

NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | FEBRUARY 1, 2019

LEGISLATIVE COMMITTEES ADDRESS MAJOR ISSUES

This week saw committee action and hearings on several significant issues.

Decoupling

The Senate Select Committee on Federal Income Tax Code Implementation passed Senate Bill 22, after three days of hearings regarding the potential tax “windfall” to the Kansas General Fund, combined with the adverse tax impact on individual and corporate Kansans if the effect of the 2017 federal tax law changes (i.e., the cause of the windfall) is not promptly addressed. Senate President Susan Wagle focused on SB 22, rather than SB 13 (which had more emphasis on individual tax issues, as well as including tax matters unrelated to federal tax changes) in order to promptly deal with impending corporate tax problems. Committee testimony indicated that without SB 22, corporations could face an 11% state tax increase, and individual taxpayers would experience a Kansas tax increase unless they were allowed to itemize deductions on their Kansas tax returns. Without decoupling Kansas from the federal tax code, the 2017 changes in the federal tax code would trigger a Kansas tax on corporate income items never before taxed in our state. SB 22 adjusts the Kansas tax code to reduce or eliminate an otherwise automatic Kansas tax increase emanating from federal law changes in the following areas: IRC §§ 965(a) and 965(c), regarding repatriated income; IRC §§ 951A and 250(a)(1)(B)(i), regarding global intangible low-taxed income, or “GILTI”; IRC § 163(j), regarding interest limitation deductions; IRC § 118, regarding capital contributions; and IRC § 162(r), regarding FDIC premiums. SB 22 passed the Special Committee on Thursday and is expected to be debated next week on the Senate floor.

Decoupling was considered by the 2018 legislature in HB 2228 and deemed necessary by the 2018 House Committee that reviewed the bill.

KPERS

The Senate Ways and Means Committee passed Senate Bill 9 providing for the transfer of \$115 million from the State General Fund to the Kansas Public Employees Retirement System (KPERS). In 2016, the Legislature was struggling to find enough cash to balance the state budget and skipped a \$97 million quarterly payment to KPERS.

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Governor Brownback signed a bill requiring principal repayment and 8% interest. The Brownback-era deferred payments to the KPERS obviously increased the fund's unfunded actuarial liability. The \$115 million payment is meant to reduce that unfunded liability. SB 9 is scheduled for Senate debate next week.

Illegal Voting

Monday, Attorney General Derek Schmidt and Secretary of State Scott Schwab testified before the House Committee on Corrections and Juvenile Justice in favor of House Bill 2042, which would return prosecutorial control over alleged election fraud cases to the Attorney General from the Secretary of State's Office. During the last four years under Secretary of State Kris Kobach, there were only 15 cases prosecuted by the Secretary of State's Office with limited success.

Association Health Plans and Farm Bureau

January 29, the Senate Committee on Financial Institutions and Insurance (Senate F I & I) heard testimony regarding what has become known as the "Farm Bureau Bill." SB 32 would add nonprofit agricultural membership organizations (that were incorporated in Kansas on June 23, 1931, and provide healthcare benefit coverage that is not considered "insurance") to a "blessed" list of entities that are not subject to the jurisdiction of the Commissioner of Insurance described in K.S.A. 40-2222. The bill would also make several technical amendments to existing statute regarding non-insurance healthcare benefits coverage. Enactment of SB 32 would allow Farm Bureau to offer a health insurance plan that would be considered non-insurance healthcare benefits coverage and would be exempt from the Commissioner of Insurance's jurisdiction.

At the same time, Senate F I & I and the House Committee on Insurance are holding hearings on a related bill package intended to implement the policy initiative behind the Department of Labor's final rule, issued last summer, under ERISA § 3(5) defining employers and associations of employers. The Kansas measures appear to be intended to favor preservation of existing and creation of new Association Health Plans (AHPs) in Kansas. The bills are apparently aimed at benefiting AHPs whether they are self-funded or insured. For insured AHPs, the bills focus on allowing AHPs to avoid high member rates because of the impact of the State's small-group (employers with 50 or fewer) rating laws. If the measures become law, AHPs may operate on a self-insured or fully insured basis with large group ratings as if the aggregation of employers (large and small) within the AHP were one large group.

RURAL REVITALIZATION COMMITTEE

Former Majority Leader Don Hineman (R-Dighton) chairs the new House Rural Revitalization Committee, which is studying a wide range of issues including healthcare, rural broadband access, population shifts, and access to goods and services. This week, part of the focus was access to grocery stores and food availability in rural areas as well as rural broadband access.

HEALTHCARE

Tuesday, the Governor's Medicaid expansion bill was introduced in the House Committee Appropriations (HB 2102) and Senate Committee Public Health and Welfare (SB 54). Governor Kelly's measure is modeled after the Medicaid expansion bill that passed in 2017 but was vetoed by Governor Brownback.

BILL INTRODUCTIONS

HEALTHCARE

HB 2066 – Amends the Nurse Practice Act. Under this bill, an Advanced Practice Registered Nurse (APRN) would no longer have to establish a collaborative agreement with a responsible physician or have physician oversight of APRN practices. It would require APRNs to provide proof of national certification for APRN licensure at the time of

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licensure or renewal. The Board of Nursing would thus be required to recognize national certifying organizations which would qualify for APRNs in Kansas. This bill would also permit APRNs to prescribe medication independently of a physician. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2082 – Proposes allowing licensed pharmacists to administer a prescription drug to a patient pursuant to a prescription order, unless explicitly prohibited by the prescription order. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2089 – Establishes the Kansas Death with Dignity Act. This bill would permit a Kansas resident over the age of 18 who is suffering from a terminal disease to make a written request to his or her physician for a prescription that would be used to end the patient's life. The bill specifies requirements that such a patient would have to meet for eligibility and provides steps the physician must take prior to writing the prescription. Under the bill, a pharmacist would have no legal duty to participate in dispensing end-of-life medications. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2102 – Proposes the establishment of the KanCare bridge to a healthy Kansas program. This bill will expand the eligibility for receipt of benefits under the Kansas Medical Assistance Program (Medicaid). Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

HB 2103 – Proposes revisions to the revised Kansas code for care of children. This bill would permit the Secretary for Children and Families to designate programs as qualified residential treatment programs in accordance with federal law. It addresses notice and other procedural requirements for when a child is placed in a qualified residential treatment program. Referred to the House Committee on Children and Seniors, Rep. Susan Concannon, Chair.

INSURANCE

HB 2074 – Would require insurers who offer individual policies providing hospital medical, or surgical expense benefits, to accept every individual who applies for coverage. The bill would also allow insurers to impose preexisting condition exclusion of 90 days following the date of enrollment for conditions for which medical advice, diagnosis, or care of treatment was recommended or received in the 90 days prior to the effective date of enrollment. In addition, the bill would make several technical amendments to current statute. Referred to the House Committee on Insurance, Rep. Jene Vickrey, Chair.

REAL ESTATE

SB 42 – Would amend the Kansas Real Estate Brokers' and Salespersons' License Act to provide a definition of a rebate. The bill defines "rebate" as the return of all or part of any purchase price of real estate, whether by cash or cash equivalent, that is promised or agreed to by a licensee and a client or customer before closing and is contingent on the transaction closing. A rebate would also include the return of all or part of any commission or compensation paid to a licensee in any transaction that has as its purpose the purchase of real estate at a price different from the price specified in the closing statement. A cash equivalent rebate would include gift cards, prepaid credit cards, and any other item with a value equal to a specific amount of money that can be used in the same manner as cash. Referred to the Senate Committee on Commerce, Rep. Julia Lynn, Chair.

TAXATION

HB 2093 – Would exempt the sale of currency and coins from sales tax and compensating use tax. Relates to the sale of coins or currency made of gold, silver or other metal, or currency made of paper. Referred to the Committee on Taxation, Rep. Steven Johnson, Chair.

COURTS, LAWS, AND REGULATIONS

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HB 2098 – Would authorize the district court to order disclosure of criminal investigation records, provided that such disclosure is in the public interest and not outweighed by the harm caused by such disclosure. Such harm includes the interference with law enforcement action, criminal investigation, or prosecution; the release of the identity of any confidential source or undercover agent; the release of confidential investigative techniques; the endangerment of any person's safety; and the release of information identifying victims of any sexual offense. To be a matter of public interest, the matter must affect a right or expectation of the community at large and further public evaluation of governmental performance. Referred to the Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2115 and SB 56 – Would require state contractors to use computer software in order to verify that their hours worked on a computer are legitimate. The verification software is to be provided by the contractor at no charge to the state. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

GENERAL BUSINESS

HB 2105 – This bill updates the Kansas Revised Limited Liability Company Act and related provisions of the Business Entity Standard Treatment Act with changes to the Delaware Limited Liability Company Act (the model upon which Kansas law is based) since 2012. Among the changes in the bill are substituting the current series provision (based on the Illinois act) with the newly passed registered series provision in Delaware; creating statutory public benefit limited liability companies, similar to public benefit corporations adopted in Kansas two sessions ago; enabling an LLC to divide its assets into two or more LLCs; and enabling the use of blockchain and distributed-ledger technology for certain electronic transmissions and records. The bill contains other substantive and technical changes. Bill Matthews, a partner in Foulston's Wichita office, served as the primary drafter and is a member of the Kansas Bar Association committee sponsoring the bill. Referred to the House Committee on Judiciary, Rep. Fred Patton, 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.

KANSAS LEGISLATIVE INSIGHTS EDITORS



James (Jim) P. Rankin

Governmental Relations &
Public Policy Law Team
Leader

785.233.3600

jrankin@foulston.com | View
Bio



Gary L. Robbins

Governmental Affairs
Consultant

785.640.2651

garyrobbinsconsulting@gmail.com

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James P. (Jim) Rankin and Gary L. Robbins are co-editors of Foulston Siefkin's Kansas Legislative Insights Newsletter.

As a partner at Foulston Siefkin, Jim's practice focuses on employee benefits law relating to public, private, governmental, and tax-exempt organizations. A large part of his work involves insurance regulatory and compliance issues in many industries, including healthcare. Jim has been selected by his peers for inclusion in The Best Lawyers in America® and the Missouri & Kansas Super Lawyers® list. He is the firm's representative with State Law Resources, Inc., a national network of independent law firms selected for their expertise in administrative, regulatory, and government relations at the state and federal level.

Gary, a governmental affairs consultant to Foulston Siefkin's Governmental Relations & Public Policy practice group, provides legislative monitoring and lobbying services for Foulston's governmental relations clients. He holds a bachelor of science degree in history and political science from Southwestern College and a master's degree in labor economics from Wichita State University. Throughout his extensive career, Gary has served as CLE Director to the Kansas Bar Association and as Executive Director of the Kansas Optometric Association.

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.

PRACTICE AREAS

- Government Affairs & Public Policy Law