barrel aggregate limits set for microbreweries. (*Passed by the House on a vote of 121-1.* Referred to the Senate Committee on Federal and State Affairs, Senator Bud Estes, chair)

HB 2649 – Creates an industrial hemp pilot program under the direction of the Secretary of Agriculture who would be responsible for developing a licensing program for growers of industrial hemp and would also coordinate research and testing of industrial hemp at any of the state colleges and universities. Exempts industrial hemp from the definition of marijuana. (Referred to the House Committee on Agriculture, Rep. Kyle Hoffman, chair)

HB 2651 – Same provisions as **SB 365** (*see above*). (Referred to the House Committee on Agriculture, Rep. Kyle Hoffman, chair)

HB 2652 – Same provisions as **SB 364** (*see above*). (Referred to the House Committee on Agriculture, Rep. Kyle Hoffman, chair)

ENERGY AND NATURAL RESOURCES

SB 379 – Establishes the Kansas Water Law Study Commission under the direction of the Kansas Water Authority. The commission would be composed of three “principal investigators selected by the Director of the Kansas Water Office and who must be Kansas attorneys with “extensive scholarly and practical experience in Kansas water law,” including transactional law and litigation. Specifies areas of water law to be studied and a report to the legislature and the Kansas Water Authority will be due by the end of the 2020 legislative session. (Referred to the Senate Committee on Agriculture and Natural Resources, Senator Dan Kerschen, chair)

HB 2641 – Prohibits the injection of more than 8,000 barrels of saltwater or other fluids per day into a class II injection disposal well. (Referred to the House Committee on Water and Environment, Rep. Tom Sloan, chair)

HB 2665 – Same provisions as **SB 379** (*see above*). (Referred to the House Committee on Water and Environment, Rep. Tom Sloan, chair)

HB 2672 – Places an 8,000-barrels-per-day limitation on injections into a class II injection disposal well. Requires certain disposal well quarterly reports to be made to the State Corporation Commission (SCC). Creates the well-induced seismicity fund where disposal well application fees are to be deposited. Specifies what the fee receipts

FOULSTON

ATTORNEYS AT LAW

can be used for. Also creates a five-member citizens' injection well board appointed by the governor. (Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Joe Seiwert, chair)

FINANCIAL SERVICES

SB 283 – Imposes time restrictions for notifying the State Bank Commissioner when there is a change of control of a state-chartered bank, bank holding company or trust company. Allows for a waiver of certain notifications if the bank or trust company is under a formal corrective action. Also broadens the experience requirements for the position of Deputy Commissioner for the Banking Division. (*Passed by the Senate on a vote of 39-0*. Referred to the House Committee on Financial Institutions and Pensions, Rep. Jim Kelly, chair)

SB 292 – Amends the credit union statutes regarding expulsion of a member from a credit union. Also alters the process by which an expelled member may appeal the expulsion. (*Passed by the Senate on a vote of 39-0*. Referred to the House Committee on Financial Institutions and Pensions, Rep. Jim Kelly, chair)

SB 335 – Brings state savings and loan associations and savings banks under the state banking code and repeals the savings and loan code. Grants specified powers to mutual state banks and to the service corporation of a savings and loan association. Allows banks to invest in bonds, securities, or other “evidences of indebtedness” up to 15% of the bank’s capital stock and surplus. (*Passed by the Senate on a vote of 39-0*. Referred to the House Committee on Financial Institutions and Pensions, Rep. Jim Kelly, chair)

HB 2637 – Establishes the Kansas Veterans Loan Act and sets separate standards for consumer loans made to veterans. Veteran is defined as “any person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard for more than 90 days of active duty, not simply for training purposes, and was discharged or released under conditions other than dishonorable.” (Referred to the House Committee on Veterans and Military, Rep. Les Osterman, chair)

SB 402 – Same provisions as **SB 401** (*see above*). (Referred to the Senate Committee on Financial Institutions and Insurance, Senator Jeff Longbine, chair)

HEALTH CARE

SB 387 – Would require the Collaborative Drug Therapy Management (CDTM) Committee of the Kansas Board of Pharmacy to develop and establish statewide protocols to allow pharmacists to perform numerous pharmaceutical-related patient care functions under numerous conditions. The bill would specifically permit a licensed pharmacist to administer a drug to a patient according to a statewide pharmacy protocol, as defined in the bill. *See also SB 377* (Referred to the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, chair)

HB 2667 – Would modify multiple provisions of Kansas law applicable to coverage of abortion services. (Referred to the House Committee on Federal and State Affairs, Rep. John Barker, chair)

HB 2663 – Would provide for a KANCARE/Medicaid ombudsman. See our February 2, 2018 issue where HB 2590 is discussed. HB 2590 involves ombudsman roles in long term care (Referred to the House Committee on Health and Human Services, Rep. Daniel Hawkins, chair)

SB 377 – Would amend K.S.A. 2017 Supp. 65-1626 and enable licensed pharmacists to administer a drug by injection pursuant to a prescription order. *See also SB 387* (Referred to the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, chair)

HB 2705 – Would amend K.S.A. 2017 Supp. Chapter 65 in several respects and modify the confidential protections and legal privilege applicable to discovery and data considered by medical practitioner peer review committees. (Referred to the House Committee on Judiciary, Rep. Blaine Finch, chair)

FOULSTON

ATTORNEYS AT LAW

HB 2704 – Would require written informed consent before administering an antipsychotic medication to an adult care home resident. “Informed consent” means receiving permission from such resident or a person acting on behalf of the resident. “Person acting on behalf of the resident” means a guardian or a person holding a durable power of attorney for health care decisions or an individual acting in accordance with a living will lawfully executed by the resident. (Referred to the House Committee on Children and Seniors, Rep. Erin Davis, chair)

HB 2688 – Would establish a Kansas behavioral health task force to study the behavioral health systems in our state. The Kansas Department for Aging and Disability Services would be required to provide administrative assistance and facilitate meetings of task force working groups. (Referred to the Committee on Appropriations, Rep. Troy Waymaster, chair)

SB 373 – Proposes special legislation for county hospitals and would amend K.S.A. 19-4625. The idea is to shield sponsoring counties from liabilities incurred by hospitals organized and operating under county auspices. (Referred to the Committee on Ethics, Elections, and Local Government, Sen. Elaine Bowers, chair)

SB 386 – Would modify professional counselor licensure requirements. (Referred to the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, chair)

HB 2721 – Would amend the Kansas Insurance Code and the Public Health Code (Chapters 40 and 65 of the K.S.A.s) to permit virtually any type of legally established business entity which is in compliance with applicable law, and which holds a certificate of authorization issued by the State Board of Healing Arts to practice medicine. (Referred to the Senate House Committee on Health and Human Services, Rep. Daniel Hawkins, chair)

INSURANCE

HB 2674 – Would amend the Kansas Insurance Code (Chapter 40 of the K.S.A.s) to implement the Kansas Telemedicine Act: “Telemedicine” means the delivery of healthcare services or consultations while the patient is remote from the physician or licensed mental healthcare professional. The bill would impose familiar patient privacy rules on telemedicine providers. Also, the bill would not permit health insurers to exclude coverage for such services solely because such service is provided by telemedicine. Further, the State Board of Healing Arts would be required to adopt rules and regulations relating to the prescribing of drugs, including controlled substances *via* telemedicine. (Referred to the Committee on Health and Human Services, Rep. Daniel Hawkins, chair)

HB 2575 – The bill, introduced in January 2018 and scheduled for hearing in the House Committee on Health and Human Services on February 14, 2018, would require an insurance carrier offering a health plan to develop and implement a program providing incentives for insureds to search out lower charging providers, even if the provider is out-of-network. (Referred to the Committee on Health and Human Services, Rep. Daniel Hawkins, chair) (See also SB 399, denominated as the Patient Right to Shop Act.)

SB 410 – Would amend the captive insurance provisions of the Kansas Insurance Code (Chapter 40 of the K.S.A.). The idea is to implement more comprehensive regulation and monitoring of captive insurers. Substantial work on this subject was spearheaded by the National Association of Insurance Commissioners (NAIC) in the last few years. (Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, chair)

HB 2646 – Would increase the minimum motor vehicle liability policy limit for bodily injury on certain persons and amend K.S.A. 2017 Supp. 40-3107. (Referred to the House Committee on Insurance, Jene Vickrey, chair)

REAL ESTATE AND CONSTRUCTION

HB 2610 – Amends the Residential Landlord and Tenant Act to authorize a landlord to terminate, under designated circumstances, rental agreements if a tenant constitutes a “clear and present danger to the health or safety of other tenants.” (Referred to the House Committee on Judiciary, Rep. Blaine Finch, chair)

STATE GOVERNMENT

FOULSTON

ATTORNEYS AT LAW

HB 2362 – A carry-over bill from the 2017 session, which establishes the Alcoholic Beverage Control Modernization Fee of \$30 for each new license application and \$10 for license renewals. Also establishes a modernization fund where all modernization fees must be deposited. Eliminates the 2022 sunset provision for the modernization fee, thus making it a permanent fee. (*Placed on General Orders in the Senate*)

HB 2600 – Allows the Secretary of Health and Human Services to impose higher annual fees for various categories of radiation protection services and to also impose an additional annual fee on “non-contiguous sites” where radioactive material is stored or used. (Referred to the House Committee on Health and Human Services, Rep. Dan Hawkins, chair)

TAXES

SB 367 – Eliminates language in the state sales tax statutes relating to the use of coupons and certain cash rebates on sales or leases of new motor vehicles. (Referred to the Senate Committee on Assessment and Taxation, Senator Caryn Tyson, chair)

SB 376 – Increases the state cigarette tax from \$1.29 per pack to \$2.79. Also increases the rate on other tobacco products from 10% to 65% of the wholesale price of such products. Requires the first \$5 million of revenue collected to be transferred to the Cigarette and Tobacco Cessation Fund. All expenditures from the fund must be used for the promotion of cessation of cigarette and tobacco usage. (Referred to the Senate Committee on Assessment and Taxation, Senator Caryn Tyson, chair)

HB 2614 – Provides for a \$200 tax credit against Kansas income tax liability for each “qualifying child,” as defined in the bill. Further provides that each qualifying child must have a valid Social Security number. (Referred to the House Committee on Taxation, Rep. Steve Johnson, chair)

HB 2615 – Increases the tax credits allowed against Kansas income tax to 25% of the tax credit allowed against a taxpayer’s federal income tax liability for tax year 2018, 37.5% for tax year 2019, and 50% for tax year 2020 and beyond. (Referred to the House Committee on Taxation, Rep. Steve Johnson, chair)

HB 2616 – Lowers the state sales tax on food and food ingredients to 3.25% from 6.5% effective July 1, 2018. (Referred to the House Committee on Taxation, Rep. Steve Johnson, chair)

HB 2618 – Adds an additional category on the state income tax tables for taxable income over \$500,000. Such income would be taxed at a rate of \$28,042.50 plus 10% of the excess over \$500,000. (Referred to the House Committee on Taxation, Rep. Steve Johnson, chair)

WORKERS COMPENSATION

SB 403 – Amends the workers compensation statute to allow an injured worker to designate his or her health care provider. (Referred to the Senate Committee on Commerce, Senator Julia Lynn, chair)

HB 2703 – Strikes references to the use of the fourth edition of the American Medical Association Guides to determine the “impairment of function” and replaces it with the sixth edition as the “most appropriate edition.” (Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Les Mason, 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

FOULSTON

ATTORNEYS AT LAW

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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