

## NEWSLETTERS



### KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MARCH 1, 2019

Last Friday and Monday were devoted to committees finishing their deliberations on non-exempt bills. Two high-profile bills were killed last Friday. The House Energy, Utilities and Telecommunications Committee killed HB 2273, establishing the Wind Generation Permit and Property Protection Act. The House Committee on Corrections and Juvenile Justice voted 7-6 to not send HB 2282, abolishing the death penalty, to the House floor. The bill would have eliminated the death penalty in Kansas for crimes committed after July 1, 2019, and it would have added a new crime of aggravated murder with the penalty of life in prison with no possibility of parole. On Monday, the House Health and Human Services Committee agreed to delay action on the corporate practice of medicine by asking both sides to try and reach an agreement by March 20.

On Monday, the House Tax Committee debated SB 22, which proposes decoupling Kansas tax calculation from the federal tax code. A 1% cut in the food sales tax was added to SB 22 in order to enhance the bill's "veto-proofness." Also added to SB 22 was an internet purchase sales tax in line with the United States Supreme Court ruling in *Wayfair*. More veto-proofing perhaps? SB 22, as amended, passed the committee and is now headed to the House floor for debate. The partial internet sales tax is projected to generate slightly less than \$25 million for next fiscal year. The cost of the bill is still fuzzy, but it is projected at \$207 million in lost revenue for the upcoming fiscal year. All legislators will be watching the state revenue numbers during the next few months given fiscal uncertainties. Governor Kelly would prefer waiting on SB 22 until the state's fiscal picture is more definite.

Tuesday and Wednesday were devoted to floor action in both Houses. There were relatively few high-profile bills on the debate calendar for both chambers. On Tuesday, the longest House debate occurred on House Bill 2167, carried by Rep. Ken Corbet. It allows landowners or tenants to sell their deer permits to non-residents. Landowners can get the permits free. The measure passed on Wednesday 63-60 on final action and now goes to the Senate.

It is always interesting to see which non-exempt bills were blessed by a referral to an exempt committee, allowing them to be considered for action later in the current session. There were only nine blessed bills in the Senate while there were more than two dozen in the House. Below is a sampling of those bills sent to the House Appropriations Committee:

HB 2018 – creates the Kansas Criminal Justice Reform Commission

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HB 2042 – removes the authority of the Secretary of State to prosecute election crimes

HB 2054 – provides for fully insured and self-insured association health plans

HB 2066 – updates requirements for certain advanced practitioner registered nurses

HB 2173 – establishes a commercial industrial hemp program

HB 2307 – establishes non-covered services for dental benefits under insurance plans

HB 2244 – authorizes the use of cannabidiol treatment preparation to treat certain medical conditions

A complete list of blessed bills are available on request.

The Legislature is taking a break until March 6 before heading toward first adjournment on April 5. Next week will be a short week for legislators. The House Health and Human Services Committee has scheduled the old Supreme Courtroom for three days of roundtable discussions on Medicaid expansion.

Rep. Greg Lewis resigned effective February 22. His successor will be selected by the Republican precinct committeemen and committeewomen in District 113 on March 12.

### BILL INTRODUCTIONS

#### INSURANCE

**HB 2054** – As amended, would change several health insurance provisions in the Kansas insurance code related to the regulation of association health plans (AHPs) and small-employer plans. The intent is to make clear that AHPs' member/employees are to be counted in the aggregate, as one large group, thus eliminating any "look through" requirement (to determine if the AHP actually includes small-employer groups for purposes of state or federal law). The law is intended to permit health insurers to write one large-group-rated policy for those AHPs choosing to be fully insured, regardless of the head count of each participating employer. The bill defines AHPs as a plan offered by a qualified trade, merchant, retail, or professional association that is Kansas-based, and has been in existence for at least five years, and is comprised of five or more employers. This provision is more restrictive than ERISA would require, but appears to be aimed at preventing sales of health benefits to Kansas consumers by self-insured multiple employer trusts established in another jurisdiction and for no purpose other than the marketing of health insurance. The bill has been recommended for passage by the House Committee on Appropriations.

**SB 32** – As amended, would modify K.S.A. 40-2222 under the insurance code to add an entity, Kansas Farm Bureau or a KFB affiliate, to the list of those entities providing healthcare benefit coverage that are not subject to regulation by the Commissioner of Insurance. The KFB proposed entity would be deemed by the Legislature not to be providing "insurance." However, excess risk under such coverage may be reinsured by a company authorized to conduct the business of reinsurance in Kansas, and KFB would be required to file a statement of plan reserves annually with the Insurance Commissioner. The bill passed the Senate Feb. 20 on an emergency final action vote – Yea: 28, Nay: 11. Now it is before the House Committee on Insurance, Rep. Jene Vickrey, Chair. A hearing is scheduled for March 6.

**HB 2072** – Would amend the Revised Uniform Arbitration Act to make an arbitration agreement contained in an insurance contract invalid, unenforceable, and revocable. This provision would not be applicable to contracts between insurance companies, including reinsurance contracts. The bill was introduced by the House Committee on Judiciary at the request of the Kansas Bar Association (KBA). The American Property and Casualty Insurance Association testified in opposition of the bill. On Feb. 22, the House Committee on Judiciary recommended to the House that the bill be passed.

#### LAWS, COURTS, AND REGULATIONS

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**SB 68** – As amended, would alter the law relating to franchise ordinances and their application to wireless service providers and wireless infrastructure providers. The bill would generally prohibit a city from requiring wireless service providers or wireless infrastructure providers from entering a franchise agreement under certain circumstances. The Senate took final action on Feb. 27, passing the bill – Yea: 40, Nay: 0.

**HB 2173** – As amended, would allow the regulated growing of commercial and industrial hemp within the state. The bill would be part of a supplemental to the newly named Commercial Hemp Crop Act (Act). On Feb. 27, the bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

**HB 2038** – As amended in the Senate, would specify notice and procedural requirements for violations of the Cereal Malt Beverage (CMB) Act and would place violations of the Act under the authority of the Division of Alcoholic Beverage Control (ABC), within the Department of Revenue. Essentially, violations would be treated the same as violations of the Liquor Control Act and the Club and Drinking Establishment Act. Effective on April 1, 2019, (under HB 2502 passed in 2018) CMB retailers are allowed to sell beer containing no more than 6.0 percent alcohol by volume, so HB 2035 is necessary to provide ABC with clear enforcement authority for violations involving the sale of such beer by those retailers. The bill would make this authority uniform across state liquor laws. This noncontroversial measure has passed the House and Senate with all “Yeas” and is expected to become law.

**SB 70** – As amended, would consolidate laws concerning temporary permits to serve liquor for consumption on certain premises. The bill would require applications to be submitted electronically to the Director of Alcoholic Beverage Control. It would also require applications for a temporary permit to include a diagram showing the boundaries of the premises, entrances, and exits and the area where liquor would be served as part of the requirement to specify the premises covered by the temporary permit. Under the bill, an application for a temporary permit could be rejected by the Director under certain conditions, including that the applicant has already been granted four such permits in the current calendar year. The bill, as amended, was passed out of the Senate Committee on Federal and State Affairs.

**HB 2223** – As amended, would revise the Liquor Control Act to allow for producers of certain fermentative products to sell wine made at a farm winery, including not only grapes, but other ripe fruits and berries. The bill was engrossed Feb. 28.

**HB 2239** – As amended, would allow a licensed premise, that has received permission to participate in a common consumption area (CCA), to sell and serve alcoholic liquor, for consumption, from a non-contiguous service area within an approved CCA, as designated and approved by the CCA permit-holder. On Feb. 27, the bill passed the House on final action vote – Yea: 121, Nay: 3. The Senate has assigned the bill to the Committee on Federal and State Affairs, Sen. Bud Estes, Chair.

## UTILITIES AND TRANSPORTATION

**HB 2248** – Would authorize the driver of an all-terrain vehicle (ATV) to cross a federal or state highway that separates property owned or leased by such driver by the most direct route. Passed out of the House (acting as a Committee of the Whole). The bill has been received and introduced to the Senate.

**Sub for SB 62** – Would authorize violation of certain traffic rules by a police vehicle where the officer has reason to believe driving with lights and sirens could impede a law enforcement action under circumstances specified in the bill. The substitute bill passed the Senate Feb. 27 on final action – Yea: 34, Nay: 4.

**SB 94** – As amended, would require a motor-vehicle accident-avoidance course using a nationally recognized driver-training curriculum associated with a required reduction in motor vehicle insurance premium charges to be at least four hours in duration. The bill passed the Senate Feb. 27 on final action vote – Yea: 40, Nay: 0. The bill is

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received and introduced in the House.

### HEALTHCARE

**SB 61** – As amended, would add podiatrists who completed two-year post-doctoral surgical residency program in reconstructive foot-ankle surgery, prior to July 1, 2017, to the list of podiatrists who may perform surgery on the ankle, provided such grandfathered podiatrists are also either board-certified or progressing to board certification. The bill would also clean up certain dead-wood provisions. The bill passed the Senate Feb. 27 on an emergency final action vote – Yea: 40, Nay: 0.

**SB 193** – Originally reported on in the Feb. 22 issue of Kansas Legislative Insights. Amended by the Senate Committee on Public Health and Welfare to reduce the number of hours of required supervised professional experience and clinical supervision for a specialist clinical social worker. The bill passed the Senate Feb. 27 on emergency final action vote – Yea: 40, Nay: 0. The bill has been received and introduced in the House.

**HB 2066** – Originally reported on in the Feb. 1 issue of Kansas Legislative Insights. Amended by the House Committee on Health and Human Services to revise the definitions of “diagnosis” and “healthcare provider.” The amendments also included inserting a program of transition to full practice as an APRN and a prohibition on an APRN prescribing any drug intended to cause an abortion. The bill has been passed over and retained on the calendar by the Committee of the Whole.

**HB 2082** – Originally reported on in the Feb. 1 issue of Kansas Legislative Insights. Amended by the House Committee on Health and Human Services to specify that a pharmacist may administer a drug that a practitioner has determined may be safely self-administered by a patient and to clarify that the bill does not repeal, supersede, or replace the requirements of KSA 65-4a10, which provides that an abortion may only be performed or induced by a physician licensed to practice medicine in Kansas. On Feb. 28, the bill was withdrawn from calendar and referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

**HB 2185** – Revises the Naturopathic Doctor Licensure Act and amends the definition of “naturopathic medicine.” This bill was amended by the House Committee on Health and Human Services to amend the definition of “naturopathic medicine” relating to diagnostic imaging. The bill was passed by the House – Yea: 123; Nay 1 and introduced to the Senate.

**HB 2307** – Originally reported on in the Feb. 15 issue of Kansas Legislative Insights. Amended by the House Committee on Health and Human Services to make changes to certain dentist provider opt-in requirements and to amend the definition of covered service. The bill was withdrawn from calendar and referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

**HB 2198** – Would allow the use of expedited partner therapy to treat sexually transmitted diseases. Originally reported on in the Feb. 15 issue of Kansas Legislative Insights along with its Senate counterpart SB 144. The Bill was passed by the House – Yea: 89, Nay: 35, and introduced to the Senate with referral to the Senate Committee on Public Health and Welfare, Sen. Gene Suellentrop, Chair.

### REAL ESTATE

**SB 60** – Would amend substantial elements of those statutes applicable to licensing of real estate brokers and the Kansas Real Estate Commission. The bill passed the Senate on a Feb. 28 final action vote – Yea: 40, Nay: 0, and has been introduced in the House.

**SB 78** – As amended, would establish a framework for the assignment of benefits between a policyholder and a home or roof contractor for claim proceeds due under property and casualty policies that insure residential real estate. The bill would require an assignment of benefits to include a statement that the residential contractor has made no assurance that the claimed loss will be fully covered by an insurance contract. The bill would also list

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violations by a residential contractor that would void the assignment of benefits. Enforcement would be through the Office of the Attorney General under the Kansas Consumer Protection Act. The bill was passed on Feb. 27 by the Senate on final action – Yea: 38, Nay: 1. The bill is received and introduced in the House.

**SB 125** – Would extend the eligible time for rural opportunity zone loan repayments and tax credits available to those relocating to such a zone to tax year 2021. The Senate Committee on Assessment and Taxation has recommended the bill be passed.

**SB 78** – Amends the Kansas Consumer Protection Act by creating provisions regarding post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate and would permit such assignment pursuant to certain conditions. This bill was amended by the Senate Committee of the Whole to clarify certain provisions of the bill and adjust definitions. The bill passed the Senate Feb. 27 on final action vote – Yea: 38, Nay: 1. The bill has been received and introduced in the House.

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**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](mailto:jrankin@foulston.com).

## KANSAS LEGISLATIVE INSIGHTS EDITORS



**James (Jim) P. Rankin**

Governmental Relations &  
Public Policy Law Team  
Leader

785.233.3600

[jrankin@foulston.com](mailto:jrankin@foulston.com) | [View Bio](#)



**Gary L. Robbins**

Governmental Affairs  
Consultant

785.640.2651

[garyrobbinsconsulting@gmail.com](mailto:garyrobbinsconsulting@gmail.com)

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

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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.

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