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NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | FEBRUARY 15, 2019

Week 5 saw a dramatic increase in the number of bills in the hopper with this week's deadlines (specifically Wednesday, February 13, for member introductions and Friday, February 15 for non-exempt committees) for introduction of individual bills and committee bills from non-exempt committees. From this point on, only the exempt committees may introduce bills. The exempt committees include the House Appropriations Committee, House and Senate Federal and State Affairs, House and Senate Tax Committee, and the Senate Ways and Means along with certain Select Committees. After this week, only one full week and two days the following week remain for committee action on non-exempt bills. The deadline for non-exempt bills to pass their House of Origin is February 28. This means that House bills have been passed by the House, and Senate bills passed by the Senate. The only exceptions are referrals to an exempt committee or waiting for consideration during the 2020 Legislature.

The Senate debated some non-controversial bills while Senate Bill 32, sponsored by the Kansas Farm Bureau (representing legislation designed by KFB to make affordable healthcare programs available to KFB members), remained on the debate calendar. House and Senate Budget subcommittees met throughout the week to prepare the state budget.

Both the House and Senate Federal and State Affairs Committees have appointed subcommittees to study sports betting. The Senate Federal and State Affairs Committee has announced informational hearings next week on the topic. House and Senate committees heard testimony on a wide range of issues from the corporate practice of medicine, commercial hemp production, the Kansas Public Employees Retirement System (KPERs), definition of rebate and interest under the real estate law, the prison staffing crisis, rural healthcare, and school finance to name a few. The Senate Federal and State Affairs Committee held a hearing on designating the official red and white wine grapes of Kansas.

This weekend is the Kansas Republican Party Convention in Topeka. It will be interesting to see if any more candidates emerge to run for retiring Sen. Pat Roberts' Senate seat in 2020. More than 10 Republicans are rumored to be exploring the possibility of running.

CORPORATE PRACTICE OF MEDICINE

On Tuesday, the House Health and Human Services Committee held a hearing on House Bill 2146, authorizing the corporate practice of medicine. Blue Cross and Blue Shield of Kansas City, Cerner, and the Kansas Chamber were

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among the proponents pointing out the advantages of employer-operated employee health clinics, the cost savings, employee convenience, and less lost work time for doctors' visits. Legislators pointed out to the proponents that lease arrangements with physicians already existed without changing the law. Health provider associations pointed out that the bill did not limit the practice of medicine to just employers and insurance companies but rather HB 2146, as drafted, is so broad as to permit any entity to provide healthcare with very little oversight. Providers noted concerns about the potential to control professional judgment of doctors. Legislators asked questions about maintaining confidentiality of patient records, meeting HIPAA requirements, and liability. It was also pointed out that the bill allows unregulated corporations to get a certificate from the Healing Arts Board with no oversight, clinical standards, or credentialing otherwise required for hospitals and other healthcare providers. The long-term impact on the healthcare stabilization fund is unknown although the proponents offered to pay into the fund. The Kansas Medical Society urged delaying the issue for an interim study to have an in-depth discussion of the ramifications of the bill.

Senate Bill 120 (the Senate version of HB 2146) was referred to the Senate Public Health and Welfare Committee this week. No hearing date has been set in the Senate committee to date.

KPERS DEBATE

On Tuesday, the House Appropriations Committee heard Senate 9 authorizing the transfer of \$115 million from the State General Fund to KPERS. On Wednesday, the House Financial Institutions and Pension Committee had a hearing on HB 2197, which is Governor Kelly's 30-year plan to amortize KPERS payments. The committee passed the bill without any recommendation.

After three days with no House floor debate this week, the House Republican leadership, in a surprise move on Wednesday afternoon, scheduled a House floor debate on HB 2197 for Thursday morning. After the floor debate on the Governor's KPERS plan, the House killed HB 2197, handing Governor Kelly her first policy setback.

HOUSE RURAL REVITALIZATION COMMITTEE

This week the House Rural Revitalization Committee held hearings on access to rural healthcare. Dr. Robert Moser updated the committee on the Kansas Clinical Improvement Collaborative addressing heart and stroke care in rural areas. He pointed out Kansas has higher mortality rates in rural Kansas for those needing heart and stroke care. They have implemented evidence-based guidelines into everyday protocols and are seeing positive results. The collaborative now works with rural independent health systems in 50 counties. Dr. Moser was asked about programs and efforts to recruit family practice physicians to rural areas. When asked about Medicaid expansion, he pointed out every dollar in rural hospitals goes further than anyone would realize. It might allow a hospital to hire a mid-level provider or fund staffing for a weekend off each month for a physician.

Kansas Academy of Family Physicians President Dr. Jeremy Presley practices in Dodge City with the same five physicians who were there when he joined the practice nine years ago. They have been recruiting for a new physician unsuccessfully every year. He pointed out that 80 percent of the medical staff in his area are at retirement age. Family physicians need a hospital to provide vital services to serve their patients, and Medicaid expansion would help keep those services available. When asked about the importance of broadband, he stated that it was critical to recruiting physicians and access to electronic medical records. Slow imaging results make patient care difficult. Arguably, a patient's zip code affects life expectancy more than genetics.

BILL INTRODUCTIONS

INSURANCE

HB 2210 – Proposed to define underinsured motorist to include such that have coverage limits equal to the limits of liability provided by such uninsured motorist coverage. Adding language that in no event shall the amount of

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underinsured motorist coverage be reduced because of any liability limit or payment by the operator of another vehicle. Referred to the House Committee on Insurance, Rep. Jene Vickrey, Chair.

SB 67 – Would require life insurers to perform a comparison of its in-force life insurance and annuity policies, contracts, and retained asset accounts against a master file, on at least a semi-annual basis, and identify policy holders who may have died. If a match is found, the bill would direct how the insurer is to locate beneficiaries, and when beneficiaries cannot be located, when to escheat proceeds of such policies to the State Treasurer. Frequent failures by an insurer to comply with the provisions of the bill could be considered an unfair or deceptive act under the Kansas Unfair Trade Practices law. However, the bill reemphasizes that there is not *private* cause of action under the Kansas Insurance Code. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Robert Olsen, Chair.

BANKING

HB 2254 – Proposes requiring banks to make a minimum amount of subprime loans. A subprime loan would mean a loan made to a borrower who has either a nonexistent credit score or a credit score of less than 620. Requiring banks to provide subprime loans to borrowers in a total amount of at least 5% of such bank's capital. Referred to House Committee on Financial Institutions and Pensions, Rep. Jim Kelly, Chair.

TAXATION

HB 2261 – Proposes reducing the Kansas sales tax on food and food ingredients. The bill would define food to include bottled water but not alcoholic beverages, candy, dietary supplements, food sold through vending machines, or soft drinks. Referred to by the Committee on Taxation, Rep. Steven Johnson, Chair.

SB 174 – Would modify Kansas individual adjusted gross income to remove amounts received from Social Security, even though such benefits are included in taxable income for federal purposes. Apparently, this tax adjustment would be available to all Kansas filers for taxable years after 2018. Referred to the Senate Committee on Federal and State Tax Affairs, Sen. Bud Estes, Chair. A similar bill, **SB 179**, limiting the availability to post-2018 jointly filing taxpayers with federal AGI of \$150,000 or less. SB 179 has been referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

HB 2118 – Would create new income tax credit for graduates of aerospace and aviation-related educational programs and their employers beginning in tax year 2020 through tax year 2024. The bill allows a qualified employer whose principal business activity is in the aviation sector to receive a non-refundable 50% income tax credit for tuition paid. The bill contains significant detail concerning eligibility and mechanics. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair.

LAWS, COURTS, AND REGULATIONS

HB 2291 – Proposes to increase the damages cap an heir may recover from \$250,000 to \$500,000 in wrongful death actions. Additionally, beginning on July 1, 2020, and recurring July 1 each following year, the damages cap (\$500,000) shall be increased by an amount equal to the percentage increase in the consumer price index for all urban consumers as published by the United States Department of Labor for the preceding fiscal year. Referred to the Committee on Judiciary, Rep. Fred Patton, Chair.

SB 177 – Relates to appeals of decisions by the Board of Tax Appeals (BOTA). The bill would eliminate appeals to and *de novo* review by the district court. The appeals of BOTA decisions to the district court was enacted in 2014 and modified in 2016, giving taxpayers essentially a "do-over" of the BOTA proceedings. As modified, BOTA decisions would be appealed directly to the Court of Appeals under the procedures and standard of review, as it essentially existed prior to 2014. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

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HB 2280 – Would amend the Kansas Lottery Act to clearly delineate how net electronic gaming income from racetrack gaming facilities will be allocated. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair.

SB 168 – Proposes to enact competency and financial responsibility on the home inspectors operating in Kansas. Home inspection means a limited visual examination of a residential dwelling designed to identify defects at the time of the inspection of three or more home systems (e.g., heating and cooling). Referred to the Senate Committee on Commerce, Sen. Julia Lynn, Chair.

HB 2244 – Permits the use of cannabidiol with 5% THC to treat debilitating medical conditions. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2237 – Allows cities, counties, and school districts to select a website as the official publication source of that entity subject to certain provisions regarding the availability of the website. Referred to the House Committee on Local Government, Rep. Kent Thompson, Chair.

HEALTHCARE

HB 2307 – Would provide that no contract issued or renewed after July 1, 2019, between an insurer and a dentist may change the terms, discounts or rates provided therein without the agreement of the dentist. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

SB 120 – Would remove the current statutory prohibition on the corporate practice of medicine. This bill would permit the Kansas Board of Healing Arts to issue a certificate of authorization permitting a business entity to practice medicine and require the business entity to apply for certification biennially. SB 120 is largely the same as HB 2721 from the 2018 session of the Kansas Legislature, which ultimately did not pass. Referred to the Senate Committee on Public Health and Welfare, Rep. Gene Suellentrop, Chair.

SB 144 and HB 2198 – Would permit a healthcare provider to prescribe medication to a patient's sexual partner without examination if the patient has been diagnosed with a sexually transmitted disease. Healthcare providers and pharmacists who prescribe or dispense in good-faith compliance with the legislation would be exempt from disciplinary action and liability. SB 144, Referred to the Senate Committee on Public Health and Welfare, Rep. Gene Suellentrop, Chair. HB 2198, Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2041 – Proposes amending the Kansas Unfair Trade Practices Act. This bill would prohibit refusing to insure, refusing to continue to insure, placing limits on individuals, or charging different rates for the same coverage solely because an individual is a living organ donor. It would also require all living organ donors to be subject to the same actuarial principles as people who are not living organ donors. Referred to the House Committee on Insurance, Rep. Jene Vickrey, Chair.

HB 2295 – Establishes the Anesthesiologist Assistant Licensure Act. Under the Act, the Board of Healing Arts would establish requirements for the licensure for an anesthesiologist assistant. Such requirements would include the supervision of the anesthesiologist assistant by an anesthesiologist. Provides for the creation of an anesthesiologist assistant council which would advise the Board of Healing Arts in carrying out the provisions of the act. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

SB 153 – Amends K.S.A. 65-171v relating to water or soil pollutants and establishes provisions for the Kansas Department of Health and Environment response operations for water and soil pollutant release, discharge, or escape. Referred to the Senate Committee on Agriculture and Natural Resources, Sen. Dan Kerschen, Chair.

TRANSPORTATION

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SB 39 – Proposes extensive amendments to the Vehicle Dealers and Manufacturers Licensing Act. The bill would require a manufacturer or distributor to specify in writing to each of its dealers operating in Kansas the dealer's obligations for preparation, delivery, and warranty services related to its products. The bill includes procedures if the manufacturer or distributor and the dealer cannot agree on the average dealer markup or labor rate. Referred to the Senate Committee on Transportation, Sen. Mike Peterson, Chair.

UTILITIES

HB 2081 – Creates the Kansas Electric Transmission Authority. The Kansas Electric Transmission Authority will be governed by a board of directors, which will consist of five members appointed by the government and four *ex officio* members, including the chairperson and ranking member of the Senate Standing Committee on Utilities, and the chairperson and ranking member of the House Standing Committee on Energy, Utilities and Telecommunications. The Kansas Electric Transmission Authority's purpose is to: (a) further ensure planning and reliable operation of the integrated electric transmission system; (b) diversify and expand the Kansas economy; and (c) facilitate the delivery and utilization of Kansas energy through improvements in the State's electric transmission infrastructure and related policy initiatives. The Kansas Electric Transmission Authority will not be subject to the supervision or regulation of the KCC, except that it will be subject to the KCC with regards to wire stringing and transmission-line sighting pursuant to state law. Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Joe Seiwert, Chair.

HB 2273 – Establishes the Wind Generation Permit Property Protection Act, which regulates the manner in which certain wind generation facilities are constructed on property and authorizes the boards of county commission to regulate and approve the construction of wind generation facilities. This Act allows the county board to apply the standards set forth in the Act in addition to any other reasonable requirements imposed by the county board without respect to whether central requirements are required by the zoning regulations of the county. The Act requires that the county board hold a public hearing no sooner than 20 days and no later than 90 days after the application has been filed. Referred to the House Committee on Energy, Utilities, and Telecommunications; Rep. Joe Seiwert, Chair. Hearing on Feb. 19, 2019.

HB 2231 – Requires the Legislative Coordinating Council to authorize a study of retail rates of Kansas electric public utilities, including the electric public utilities as defined by K.S.A. 66-101a, electric cooperative public utilities exempt from KCC jurisdiction, and the 10 largest municipalities operating electric utilities by customer count. The study is to be completed by Dec. 31, 2019. The study shall address: (a) extent and impact of electric made changes in Kansas; (b) the effectiveness of current Kansas rate-making practices; (c) options available to the KCC and the Kansas legislature to begin reducing Kansas retail electric prices; and (d) other consequential energy issues materially affecting Kansas electricity rates. In addition to requiring a study, the Act amends K.S.A. 66-101b to require the KCC when determining just and reasonable rates to evaluate the competitiveness of any proposed electric rate with those of comparable public utilities in surrounding states. Finally, the bill requires that the KCC report to the Legislature on or before Feb. 1 of each year an assessment of the reasonable competitiveness of electrical and natural gas rates with such assessment to compare the rates of Kansas with Missouri, Nebraska, Oklahoma, Colorado, Arkansas, Iowa, Texas, and any other additional regional state that the Commission deems appropriate. Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Joe Seiwert, Chair.

SB 69 – [*companion bill to HB 2273*] Establishes the Wind Generation Permit Property Protection Act, which regulates the manner in which certain wind generation facilities are constructed on property and authorizes the boards of county commission to regulate and approve the construction of wind generation facilities. This Act allows the county board to apply the standards set forth in the Act in addition to any other reasonable requirements imposed by the county board without respect to whether central requirements are required by the zoning regulations of the county. The Act requires that the county board hold a public hearing no sooner than 20 days and

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no later than 90 days after the application has been filed. Referred to Senate Committee on Utilities, Sen. Ty Masterson, Chair. Hearings Feb. 19, 2019 [opponents] and Feb. 20, 2019 [proponents].

SB 145 – Requires the KCC to investigate rates, joint rates, tolls, charges and exactions, classifications, and schedules of rates of a board of public utilities established under 13-1220 if a petition is filed with the KCC of not less than 5% of all of the board's customers or not less than 3% of the board's customers from any one rate class. If, after investigation, the KCC finds that the rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, the KCC will have the power to fix the rates. The Act also amends the definition of Public Utility under K.S.A. 66-104. Referred to Senate Committee on Utilities; Sen. Ty Masterson, Chair; Hearing Feb. 18, 2019.

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

- Government Affairs & Public Policy Law