

# FOULSTON

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NEWSLETTERS



## KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | FEBRUARY 17, 2023

### WEEK SIX – TURNAROUND DEADLINES

Friday morning, committees continued working on bills before the turnaround day next week. Both the House Appropriations and Senate Ways and Means Committees continued grinding through various agency budgets. Week six saw non-exempt committees finishing hearings and taking final action on bills ahead of next Tuesday's deadline to complete their work. This week's House bill introductions included Medicaid expansion and medical marijuana. There continues to be a steady stream of tax cut proposals. Among the latest is HB 2419, establishing a \$500 tax credit for expenses incurred for the care of cats and dogs for up to three animals.

This week, both chambers went on General Orders debating less controversial measures. The House quickly approved a bill banning TikTok from state-owned devices and networks. The exception was the two-hour debate on the Senate floor over gun safety education programs. SB 116 would create firearm safety education programs conducted in public school districts. The bill would allow local school boards to provide firearm safety education programs. The State Board of Education would be directed to establish curriculum guidelines for a standardized firearm safety education program, which would be required to include accident prevention. The bill specifically directs the State Board to use the National Rifle Association's gun safety program called "Eddie Eagle." Opponents claimed the NRA was growing a new crop of gun buyers. The bill applies to school districts choosing to offer such courses for their students. The bill passed 30-8.

### BUSY WEEK FOR TAX COMMITTEES

Monday, the Senate Tax Committee concluded three days of hearings on SB 128, allowing a refundable income tax credit for students enrolled in kindergarten or grades 1 through 12 in an accredited nonpublic school or a non-accredited private or elementary school registered with the Department of Education. The tax credit would be equal to the amount of the Base Aid for Student Excellence (BASE) in the school finance formula in effect on Jan. 1 of the tax year for each dependent child.

Tuesday, the House Tax Committee heard testimony on implementing a 5% flat tax in Kansas. The Kansas Chamber argued a flat tax would make Kansas more competitive and encourage population growth. Opponents argued it is unfair and benefits the wealthy. The annual estimated loss of state revenue is \$1.5 billion annually.

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Wednesday, the House Tax Committee approved a bill extending \$10 million in tax credits for donations to pregnancy crisis centers discouraging abortion. The bill provides a 70% tax credit for donations. The committee vote was 12-8. The Senate Assessment and Taxation Committee approved SB 96 with the Senate version on Thursday.

Thursday, the House Tax Committee approved increasing the threshold for taxable Social Security benefits from \$75,000 to \$125,000 for 2023, \$175,000 in 2024, and \$275,000 for 2025. Changing the Social Security threshold will cost about \$50 million in the next fiscal year and lost state revenue would increase to \$124 million by year four. The committee vote was 12-8.

## COMMITTEES

Monday, the House Legislative Modernization Committee approved HB 2314, banning TikTok on state-owned devices and networks. The legislation codifies Gov. Laura Kelly's Executive Order banning TikTok. The bill would define "social media platform of concern" to mean an application or website that is owned or controlled by TikTok or any of its subsidiaries or successor companies or companies directly or indirectly controlled by TikTok. The prohibition would not apply to state agency employees accessing social media platforms of concern for law enforcement activities or cybersecurity investigations. Thursday, the bill passed the House 109-12.

Tuesday, the House Judiciary Committee amended and approved HB 2033 to include all healthcare clinics with the protections for healthcare workers.

Tuesday, the Senate Public Health and Welfare Committee heard testimony on SB 233, concerning gender identity medical care. SB 233 would create a civil cause of action against a physician who performs childhood gender reassignment service and would provide for licensure revocation. The hearing generated considerable testimony. Wednesday, the Committee heard SB 5, related to the Kansas Telemedicine Act. The Act proposes, among other things, to prohibit prescriptions via telemedicine which are intended to induce an abortion. The Senate Public Health and Welfare Committee also heard SB 6, concerning infectious or contagious diseases. SB 6, if it becomes law, would repeal the authority of the Kansas Secretary of Health and Environment to order individuals to isolate or quarantine and subject violators to associated penalties. The bill eliminates the requirements for schools and individual persons to report certain contagious diseases.

Thursday, the House Federal and State Affairs Committee voted 19-3 to advance HB 2269, increasing the age to use tobacco products to 21.

The House Elections Committee had a heated hearing on HB 2391, limiting the powers of the Governmental Ethics Commission and allowing limitless campaign contributions. Political action committees would no longer need to register. The Governmental Ethics Commission Executive Director, Mark Skoglund, strongly objected to the bill and stated it was designed to undermine ongoing investigations.

Thursday, the House Water Committee amended and passed HB 2279, designed to push Groundwater Management Districts in western Kansas to address water conservation in the disappearing Ogallala Aquifer. HB 2302, funding water projects, was also approved by the committee.

## NEXT WEEK'S SCHEDULE

- **Feb. 21** – Last day for morning and afternoon committees to meet
- **Feb. 22, 23** – On the floor all day
- **Feb. 24** – Turnaround Day: Last day for consideration of bills by non-exempt committees in the house of origin
- **Feb. 25-28** – No session

## BILL INTRODUCTIONS AND NOTABLE DEVELOPMENTS

### COURTS, LAWS, AND REGULATIONS

**HB 2023** – As amended by the House Committee on Judiciary, Rep. Fred Patton, Chair, would create the crime of interference with the conduct of a healthcare facility, which, among other matters, includes knowingly impeding an employee of a healthcare facility from the performance of such employee's duties.

**Sub for HB 2077** – As recommended by the House Committee on Appropriations, Rep. Troy Waymaster, Chair, would add requirements for reporting significant cybersecurity incidents by entities maintaining personal information provided by the State or using information systems operated by the State. Additionally, the bill would authorize the Executive Branch Chief Information Security Officer (CISO) to establish branch cybersecurity standards and policy and make changes to the responsibilities of state agencies and agency heads related to cybersecurity training, assessment, and incident response.

**HB 2127** – As recommended by the House Committee on Judiciary, Rep. Fred Patton, Chair, would amend the Kansas Probate Code's provisions concerning notice of probate hearings and sales of probate real estate.

**HB 2144** – As recommended by the House Committee on Judiciary, Rep. Fred Patton, Chair, would amend law in the Kansas Uniform Trust Code, Kansas Probate Code, and Kansas Income Tax Act with respect to the statutory rule against perpetuities.

**HB 2172** – As recommended by the House Committee on Judiciary, Rep. Fred Patton, Chair, would enact the Uniform Trust Decanting Act (UTDA), and define "decanting power" to mean the power of an authorized fiduciary under the UTDA to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

**HB 2218** – As recommended by the House Committee on K-12 Education Budget, Rep. Kristey Williams, Chair, would create the Sunflower Education Equity Act by providing for education savings accounts for students, establishing the Sunflower Education Equity Board, and establishing the Sunflower Education Equity Scholarship Fund. The bill would amend law to state that program participants would meet the compulsory attendance requirements.

**HB 2261** – As recommended by the House Committee on K-12 Education Budget, Rep. Kristey Williams, Chair, would amend K.S.A. 72-1137 to authorize school districts to compensate members of local boards of education for the work and duties performed by such members.

**HB 2275** – As recommended by the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair, would make several changes to a tax credit available for certain purchases from qualifying vendors employing individuals with disabilities.

**HB 2291** – As amended by the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair, would permit food establishments to allow dogs in outside areas on the premises if certain conditions are met and would provide a specific exception from the Kansas Food Code for microbreweries to allow dogs in inside areas upon meeting an additional condition.

**HB 2305** – As amended by the House Committee on General Government Budget, Rep. Kyle Hoffman, Chair, would make multiple changes to the statutes relating to barbering licensure.

**HB 2394** – Would require the Secretary for Children and Families to develop a low-income energy assistance program and the Secretary for Aging and Disability Services to develop a program for unhoused individuals to find and secure affordable housing; determining eligibility for such programs. Referred to the House Committee on Welfare Reform, Rep. Francis Awerkamp, Chair.

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**HB 2395** – Would continue certain exceptions to the disclosure of certain governmental materials under the Kansas Open Records Act. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

**HB 2399** – Would provide protections for freelance workers including payment within 30 days unless otherwise contractually specified and require written contracts and prohibit retaliation against freelance workers who seek payment. Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair.

**HB 2400** – Would enact the Kansas Adult Learner Grant and establish a grant program for adult learners to pursue certain fields of study, including technology and healthcare. Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair.

**HB 2401** – Would amend the Kansas Employment Security Law and among other things, require electronic filing of wage reports, contribution returns, and payments and interest assessments for employers with 25 or more employees. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair.

**HB 2402** – Would prohibit new self-storage facilities located within 1,000 feet of a childcare facility or school. Referred to the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair.

**HB 2405** – Would establish the Kansas Legal Tender Act, reaffirming gold and silver coin as legal tender and provide an income taxation subtraction modification for gains from the sale of specie. Referred to the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair.

**HB 2408** – Would exempt adult care homes from statutes governing barbering and cosmetology facilities. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

**HB 2413** – Would require safe storage of firearms and establish serious criminal penalties for violations. Referred to the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair.

**HB 2417** – Would create the Medical Cannabis Regulation Act and provide for licensure and regulation of the cultivation, processing and distribution, sale, and use of medical cannabis. Referred to the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair.

**HB 2418** – Would abolish certain quasi-governmental committees. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

**HCR 5005** – As recommended by the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair, if adopted by a two-thirds majority of each chamber of the Kansas Legislature, serves as Kansas' application to Congress, under the provisions of Article V of the U.S. Constitution, for the purpose of calling a convention of the states. The convention would be limited to propose an amendment to the U.S. Constitution that would impose term limits on members of Congress.

**SB 50** – As amended by the Senate Committee on Federal and State Affairs, Sen. Mike Thompson, Chair, would create a crime concerning instances of social media websites entering contracts with Kansas residents through terms of service that allow the website to censor certain speech.

**SB 194** – Would remove the requirement that hospital district members be qualified electors. Referred to the Senate Committee on Local Government, Sen. Carolyn McGinn, Chair.

**SB 245** – Would enact the Commercial Financing Disclosure Act requiring the disclosure of certain commercial financing product transaction information and registration of commercial finance brokers with the state bank commissioner. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair.

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**SB 251** – Would regulate samples of alcoholic beverage provided by spirits distributors, wine distributors, and cereal malt beverage distributors. Referred to the Senate Committee on Federal and State Affairs, Sen. Mike Thompson, Chair.

**SB 258** – Would create the Act Against Abusive Access Litigation. The Act would establish a civil cause of action for determining whether litigation alleging any access violation under the Americans With Disabilities Act or similar law constitutes abusive litigation and authorizing penalties for such abusive litigation. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

## HEALTHCARE AND INSURANCE

**SB 18** – As recommended by the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair, would add “and any other legal entity under the jurisdiction of the commissioner” to the definition of “person” in statute pertaining to insurance laws and enforcement. The change would allow for entities that are currently under the jurisdiction of the Commissioner of Insurance to be more accurately described in statute. The Senate Committee of the Whole passed the bill on emergency final action; Yea: 38, Nay: 0. Referred to the House Committee on Insurance, Rep. William Sutton, Chair.

**SB 34** – As recommended by the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair, would expand the Kansas Rural Housing Incentive District Act to allow for certain housing projects in cities with a population of 60,000 or more. Cities establishing a Rural Housing Incentive District (RHID) would be limited on designations during one-year periods within the district.

**SB 37** – As amended by the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair, would amend the Kansas Housing Investor Tax Credit Act to expand the transferability of tax credits issued under the Act. Under the Act, for the tax years 2022 and thereafter, a tax credit could be claimed against Kansas income tax liability, the privilege tax liability imposed upon certain financial institutions, and the premium tax liability imposed upon insurance companies. The tax credit could be claimed by qualified investors and project builders or developers of a qualified housing project.

**SB 44** – As amended by the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair, would enact the Kansas Financial Institutions Information Security Act to provide the Kansas State Bank Commissioner (OSBC) with more regulatory and enforcement heft. SB 44 would designate covered entities (e.g., financial institutions engaging in money transmission), define terms, outline requirements for covered entities, and provide for responsibilities of the OSBC. The Senate Committee of the Whole passed the bill, as amended, on emergency final action; Yea: 33, Nay: 5.

**SB 85** – As recommended by the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair, would enact the Kansas Travel Insurance Act as part of the Kansas Insurance Act. The bill would address the licensure and registration of limited-lines travel insurance producers and travel retailers, establish a premium tax for travel insurers, regulate the sale and marketing of travel insurance and travel protection plans, provide for travel administrators, and establish standards for travel insurance policies.

**SB 233** – Would create a civil cause of action against a physician who performs childhood gender reassignment services and require revocation of a physician’s license if such physician performs childhood gender reassignment service. Referred to the Senate Committee on Public Health and Welfare, Sen. Beverly Gossage, Chair.

**SB 234** – Would require consent for an individual’s information to be added to or transmitted by a closed-loop referral system. Referred to the Senate Committee on Public Health and Welfare, Sen. Beverly Gossage, Chair.

**SB 235** – Would grant third-party access to provider network contracts if certain criteria are met and establish requirements and restrictions for the payment and reimbursement of healthcare services. Referred to the Senate

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Committee on Public Health and Welfare, Sen. Beverly Gossage, Chair.

**SB 236** – Would prohibit disparate treatment of pharmacies based upon participation in the federal 340B program and require drug manufacturers to provide 340B pricing to pharmacies that enter into contractual agreements covered under the 340B program and prohibit pharmacy benefits managers from denying patients the use of other pharmacy and healthcare provider chosen by such patients. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair.

**SB 246** – Would define in-state and interstate practitioners under the Kansas Telemedicine Act and require certain insurance coverage of in-state telemedicine services, plus provide for certain standards of care. Referred to the Senate Committee on Public Health and Welfare, Sen. Beverly Gossage, Chair.

**HB 2090** – As recommended by the House Committee on Insurance, Rep. William Sutton, Chair, would amend provisions in the Uniform Insurance Agents Licensure Act and the Public Adjusters Licensing Act to allow the Commissioner of Insurance to set fees in an amount lower than the maximum amount of the fees established in law. Would also amend fingerprinting criteria for resident agents.

**HB 2097** – As recommended by the House Committee on Insurance, Rep. William Sutton, Chair, would remove the requirement of a documented written demand from an insurance company for unpaid premiums by an agent or broker.

**HB 2094** – As recommended by the House Committee on Insurance, Rep. William Sutton, Chair, would amend law relating to the financial documentation demonstrating fiscal soundness that must be submitted by a health maintenance organization (HMO) or a Medicare provider organization (MPO) when applying for a certificate of authority to provide health care in the state.

**HB 2098** – As recommended by the House Committee on Insurance, Rep. William Sutton, Chair, would add “and any other legal entity under the jurisdiction of the commissioner” to the definition of “person” in statute pertaining to insurance laws and enforcement.

**HB 2259** – As amended by the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair, would amend the Medicaid Drug Utilization Review Program regarding the requirement to have prior authorization for mental health medications. The bill would remove the requirement for the Medicaid Drug Utilization Review Board to review and approve any proposed policy, rule, or regulation regarding medications used to treat mental illness as submitted to the electronic pharmacy claims management system. The bill would remove the prior authorization requirement for authorized prescribers of mental health medications for Medicaid recipients. The bill would also eliminate the Mental Health Medication Advisory Committee in its entirety.

**HB 2264** – As amended by the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair, would establish the No Patient Left Alone Act. The Act would establish who may visit a patient in a patient care facility and would require patient care facilities to provide for in-person visitation. The bill would provide parameters for patient care facilities as to what restrictions may be asked of visitors when visiting a patient.

**HB 2288** – As amended by the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair, would establish the Counseling Compact to facilitate interstate practice of licensed professional counselors. The bill would also amend law to add a licensure fee relating to the privilege to practice under the Compact.

**HB 2415** – Would establish the KanCare Bridge to a Healthy Kansas program relating to medical assistance. The income limits for eligibility would be expanded to 138% of the federal poverty level. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

## AGRICULTURE

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**HB 2047** – As amended by the House Committee on Agriculture and Natural Resources, Rep. Ken Rahjes, Chair, would authorize certain rules and regulations to be adopted by the Secretary of Health and Environment and would increase the amount of time a municipality would have to repay a loan from the Kansas Water Pollution Control Revolving Fund.

**HB 2084** – As amended by the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair, would enact the Kratom Consumer Protection Act (KCPA), which would permit the Secretary of Agriculture to implement a fine on processors and retailers that sell, prepare, manufacture, distribute, or advertise kratom products that are adulterated with dangerous non-kratom substances.

**HB 2397** – Would prohibit conveyance of title to certain real property to foreign adversaries of the United States as determined under federal regulation and establish criminal penalties. Referred to the House Committee on Agriculture and Natural Resources, Rep. Ken Rahjes, Chair.

## Taxation

**HB 2106** – As recommended by the House Committee on Taxation, Rep. Adam Smith, Chair, would create a sales tax exemption for the purchase of equipment, machinery, or other infrastructure purchased for use in the provision of internet access service, telecommunications service, or video service and for the purchase of repair, maintenance, and installation services purchased by providers in the provision of such internet access service, telecommunications service, or video service.

**HB 2135** – As recommended by the House Committee on Taxation, Rep. Adam Smith, Chair, would create the Pregnancy Resource Act.

**HB 2410** – Would increase taxable income amounts by a cost-of-living adjustment in determining Kansas income tax. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

**HB 2411** – Would decrease the penalties for failing to timely remit withholding on income tax. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

**HB 2419** – Would establish a tax credit for expenses incurred for the care of cats and dogs. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

**HB 2420** – Would establish withholding requirements for certain employees who work in multiple states. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

**HB 2424** – Would establish a refundable income tax credit for direct payments made by employers to student loans on behalf of a qualified employee. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

**HB 2425** – Would establish a refundable income tax credit for tuition payments made to postsecondary educational institutions. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

**SB 41** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would create a sales and use tax remittance credit for retailers in an amount equal to 1.5 percent of the amount of sales and use tax being remitted by the retailer, with a monthly cap of \$300 per retailer.

**SB 54** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would expand, beginning July 1, 2024, the state sales and use tax rate of zero percent currently applied to residential and agricultural sales of gas, electricity, heat, propane gas, liquified petroleum gas, coal, wood, and other fuel sources for the production of heat or lighting to all such sales.

**SB 81** – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would enact subtraction modifications in determining Kansas adjusted gross income equal to 25.0 percent of the amount of federal disallowance related to the Work Opportunity Tax Credit and similar credits under section 280C

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of the federal Internal Revenue Code and, effective for tax year 2020 and all years thereafter, 25.0 percent of the amount of federal disallowance related to the Employee Retention Tax Credit.

**SB 248** – Would provide a sales tax exemption for sales of healthy food and repeal the state rate of reduction for sales of certain food and food ingredients. Referred to Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

**SB 252** – Would provide a property tax exemption for certain business property operated in competition with property owned and operated by a government entity and provide a sales tax exemption for certain businesses competing against governmental entities. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

**SB 253** – Would authorize the delivery of alcoholic liquor and cereal malt beverage by licensed retailers, licensed clubs, drinking establishments and restaurants, and third-party delivery services to patrons. Referred to the Senate Committee on Federal and State Affairs, Sen. Mike Thompson, Chair.

**SB 263** – Would require county appraiser directives be established by rules and regulations. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

**SB 264** – Would increase the tax credit amount for household and dependent care expenses. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

## UTILITIES

**HB 2226** – As recommended by the House Committee on Energy, Utilities, and Telecommunications, Rep. Leo Delperdang, Chair, would amend the Kansas Underground Utility Damage Prevention Act regarding excavation notification and white lining.

**SB 68** – As amended by the Senate Committee on Utilities, Sen. Robert Olson, Chair, would establish right of first refusal for incumbent electric transmission owners.

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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 Siefkin's Governmental Affairs & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or [jrankin@foulston.com](mailto:jrankin@foulston.com). Learn more about the authors below:

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## **PRACTICE AREAS**

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