

## NEWSLETTERS



### KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MARCH 24, 2022

March 24, 2022

#### OVERVIEW

This week, the Kansas Legislature endeavored to meet the Wednesday deadline for consideration of non-exempt bills not in their originating chamber. Both chambers spent long hours on the floor. Among the issues on the debate calendar were automated delivery vehicles, boll weevil eradication, the House of Representatives' budget and redistricting map, constitutional amendments, elections, judicial selection of Supreme Court justices, open enrollment in school districts, plastic bags, Parents' Bill of Rights, transgender athletes, and sanctuary cities. The House adjourned early on Wednesday afternoon, while the Senate toiled until 1:30 a.m. The Senate delayed voting on measures debated on General Orders Tuesday and Wednesday until after midnight, adding drama to the outcome of high-profile issues.

There were a few committee meetings this week. On Tuesday, the House Federal and State Affairs heard HB 2740, authorizing sports wagering under the Kansas Expanded Lottery Act. The measure was supported by casinos and convenience store retailers but opposed by the Kansas Greyhound Association. Addiction professionals asked that 2% of the revenue be set aside for an addiction fund. Final action on the bill was delayed until next week. In addition to the omnibus budget bill and tax cuts, medical marijuana and sports gambling are expected to be among the key issues for final adjournment.

#### CONSTITUTIONAL AMENDMENTS

This week, the Kansas Senate debated four constitutional amendments. The first proposal would address review of administrative rules and regulations. HCR 5014 was debated in the Senate on Wednesday. HCR 5014 amends the Kansas Constitution to create a new section in Article 1 concerning legislative oversight of administrative rules and regulations. The amendment allows the Legislature to revoke or suspend any such rules and regulations, or any portion thereof, by a majority vote of each house. The Senate voted 27-12 to approve. HCR 5014 passed the House 85-39. The proposed amendment will now appear on the general election ballot in November.

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The second, SCR 1621, changes the selection process for Supreme Court nominations and moves from a Supreme Court Nominating Commission to nomination by the Governor with Senate confirmation. SCR 1621 failed 26-13 (one vote shy of the two-thirds needed).

The third, SCR 1620, requires a supermajority for the passage of bills for new or increased state taxes. The floor discussion addressed what constitutes a tax increase. On final action early this morning, it failed 25-14.

The fourth constitutional amendment, HCR 5022, requires that a sheriff be elected in each county for a four-year term. The only exception is Riley County, which abolished the office of sheriff in 1974. On final action, it received the necessary 27 votes and will appear on the August primary ballot.

### HOUSE FLOOR DEBATES

Monday, the House debated 29 bills in three hours. All bills under consideration were non-controversial, with 23 measures passing with more than 100 votes. One example of the approved measures is House Sub for SB 261 (dubbed the “fake-meat bill”), requiring explicit labeling of non-meat grocery items displayed and manufactured to appear to be cuts of meat. The bill passed 96-26. Among the other measures approved was the 988 Suicide Prevention and Mental Health Crisis Hotline (H. Sub for SB 19).

Tuesday, both chambers debated major policy issues. The House budget was divided into two separate bills, with education spending and policy in a single bill. The budget debate started with House Sub for Sub SB 267, which covers everything except education. House Sub for Sub HB 2512 addresses education funding and policy. During the budget debate on H Sub for Sub SB 267, efforts to include the Governor’s funding proposal for the \$250 one-time tax rebate for Kansas taxpayers and restoring \$70 million in funding for Medicaid expansion to cover an additional 150,000 Kansans also failed. During debate, concerns were raised about the legality of including the one-year extension of the Medicaid MCO contracts in the budget and whether it could jeopardize federal funds. House Sub for Sub SB 267 passed with only one minor amendment added. The House Education Budget bill (H Sub for Sub HB 2512) floor debate made some technical changes. There was significant debate around math education programs. Rep. Jarrod Ousley successfully added an amendment increasing special education funding by \$68 million on a 58-54 vote. Later, there was a motion to reconsider the action and the amendment failed 50-70.

Tuesday, the House debated HB 2717, banning “sanctuary cities.” The proposal would make it illegal for any city to pass a law that would keep a law enforcement officer from cooperating with federal authorities to collect and trade information about immigration status. The bill was requested by Attorney General Derek Schmidt in response to an ordinance passed by the Unified Government in Wyandotte County. Wednesday on final action, the bill passed the House 84-38.

The House debated Sub HB 2737, the reapportionment map for the House of Representatives. Representatives of both political parties praised the House Redistricting Committee for listening to the concerns of House members. On Wednesday, Sub HB 2737, concerning House reapportionment, passed 112-10. The House debated Sub HB 2615, permitting students to transfer to and attend school in any school district in the state based on capacity limitations of school districts. On Wednesday, the bill narrowly passed 63-59.

The House approved SB 161, providing for the use of personal package-delivery devices on sidewalks and crosswalks, exempting such devices from motor vehicle regulation and limiting additional municipal regulation. The House also passed legislation preventing local governments from regulating plastic bags. The House version includes plastic straws, which differs from the Senate version. This bill is a response to City of Wichita discussions on banning single-use plastic bags.

Wednesday morning final action saw the House education budget (Sub for Sub HB 2512) pass 76-46, with the primary budget bill (H Sub for Sub SB 267) passing 73-49. The House redistricting plan received 112 votes. The

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House had a relatively light debate calendar that approved HB 2340, raising the age to purchase tobacco products, and SB 150, on legal advertising. The final bill debated by the House was Sub SB 563, concerning reapportionment. It combines the House and Senate redistricting maps into one bill. Sub SB 563 passed 112-9. This allows the Senate to concur and send the House and Senate maps to the Governor. The House completed its work on Wednesday by early afternoon.

### SENATE FLOOR DEBATES

The Senate debated six bills for four hours Monday. Three education bills generated considerable debate. SB 455 would establish a transfer system for nonresident students to move between unified school districts based upon the student capacity of each school district. The bill passed Tuesday 23-16.

Another bill of interest was SB 484, creating the Fairness in Women's Sports Act, which would require interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by public educational institutions to be designated based on biological sex. The Senate rejected six proposed amendments during the floor debate. The bill passed 27-11 on Tuesday.

There was also robust debate regarding SB 496, establishing the Parents' Bill of Rights. The bill generally acknowledges that parents have a right to direct the upbringing, education, care, and mental health of their child. However, the bill further enumerates 12 rights reserved by the State for parents. Such enumerated rights include, but are not limited to, the parents' right to direct the education and care of the child and the right to direct the upbringing and moral or religious training of the child. The bill would also require boards of education of each school district to develop and adopt policies to guarantee parents' rights. Such policies would include a parent's review of various educational materials and would empower parents to challenge such material proposed for introduction into the curriculum. Under SB 496, a parent's successful challenge to any such material could result in removal of the challenged material from the school, subject to policies and procedures as the bill directs school districts to adopt. During floor debate, a reference to immunizations was deleted in the health care section. Opponents expressed concern that this could result in bullying of educators by parents and banning books. Tuesday morning, the bill passed 24-15.

Both Tuesday and Wednesday were marathon days for the Kansas Senate, with adjournment around 1:30 a.m. Thursday. Tuesday, the Senate debated HB 2559, which would create a Kansas cotton boll weevil program. The program would impose a levy on Kansas-produced cotton in order to monitor and mitigate the risk of boll weevils. HB 2559 generated significant debate and a number of proposed amendments but passed 32-6.

The Senate also debated Sub HB 2280, which would permit off-label prescription of unconventional drugs and prevent the Board of Healing Arts' ability to investigate physicians prescribing ivermectin or hydroxychloroquine. The bill also broadens a religious exemption for vaccine mandates for public schools and daycare centers. Sub HB 2280 passed 21-16.

The Senate approved SB 541, barring governments or public officials from mandating masks in response to a contagious disease. The bill passed 24-14. The bill also bars any government from limiting worship services similar to what Gov. Laura Kelly tried to do in 2020 when she limited mass gatherings at church services in an effort to slow the spread of the coronavirus. The bill also bans local school officials as well as the state's postsecondary schools from imposing a vaccine passport.

On Wednesday, the Senate voted 22-17 to approve a bill limiting counties to one ballot dropbox per 30,000 people, requiring monitoring of boxes when open. The bill eliminates the current 3-day post-election grace period for mail-in ballots to arrive. The S Sub for HB 2056 fell five votes short of a veto-proof majority. The bill will now go to the House, where a similar bill eliminating the grace period was voted down in committee. During the debate, concerns were expressed about requiring arrival of mail ballots on Election Day with Kansas no longer having an in-state mail

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processing center.

The Senate passed S Sub for HB 2416, which would provide compensation if the government uses or limits the use of property in response to an infectious or contagious disease. The bill passed 26-11.

Finally, the Kansas Senate passed S Sub for HB 2239, which is an estimated \$165 million in tax cuts over three years, including a property tax break for seniors and disabled veterans and an increase in the standard deduction for Kansas taxpayers. Known as the “Golden Years Property Tax Freeze”, the proposal has been bouncing around the Legislature for several years. This was part of another tax package that the Senate passed earlier this session but which had stalled in the House. The measure passes a property tax freeze for seniors 65 and older or disabled veterans whose total household income does not exceed \$75,000, and with an appraised value of \$485,000 or less. In addition, the bill also would increase the standard deduction for Kansas taxpayers across the board. The standard deduction would increase for single filers from \$3,500 to \$3,850, for married couples from \$8,000 to \$8,800, and for head of household from \$6,000 to \$6,600. The bill did not include the governor’s proposed cut to the sales tax on food. The vote was 36-2.

### NEXT WEEK

Next Friday, April 1, is the last day for consideration of all bills or drop-dead day for non-exempt bills. Conference Committees will be meeting to work out the differences between the House and Senate bills. Conference committees are composed of the Chair, Vice Chair and the Ranking Minority Member from each chamber. Members not on conference committees are waiting for preparation of the conference committee before floor action. On Monday morning, the House Appropriations Committee and Senate Ways and Means Committee conferees will be briefed on the more than 200 differences in their budget bills. The tentative House schedule for next Monday is meeting at 10 a.m., 2:00 p.m., and 4:00 p.m. to consider conference committee reports.

The APEX mystery company’s decision on the site selection between Kansas and Oklahoma is expected by the end of March. If Kansas is selected, it will have some potential effect on the budget with the initial tax credits and other considerations.

### BILL INTRODUCTIONS

#### TAXATION

**HB 2719** – As recommended by the House Committee on Taxation, Rep. Adam Smith, Chair, would define telecommunications machinery and equipment to include machinery and equipment placed in inventory or work-in-progress for purposes of the telecommunications machinery and equipment property tax exemption.

**HB 2721** – As recommended by the House Committee on Taxation, Rep. Adam Smith, Chair, would provide a sales tax exemption for over-the-counter drugs, which would be defined as a drug containing a label with a drug facts panel or statement of the drug’s active ingredients and a list of those ingredients. Over-the-counter drugs would not include grooming and hygiene products such as soaps, cleaning solutions, shampoo, toothpaste, antiperspirants, suntan lotions, or sunscreens.

**SB 509** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would provide for refunds of the state sales tax amounts paid on purchases to reconstruct or replace any residence, building, facility, structure, fixture, fence, or other improvement, and any household appliance located therein that was damaged or destroyed by fire, flood, tornado, lightning, explosion, windstorm, ice loading and attendant winds, terrorism, or earthquake occurring on or after Jan. 1, 2021. The bill would require claims for refunds to be submitted within three years of the date of the disaster causing the damage.

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**SB 556** – As amended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would create income tax exemptions for the federal deduction disallowances associated with the federal Work Opportunity Tax Credit, or similar credits, and the federal Employee Retention Credit.

**S Sub for HB 2316** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would amend law related to sales tax, including exemptions, exclusions, state rates on certain utilities, and sales tax remittances by retailers. The bill would also sunset a local sales tax in Atchison County and amend law related to the disposition of revenue of countywide sales taxes and sales tax imposed by Washburn University.

**HB 2315** – As amended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would provide for a refundable tax credit for donors who contribute to community colleges and technical colleges.

**HB 2239** – As amended by the Senate Committee of the Whole, would create the Golden Years Homestead Property Tax Freeze Program (refund program), increase the individual income tax standard deduction, enact the SALT Parity Act, and amend law related to carrying forward net operating losses.

**S Sub for HB 2316** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would amend law related to sales tax, including exemptions, exclusions, state rates on certain utilities, and sales tax remittances by retailers.

**S Sub for HB 2597** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would amend law related to property taxes. The bill would amend law related to the revenue-neutral notice and hearing process, specify the classification of certain land as agricultural, create a property tax exemption for antique utility trailers, and provide for the proration of property taxes for certain personal property.

**HB 2727** – As amended by the House Committee on Taxation, Rep. Adam Smith, Chair, would expand the income tax exemption for certain Social Security benefits to phase out taxpayer eligibility for the exemption through a linear transition formula from \$75,000 in federal adjusted gross income to \$85,000 in federal adjusted gross income. Current law ends eligibility at \$75,000 with no phase-out.

**SB 180** – As amended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would create a sales tax exemption beginning Jan. 1, 2023, for food and food ingredients, grooming and hygiene products, and household personal products purchased by Kansas resident veterans who have been honorably discharged and 100% disabled through military service.

**SB 326** – As amended by the House Committee on Taxation, Rep. Adam Smith, Chair, would create an income tax credit for any Class II or Class III railroad or any owner or lessee of rail siding located on or adjacent to a Class II or Class III railroad for tax years 2022 through 2031 equal to 50% of the qualified track maintenance expenditures paid or incurred during the taxable year for track located in the state of Kansas.

**Sub. SB 462** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would repeal the prohibition on imposing a surcharge on payments made by credit or debit cards.

**Sub. SB 565** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would provide, beginning in tax year 2024, for a uniform individual income tax rate of 4.75% for all Kansas taxable income of all individual income taxpayers, regardless of filing status.

## COURTS, LAWS, AND REGULATIONS

**HB 2492** – As amended by the House Committee on Appropriations, Rep. Troy Waymaster, Chair, would authorize expenditures and make appropriations totaling \$2 million, including \$1.9 million from the State General Fund (SGF), in FY 2022 to pay claims against the State. The bill would appropriate \$1.9 million from the SGF to the Office of the Secretary of State to pay certain pending claims including \$1.4 million to the ACLU Foundation for attorney fees



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owed as a result of a federal court order related to the case of *Steven Wayne Fish, et al, v. Scott Schwab, Secretary of State for the State of Kansas*; and \$475,000 to Dentons US LLP for attorney fees owed as a result of a federal court order related to the case of *Bednasek, et al., v. Scott Schwab, Secretary of State for the State of Kansas*.

**HB 2559** – As amended by the Senate Committee of the Whole, would establish the Kansas Cotton Boll Weevil Act and create the Kansas Cotton Boll Weevil Program, which would be administered by a board of directors.

**HB 2579** – As amended by the Senate Committee on Transparency and Ethics, Sen. Elaine Bowers, Chair, would amend the Campaign Finance Act to require treasurers for candidates for state offices to file reports of contributions, expenditures, and the like electronically with the Secretary of State in a form as prescribed by the Secretary of State.

**HB 2731** – As recommended by the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair, would enact law requiring the verification and disclosure of identifying information of certain sellers on online marketplaces. The bill would take effect on Jan. 1, 2023.

**SB 150** – As amended by the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair, would create law related to legal advertising and the use of protected health information to solicit individuals for legal services. Among other things, the advertising could not be presented as a “medical alert,” “health alert,” “consumer alert,” “public service announcement,” or use similar terms.

**SB 382** – As amended by the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair, would amend the Real Estate Brokers’ and Salespersons’ License Act by requiring individuals and organizations dealing in assignable contracts for the purchase, sale, or option on real estate to be licensed by the Kansas Real Estate Commission. The Commission would also be authorized to issue cease-and-desist orders.

**HB 2631** – As amended by the House Committee of the Whole, would create the Career Technical Education Credential and Transition Incentive for Employment Success Act, which would provide state aid to school districts for the reimbursement of assessment costs for students who earn certain credentials.

**HB 2688** – As amended by the Senate Committee on Federal and State Affairs, Sen. Robert Olson, Chair, would require the board of county commissioners, the governing body of the city, or the Director of the Alcohol Beverage Control Division (ABC) to issue a Cereal Malt Beverage (CMB) retailer’s license to applicants who have already been issued a farm winery license and satisfy the requirements for such CMB retailer’s license. Licensing authorities would not be able to deny a CMB retailer’s license on the basis of zoning or other regulations or any city or county resolutions or ordinances.

**HB 2708** – As amended by the House Committee on Federal and State Affairs, Rep. John Barker, Chair, would establish requirements for and licensure of medical marijuana testing laboratories.

**HB 2710** – As amended by the Senate Committee on Federal and State Affairs, Sen. Robert Olson, Chair, would amend the Kansas Liquor Control Act’s definitions of certain domestic wine classifications to raise the alcohol level and would make a corresponding amendment to current law concerning gallonage taxes.

**HB 2717** – As amended by the House Committee on Federal and State Affairs, Rep. John Barker, Chair, would prohibit municipalities from restricting law enforcement cooperation with federal authorities and would prohibit the use of municipal identification cards from being used to satisfy state proof of identity requirements, including for voter identification.

**HB 2744** – Would create the Kansas Sunset Act and establish the Kansas Sunset Advisory Commission, requiring the review and evaluation of state agencies and offices. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

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**S Sub for HB 2380** – As recommended by the Senate Committee on Ways and Means, Sen. Rick Billinger, Chair, would increase a service fee paid by any applicant for vehicle registration or renewal and would apply the service fee to each applicant for vehicle title.

**SB 343** – As amended by the House Committee of the Whole, would replace statutory references to “hearing impairment” and similar terms with “hard of hearing,” “hearing loss,” or “deaf.” The bill would also make technical amendments.

**SB 496** – As amended by the Senate Committee of the Whole, would establish the Parents’ Bill of Rights, which would state that all parents have a right to direct the upbringing, education, care, and mental health of their child.

**SB 541** – As amended by the Senate Committee of the Whole, would create law regarding actions taken by a city related to contagious or infectious disease, COVID-19 vaccination passports, actions by governmental entities or public officials affecting worship services or activities, and face-mask requirements. The bill also would amend law in the Kansas Emergency Management Act.

### EDUCATION

**SB 455** – As amended by the Senate Committee on Education, Sen. Molly Baumgardner, Chair, would establish a transfer system for nonresident students between unified school districts based on the student capacity of each unified school district.

### HEALTHCARE

**S Sub for HB 2280** – As amended by the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair, concerns prescribing and dispensing of drugs for off-label use and religious exemptions for childhood vaccines.

**S Sub for HB 2448** – As recommended by the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair, would require the Department for Children and Families to assign all able-bodied adults without dependents subject to the food assistance work requirements established by federal law to an employment and training program as defined in 7 U.S.C. § 2015(d)(4). The bill would specify the provisions of the bill would only apply to ages 18 through 49.

### TRANSPORTATION

**SB 161** – As amended by the House Committee on Transportation, Sen. Richard Proehl, Chair, would create law related to personal delivery devices, i.e., devices operated primarily on sidewalks and crosswalks and intended primarily for the transport of property that does not exceed 550 pounds, excluding cargo, on public rights-of-way, and is capable of navigating with or without the active control or monitoring by a person.

**SB 546** – As amended by the Senate Committee of the Whole, would permit operation of driverless-capable vehicles without a human driver with the automated driving system engaged under certain circumstances. Provisions added by the bill would be added to the Uniform Act Regulating Traffic on Highways.

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Kansas Legislative Insights is a publication developed by the Governmental Affairs & 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 Healthcare, 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

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officials, and staff members – that prove valuable in advancing clients' interests and issues. Drawing on his experience as a regional governmental affairs attorney for AT&T in Chicago, he helps clients navigate the maze of federal policies and agencies, advises on how processes work in Washington, and provides introductions to those who can help them accomplish their goals.

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### PRACTICE AREAS

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