



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | FEBRUARY 5, 2021

February 5, 2021

OVERVIEW

This week, Gov. Laura Kelly announced a new method of funding her Medicaid expansion proposal, recommending that legalization of medical marijuana would provide the funding. Republican leaders have consistently expressed concerns regarding Medicaid expansion. Also, this week, Gov. Kelly announced the “Find My Vaccine” portal as a resource to help Kansans locate vaccination sites. Thursday was the last day for interested legislators to receive the COVID-19 vaccine. Administration of the vaccine to most legislators and staff is intended to lessen any potential pandemic disruptions to this Legislative session.

While legislative committees began hearing state agency budgets this week, the Kansas Department of Revenue announced that the January Kansas revenue receipts were 12.8%, or \$90.2 million, higher than the revised revenue estimates. Interestingly, January revenue collections are \$70.4 million, or 9.7%, more than last January before the pandemic began.

On Wednesday, the House Judiciary Committee held a hearing on legislation for nursing home liability protections from COVID lawsuits. Last session, at the start of the pandemic, healthcare facilities were exempted from liability if patients contracted COVID, but nursing homes were excluded from the protection. Advocates for the expansion of liability protection to nursing homes included the Kansas Hospital Association (aside from nursing home operators themselves). Apparently, 25% of Kansas hospitals have nursing home affiliates. The opposition was led by the Kansas Bar Association, AARP-Kansas, the Kansas Trial Lawyers Association, and nursing-home patient advocates.

DEPARTMENT OF LABOR UPDATE

Issues arising at the Kansas Department of Labor (KDOL) continue to generate legislative discussion regarding modernization of the KDOL computer system, unemployment claim delays, employer exposure for fraudulent unemployment claims, and slow KDOL responses to inquiries. The KDOL unemployment website was shut down Jan. 30 through Feb. 2 to install new identity-verification software. On Wednesday, the KDOL told the Senate Ways

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and Means Committee that since the updated unemployment identity system was activated on Tuesday morning, the agency had identified 540,000 fraudulent attempts to access the system in just 24 hours.

On Thursday, the House Commerce, Labor and Economic Development Committee discussed House Bill 2196, addressing modernizing unemployment insurance technology, protecting employers from fraudulent claims, and strengthening the state unemployment insurance trust fund.

FLOOR ACTION

On Monday, the Senate opened on General Orders to debate four measures. This included Senate Bill 15, addressing low-interest loans, expanding credit union membership, and eliminating the privilege tax on agricultural loans and residential loans in communities of fewer than 2,500. The other bills debated were insurance regulatory measures and the Kansas Storage Tank Act. All four bills passed 39 to 0. On Thursday, the Senate debated three measures and a Senate Resolution. These included Senate Bill 38, establishing the Kansas pesticide waste disposal program and fund, Senate Bill 24, prohibiting regulatory requirements which might impede a customer's use of natural gas service and creating the Kansas Energy Choice Act, and Senate Resolution 1707, insisting Gov. Kelly provide the COVID vaccine to law-abiding Kansans ahead of incarcerated individuals. The non-binding resolution was a strong message to the Governor to rescind her policy on vaccinating healthy incarcerated prisoners before others needing vaccine. The measure passed 28-8.

On Wednesday, the House of Representatives debated and approved eight bills, four of which were criminal justice measures.

CONSENT CALENDAR

Because the pandemic shortened the 2020 legislative session, there has been increasing use of the consent calendar. Unresolved issues from last session which passed in either chamber in 2020 may be expedited through the consent process. The consent calendar is used for non-controversial bills with no committee amendments. Any legislator may object to a bill on the consent calendar, and the bill will be removed. If there is an objection, the bill will then be added to the debate calendar. If a bill remains on the consent calendar for two consecutive days without objection, it will advance to a final action vote.

BILL INTRODUCTIONS

COURT, LAWS, AND REGULATIONS

SB 107 – Would enact the Uniform Fiduciary Income and Principal Act (UFIPA). Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

SB 106 – Would institute the Revised Uniform Law on Notarial Acts and repeal and replace the existing Uniform Law on Notarial Acts. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

SB 105 – Would prohibit the denial of an expungement petition due to the petitioner's inability to pay outstanding costs, fees, fines, or restitution. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

SB 103 – Would amend the Kansas power of attorney law with respect to the power's form and the duties of third parties relying on such powers. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

SB 122 – Would amend the Kansas rules of evidence to provide proof methodologies available to a litigant attempting to authenticate records and documents. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair. A hearing has been scheduled for this matter on Feb. 9, 2021.

HB 2079 – As amended by the House Committee on Judiciary, would transfer certain duties from the Secretary of State to the Attorney General. The bill would amend the Charitable Organizations and Solicitations Act to transfer

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responsibilities related to registration under the Act from the Secretary of State to the Attorney General. Preonements, argued, among other factors, that the existing “safe at home” program would be a better fit with the Attorney General. The bill passed as amended on emergency final action as amended; Yea: 70, Nay: 54.

HB 2082 – As amended by the House Committee on Judiciary, would amend law related to the Crime Victims Compensation Board compensation award process. Among other changes, the bill would amend the definition of “victim” for purposes of the Board compensation award process to include persons suffering personal injury or death as a result of witnessing a violent crime at 16 years of age or younger. The bill would also broaden expectations providing an extended deadline for compensation for mental health counseling to be awarded. The bill passed as amended on emergency final action as amended; Yea: 125, Nay: 0.

HB 2056 – Would amend the Kansas Food, Drug, and Cosmetic Act by adding provisions concerning the regulation of kratom. Kratom is derived from a tropical evergreen tree and is used in herbal medicine. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair. The Committee has recommended the bill be passed.

HB 2199 – Would amend the Kansas Expanded Lottery Act to authorize sports wagering. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

SB 125 – Would authorize mail-in ballot elections for propositions to amend the Kansas Constitution. Referred to the Senate Committee on Federal and State Affairs, Sen. Larry Alley, Chair.

HB 2112 – Would significantly revise the Self-Service Storage Act as it pertains to liability claims and the contents of storage agreements. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair. The Committee has recommended the bill be passed.

HB 2212 – Would eliminate residency requirements for several types of liquor licenses. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

HB 2162 - Would amend existing law concerning data used in adopting senatorial and representative district boundaries and would also repeal law related to the data used in adopting senatorial and representative district boundaries; would repeal a prohibition against certain government-related organizations, such as banks and railroads from making political contributions; and would repeal certain statutes related to presidential preference primaries. Certain provisions of this bill are identical to 2020 SB 256, as amended by the Senate Committee on Ethics, Elections, and Local Government. Referred to the House Committee on Elections, Rep. Blake Carpenter, Chair. The Committee has recommended the bill for passage.

HB 2183 – Would amend existing law to prohibit the Governor from having any authority to alter election laws or procedures by issuance of an Executive Order; confirming that neither the executive branch nor judicial branch will have any authority to alter election law; and prohibiting the Secretary of State from entering into a consent decree or other agreement with any state or federal court regarding the enforcement of any election law without the approval of the Legislative Coordinating Council. Referred to the House Committee on Elections, Rep. Blake Carpenter, Chair.

HB 2205 – Would amend existing law concerning how boards or entities may give legal notices and allows for such notice obligations to be fulfilled by publication on a website that meets certain qualifications delineated in the new statutory provision. The bill further provides that cities of the second and third class may designate that the official city publication source to be a website that meets certain qualifications delineated in the bill. Referred to the House Committee on Local Government, Rep. Kent Thompson, Chair.

SB 88 – Would amend existing law, among other changes, to allow any landowner aggrieved by a decision of a City’s governing body which relates to the vacation or exclusion of territory or easement to challenge the decision in

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district court within 30 days following the publication of the vacation ordinance. The bill would also amend the law related where notice must be posted and clarify additional notice requirements. Referred to the Senate Committee on Local Government, Sen. Carolyn McGinn, Chair.

SB 90 – Would amend Kansas Rural Housing Incentive District Act to permit the use of bond proceeds for vertical renovations of certain building for residential purposes. Referred to the House Committee on Commerce, Sen. Robert Olson, Chair. See also HB 2180. A hearing has been scheduled for this matter on Feb. 10, 2021.

SB 94 – Would amend existing law to voting systems and procedures to require that all voting systems used for elections must use an individual, durable, voter-verified, paper ballot of the vote's vote which would be considered the official ballot and the true and correct record of votes cast. The bill would establish the requirements for how the ballot must be marked, corrected, preserved, counted, made available to the voter, and canvassed. The bill would require a sample hand-counted audit of the paper ballots to be conducted in each precinct at the polling place after polls are closed. Referred to the Senate Committee on Federal and State Affairs, Sen. Larry Alley, Chair.

SB 97 – Would amend certain existing laws concerning cemetery corporations to define the purpose and meaning of sepulture. Referred to the Senate Committee on Local Government, Sen. Carolyn McGinn, Chair. The Committee heard this bill on Feb. 2, and 4, 2021 and the hearing will continue to Tues., Feb. 9, 2021.

SB 99 – Would amend the Vehicle Dealers and Manufacturers Licensing Act to increase the bonding requirement for vehicle dealers. Referred to the Senate Committee on Transportation, Sen. Mike Peterson, Chair. A hearing for this matter has been scheduled on Feb. 11, 2021.

SB 101 – Would amend existing law concerning electric-assisted bicycles to regulate and approve the use hereof. Referred to the Senate Committee on Transportation, Sen. Mike Peterson, Chair.

TAXATION

SB 98 – Would, among other things, place the burden of proof on county appraisers in certain property valuation and classification district court appeals. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

HB 2171 – Would enable a taxpayer to transfer high-performance incentive fund tax credits. See also SB 91. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair.

HB 2187 – Would establish the First-Time Homebuyer Savings Account Act, creating a tax-advantaged arrangement for qualified taxpayers. Referred to the House Committee on Financial Institutions and Rural Developments, Rep. Jim Kelly, Chair. A hearing has been scheduled for this matter on Feb. 8, 2021.

HB 2186 – Would allow single sales factor appointment of business income for certain taxpayers. The qualifying taxpayers are basically manufacturers and those engaged in production or storage of electricity. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

SB 119 – Would make several revisions to the procedural rules applicable to actions before the Board of Tax Appeals. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

HB 2230 – Would impose sales tax on sales of digital property and subscription services. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HB 2225 – Would require collection and remittance of sales and use tax by marketplace facilitators and provide nexus for certain retailers. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HEALTHCARE

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HB 2179 – Would provide for the licensure of dental therapists. See also SB 129. Referred to the House Committee on Health and Human Services. Rep. Brenda Landwehr, Chair.

SB 128 – Would prohibit disparate treatment of certain pharmacies and pharmaceutical services providers (basically pharmacy benefit managers [PBMs]) participating in the federal 340B drug-pricing program. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair.

HB 2206 – Would update certain provisions of the Kansas Telemedicine Act to, among other changes, permit telemedicine providers to refer to specialists. Referred to the House Committee on Health and Human Services. Rep. Brenda Landwehr, Chair.

SB 137 – Would expand the military spouse and service members expedited licensure law and all applicant who establish Kansas residency. Also, among other changes, the bill will allow out-of-state healthcare providers to practice telemedicine in Kansas. Referred to the Senate Committee on Commerce, Sen. Robert Olson, Chair.

HB 2184 – Would enact the Kansas Medical Marijuana Regulation Act and would, among other changes, provide for the licensure and regulation of the manufacture, transportation, and sale of medical cannabis. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

HB 2207 – Would generally prohibit any practitioner licensed by the Board of Healing Arts from providing “conversion therapy” to a minor. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

SB 138 – Would provide for certification and funding for community behavioral health clinics. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair.

HB 2209 – Would enact the Psychology Interjurisdictional Compact and provide for interjurisdictional authorization to practice telepsychology and temporary in-person, face-to-face psychology. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair. A hearing has been scheduled on this matter for Feb. 11, 2021.

HB 2208 – Would, among other changes, reduce certain licensing requirements, require board approval to provide clinical social worker supervision, expand the board’s grounds for discipline, and expand the ability to issue temporary permits to practice. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

SB 92 – Would enact the Kansas Equal Access Act relating to medical cannabis and providing for licensure and regulation of the manufacture, transportation, and sale of medical cannabis. Referred to both the Senate Committee on Public Health and Welfare, Rep. Richard Hilderbrand, Chair and the Senate Committee on Federal and State Affairs, Sen. Larry Alley, Chair.

INSURANCE

SB 28 – As amended by the Senate Committee on Insurance, would codify the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Regulation into statute and amend the Kansas credit for reinsurance statute to add another condition under which a ceding insurer is permitted credit for reinsurance. The bill would amend the Insurance Holding Company Act by adding definitions for “group-wide supervisor” and “internationally active insurance group,” requiring the filing with the Commissioner of Insurance of a confidential notice of proposed preacquisition by the acquiring entity. Also, the bill would add amendments or modifications of insurance holding-group affiliate agreements as actions a holding group may not enter into without advance written notice to the Commissioner. The bill passed as amended on emergency final action as amended; Yea: 39, Nay: 0.

SB 114 – Would permit governmental entities and self-insurers to reject uninsured motorists and personal injury coverage. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair.

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SB 30 – As amended by the Senate Committee on Insurance, would amend the Kansas Uniform Securities Act and other provisions of law applying to state funds in order to fully effectuate the Kansas Securities Act Victims Restitution Program. This bill would provide restitution to certain victims of securities violations. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine. The Committee has recommended the bill be passed as amended.

HB 2211 – Would require law enforcement to impound vehicles if the individual cannot provide proof of insurance (basically prove financial security). Referred to the House Committee on Corrections and Juvenile Justice, Rep. J. Russell Jennings, Chair.

EDUCATION

SB 64 – As amended by the Senate Committee on Education, would amend the Kansas Private and Out-of-State Postsecondary Education Institution Act to clarify the State Board of Regents' authority over private and out-of-state institutions. The Committee recommended the bill be passed as amended.

HB 2182 - Would amend existing law, among other changes, to establish the Kansas Promise Scholarship, authorize the payment of tuition for students who are dually and concurrently enrolled in secondary and post-secondary school, and to require school districts to insure against injury or loss when students are engaged in work-based learning programs. Referred to the Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair.

BANKING AND FINANCE

SB 15 – As amended by the Senate Committee on Financial Institutions, would establish the Kansas Economic Recovery Loan Deposit Program. Also, the bill would amend laws governing linked deposit programs and related investment procedures and amend field-of-membership requirements placed on state-chartered credit unions' field of membership. Further, the bill would permit national banking associations, state banks, trust companies, and saving and loan associations to deduct net interest income received from qualified agricultural real estate loans and the net interest income received from single-family residence loans. The bill passed as amended on emergency final action as amended; Yea: 39, Nay: 0. This matter has now been referred to the House Committee on Financial Institutions and Rural Development, Rep. Jim Kelly, Chair. A hearing is scheduled for this matter on Feb. 8, 2021.

SB 124 – Would amend the existing STAR bonds provisions by, among other changes, adding rural development programs as eligible projects, altering projects through rules, and adding a visitor-tracking plan as well as additional feasibility study requirements. See also HB 2221. Referred to the Senate Committee on Commerce, Sen. Robert Olson, Chair.

HB 2189 – Would provide restrictions, lender reporting, and other requirements for alternative small installment loans under the Uniform Consumer Credit Code (UCCC). Referred to the House Committee on Financial Institutions and Rural Development, Rep. Jim Kelly, Chair.

HB 2170 – Would amend the Kansas Rural Housing Incentive District Act to permit the use of bond proceeds for vertical renovations of certain building for residential purposes. Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair.

EMPLOYMENT

HB 2196 – Would make multiple and significant revisions to the Kansas employment security law. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair.

HB 2090 – As amended by the House Committee on Elections, would establish a process for the handling of temporary vacancies created by officers or employees of the State or political subdivisions of the State due to military service. The bill passed as amended on emergency final action as amended; Yea: 125, Nay: 0.

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Sub. For HB 2066 – Would shorten the period of time in which regulatory bodies are required to issue occupational credentials to military servicemembers or military spouses seeking to establish residency in Kansas and provide for expedited credentialing of non-military prospective residents. Also, the bill would expand and clarify existing conditions on expedited occupational credentialing and permit temporary credentialing during states of emergency and the use of electronic credentials. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair. The Committee has recommended the substitute bill be passed.

HB 2097 – Would decouple participation in the Kansas Industrial Training (KIT) program or the Kansas Industrial Retraining (KIR) program as a method to qualify for the High-Performance Incentive Program (HPIP) tax credit. The bill also would eliminate the HPIP certification and recertification by a business to dedicate 2% of payroll for training purposes. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair. The Committee has recommended the bill be passed.

HB 2219 – Would enact the Kansas Targeted Employment Act, focused on persons with developmental disabilities, and provide credit to incentivize employers to employ such persons. Referred to the House Committee on Commerce, Labor, and Economic Development, Rep. Sean Tarwater, Chair.

AGRICULTURE

HB 2172 – Would amend K.S.A. 82a-736, relating to the Department of Agriculture's division of water resources, modifying multi-year flex accounts, base average usage calculations and fees, and permitting alternative base average usage calculations and prorated terms. Referred to the House Committee on Water, Rep. Ron Highland, Chair. A hearing has been scheduled for this matter on Feb. 9, 2021.

SB 38 – A parallel bill to HB 2103, which would establish the Kansas Pesticide Waste Disposal Program within the Kansas Department of Agriculture to administer the pesticide waste disposal grant supported by federal funds and create the Kansas Pesticide Waste Disposal Fund, which would annually receive a transfer of not more than \$50,000 from the Kansas Agricultural Remediation Fund. Referred to the Senate Committee on Agriculture and Natural Resources, Sen. Dan Kerschen, Chair. The Committee heard the bill on Jan. 26. The Committee recommended passage, as amendment. The bill passed on Emergency Action as amended; Yea: 35, Nay: 2.

SB 40 – Would amend existing statutory provisions to clarify the powers and duties that exist within the current relationship between the State Conservation Commission, the Kansas Department of Agriculture, and the division within the Kansas Department of Agriculture that manages conservation, and to specify, among other changes, the types of surveys, investigations, and research that the conservation districts have the power to conduct. Referred to the Senate Committee on Agriculture and Natural Resources, Sen. Dan Kerschen, Chair. The Committee passed the bill on final action as amended: Yea: 37, Nay: 0.

UTILITIES

HB 2180 – Would amend K.S.A. 66-1237 to prohibit electric public utilities from seeking to recover costs associated with the transmission of electric power through a separate delivery charge included in the customer's bill; provided, however, that any electric public utility that is already assessing its existing customers a transmission delivery charge may continue to do so if they file an application with the Kansas Corporation Commission for a general retail rate change. See also SB 80. Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Joe Seiwert, Chair. A hearing has been scheduled for this matter on Feb. 11, 2021.

HB 2181 – Would amend K.S.A. 66-117b to require the Kansas Corporation Commission to provide to the legislature, as part of its annual report, information regarding the average residential, commercial and industrial electric rates of Kansas electric public utilities in comparison to the rates of at least nine states in the region, including states contiguous to Kansas. See also SB 81. Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Joe Seiwert, Chair. A hearing has been scheduled for this on Feb. 9, 2021.

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SB 24 – Would create the Kansas Choice Energy Act, which prohibits a municipality from implementing or imposing any law that would limit an end-user’s use of a public utility based upon the source of energy to be delivered to such customer. Referred to the Senate Committee on Utilities, Sen. Mike Thompson, Chair. The Committee conducted hearings on the bill on Jan. 21, Jan. 26, and Jan. 27. The amendment removed the application of this bill to electric public utilities, clarified the meaning of key terms, and confirmed that the bill did not apply to a municipality’s ability to place restrictions on its own ability to restrict itself in its choice of a gas provider. On Feb. 2, the Committee recommended passage of the bill as amended by the Committee.

SB 117 – Would create the Kansas Electricity Bill Reduction Bonds Act authorizing the approval and issuance of K-EBRA bonds to facilitate capital investment for new, cost-effective facilities and services needed to reliably serve electric utility customers and to provide transition assistance to Kansas communities and electric-generation facility workers that are directly impacted by the retirement of electric generation facilities. Referred to the Senate Committee on Ways and Means, Sen. Rick Billinger, Chair.

SB 133 – Would amend K.S.A. 66-104 to exempt electricity purchased through a retail electric supplier for the sole purpose of provision of electric vehicle-charging service to end users from the regulation of the Kansas Corporation Commission. See also HB 2145. Referred to the Senate Committee on Utilities, Sen. Mike Thompson, Chair. A hearing has been scheduled for this matter on Feb. 10, 2021.

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 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 Relations & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or jrankin@foulston.com. Learn more about the authors below:

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As a partner at Foulston Siefkin, Eddie represents clients in matters before state regulatory commissions, courts, and local governmental bodies. He has built and maintained relationships with key individuals – including lobbyists, elected and appointed 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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