

# FOULSTON

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NEWSLETTERS



## KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MARCH 13, 2020

### WEEK NINE OVERVIEW

On Tuesday, Medicaid expansion advocates chanted for action on the issue around the third-floor railing for several hours. Some protesters blocked the entrance to the Senate and were removed from the Capitol but not arrested. The noise could be heard throughout the Statehouse. By Thursday evening, Kansas had the first confirmed death from COVID-19 in Wyandotte County, prompting Gov. Laura Kelly to issue an emergency declaration, which allows use of state resources to fight the spread of the disease. Thursday night, Gov. Kelly announced she will be issuing an executive order to limit access to the Statehouse and Capitol Complex. To reduce the presence of large groups, the order will limit access to the Statehouse to employees and those testifying before committees or lobbying. On Friday morning, the House passed HCR 5025 on emergency final action, 116-0, to issue an emergency declaration. On Friday, the House Judiciary committee met to consider a bill relating to the state court system that would allow the Chief Justice of the Kansas Supreme Court to modify court deadlines and avoid constitutional issues related to speedy trial.

This week, the Legislature debated a wide range of issues along with the budget – sports gaming and transportation issues were front and center. On Wednesday, the Senate Ways and Means Committee members completed key pieces of their budget for the next two years. On Thursday, the Senate Ways and Means Committee passed the budget to the Senate floor. Among the key decisions this week was funding the new “Forward” 10-year transportation program, which finances road projects which were proposed more than a decade ago. Those projects were not completed due to budget shortfalls and the Brownback administration’s redirection of Department of Transportation funds to finance the state budget. Another key decision was approval of the bill appropriating \$268 million for the upcoming year to repay part of the funds borrowed from the Kansas Public Employees Retirement System (KPERs) in 2017. This mirrors the action of the House Appropriations Committee. Gov. Kelly had recommended reamortization over 25 years, which would have provided funding for other needs in her budget proposal. On Friday morning, the House Appropriations Committee approved its version of the budget and deferred any discussion on additional budget items to the veto session.

On Tuesday, the Senate Commerce Committee approved SB 474, as amended, creating a law related to postsecondary student athletes and compensation for the use of student athletes’ names, images, likeness rights, or athletic reputation (“NIL”). Among the provisions of the bill is a prohibition against postsecondary educational

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institutions preventing a student athlete from earning compensation for the use of the athlete's NIL or restricting an athlete's scholarship eligibility based on compensation for the use of the athlete's NIL.

This week, Gov. Laura Kelly announced the appointment of Keynen "KJ" Wall, of Lawrence, to the Kansas Supreme Court. Wall was in private practice with the Forbes Law Group in Overland Park.

## HEARING ON HOUSE SPORTS GAMING BILL

On Wednesday, the House Federal and State Affairs Committee heard from proponents of HB 2671, which is the House version of the sports gaming bill. It is broader than the Senate version (SB 283). The legislative staff presented a review of the provisions of the House and Senate bills, illustrating the significant differences. The House bill would include convenience-store retailers and current lottery retailers. Among the proponents were the Petroleum Marketers and Convenience Store Association of Kansas, the Kansas Greyhound Association, Kansas Quarter Horse Racing Association, and the Greyhound Pets of America.

On Wednesday, the National Council on Problem Gambling (NCPG) testified as a neutral party. In 2019, the NCPG helpline received 3,458 calls, seven texts, and nine chats from residents of Kansas. With significant increases in advertising and advances in technology for mobile phone gambling, NCPG recommended that at least two percent of the gaming revenue be devoted to prevention, treatment, and research for gambling addiction. The Senate bill does include funding for prevention and treatment.

On Thursday, opponents of the bills included representatives of the state-owned-and-operated casinos who support legalized sports wagering but oppose the House bill and prefer the Senate version. Animal rights organizations also opposed the bill. Health professionals treating those with gambling addictions expressed their concerns and opposition. Several additional organizations expressed their neutrality on the bill, including the Kansas Restaurant and Hospitality Association and the League of Kansas Municipalities.

## SENATE TRANSPORTATION COMMITTEE DEBATES CONSTITUTIONAL AMENDMENT

On Tuesday, the Senate Transportation Committee held a hearing on Senate Concurrent Resolution (SCR) 1601. It is a proposition to amend article 11 of the Kansas Constitution by adding a new section. The proposed section concerns the State Highway Fund. The amendment would provide that on or after July 1, 2021, monies that are appropriated, expended, or transferred from the State Highway Fund could ONLY be spent for seven enunciated purposes, all related to state or local transportation needs. The Legislature could enact laws to carry out the purposes of the amended section of the constitution.

Among the proponents for the constitutional amendment were Senator Hilderbrand (its sponsor), the Kansas Contractors Association (KCA), Economic Lifelines, the Kansas Association of Professional Engineers, the Kansas Association of Counties, and the Petroleum Marketers and Convenience Stores Association of Kansas. Additional written testimony in support was submitted by the Highway 96 Association, the Kansas Aggregate Producers and Kansas Ready Mixed Concrete Associations, the Greater Kansas City Chamber of Commerce, CRH Materials Inc., and American Concrete Company Inc. The KCA argued that the amendment only protects money credited to the highway fund, but nothing in the amendment would limit the ability of the Legislature to redirect sales tax, now being deposited into the highway fund, to some other fund or the State General Fund.

There were no opponents. The Kansas Department of Transportation was neutral on the proposal. KDOT noted Gov. Kelly's plan to stop the transfers by 2023 but also understood the need for the Legislature to have flexibility moving forward. Several senators agreed with the concept but worried about limiting future Legislatures if the State faces financial challenges. In addition, the concern was raised about the possibility that other special interests might move to protect their programs through Constitutional amendments.

## BILL INTRODUCTIONS

## COURTS, LAWS, AND REGULATIONS

**HB 2735** – Would protect the interests of blind persons as parents and would protect such persons' ability to successfully parent their children. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

**HB 2736** – Would authorize issuance of bonds for the construction of a Kansas Department of Health and Environment laboratory to be built at the site of state parking lot number 4 on the Statehouse complex. This bill is a companion to SB 487 and is designed to appropriately utilize potentially available space in Topeka all as part of the move to raze the Docking State Office building. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

**House Concurrent Resolution No. 5024** – Would amend the Kansas Bill of Rights by adding a new § 22, which, if enacted, would make clear that the Kansas Constitution does not create a right to abortion or the right to require government funding of abortions. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

**HB 2733** – Would require relinquishment of firearms by owners if the owner becomes the subject of certain court orders related to domestic violence. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

**SB 483** – Would eliminate the current requirement that a significant percentage of Kansas-grown grapes be included in the manufacture of domestic wine by a farm winery. Referred to the Senate Committee on Federal and State Affairs, Sen. Bud Estes, Chair.

**SB 484** – Would permit the Secretary of the Department for Children and Families (DCF) to request a waiver for able-bodied adults, aged 18-49, without dependents in the home, if the Secretary establishes that there are insufficient jobs using federal law criteria. Currently, eligibility requirements for assistance for which federal funds are expended requires participants to perform 20 hours of work per week. Referred to the Senate Committee on Ways and Means, Sen. Carolyn McGinn, Chair.

**SB 485** – Would allow an additional option to fulfill work-participation requirements under the Cash Assistance program. The bill would allow a single parent of a child who is between three months and one year of age to fulfill work requirements by engaging in in-home parenting skills training. Current eligibility requirements for assistance for which federal funds are expended requires that participants must perform 20 hours of work activity per week. Referred to the Senate Committee on Ways and Means, Sen. Carolyn McGinn, Chair.

**SB 494** – Would modify the existing criminal statute, K.S.A. 2019 Supp. 21-5837 (applicable to pyramid schemes), to clarify that such a scheme does *not* include an arrangement where a participant gives consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property for personal use, consumption, or resale, provided the arrangement does not cause inventory loading. "Inventory loading" means the requirement or encouragement that an independent salesperson participating in the scheme purchase inventory in an amount exceeding what the salesperson could expect to reasonably resell or to use. Referred to the Senate Committee on Commerce, Sen. Julia Lynn, Chair. A hearing has been scheduled for this matter on March 16, 2020.

**HB 2437** – As amended, would revise the Kansas Food Drug and Cosmetic Act to include several new terms, including "meat analog" and "identifiable meat term," and would specify when such foods would be deemed misbranded under provisions of the Act. The Committee recommended the bill be passed as amended by the House Committee on Agriculture, Rep. Ron Highland, Chair.

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**SB 497** – Would require restitution ordered in cases of criminal conviction to be due immediately unless the court further orders a payment plan. Referred to the Senate Committee on Judiciary, Sen. Rick Wilborn, Chair.

**HB 2740** – Would enact the Kansas Medical Marijuana Regulation Act and would provide for the licensure and regulation of the manufacture, transportation, and sale of medical cannabis. The proposal would provide fines and penalties for violations of the act. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

**HB 2742** – Would establish the Kansas Equal Access Act authorizing the use of medical marijuana. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

**SB 423** – As amended, would establish the Sedgwick County Urban Area Nuisance Act. The bill states that Sedgwick County is an urban area and authorizes the Board of County Commissioners to order the removal or abatement of any nuisance from any property in an unincorporated area of Sedgwick County. The bill states the act shall not apply to any land, structures, machinery, equipment, or vehicles used for agricultural purposes. The Committee recommended the bill be passed as amended by the Senate Committee on Ethics, Elections and Local Government, Sen. Elaine Bowers, Chair.

## UTILITIES

**SB 488** – If the Kansas Energy Office is established pursuant to Executive Reorganization Order Number 46, the bill would provide that such office would be administered under supervision of a director. The proposal makes clear that such a director, once appointed, would be subject to Senate confirmation. Referred to the Senate Committee on Utilities, Sen. Ty Masterson, Chair.

**Substitute for HB 2536** – Would amend existing law concerning the filing of complaints and investigations pertaining to abandoned oil and gas wells. Also, the bill speaks to the matter of responsible parties required to plug abandoned wells and provides the Kansas Corporation Commission (KCC) with regulatory methods for administering management of abandoned wells. The Committee has recommended the substitute bill be passed by the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

**SB 492** – Would allow public utilities to create demand-side programs in order to increase energy efficiency. “Demand-side program” means any program conducted by a public utility to modify the consumption of electricity or natural gas on the customer’s side of the utility meter. Referred to the Senate Committee on Utilities, Sen. Ty Masterson, Chair.

## HEALTHCARE

**SB 225** – As amended, would revise current law concerning the hospital provider assessment known as the Healthcare Access Improvement Program. The bill would make the following changes in the assessment: the annual assessment rate would increase from 1.83% to 3.0%; taxable revenue would expand to include outpatient net operating revenue; the assessment would be based on the net operating revenue for the hospital’s fiscal year three years prior to the assessment year; and distribution of assessment revenues generated from Health Management Organizations would no longer be included in the assessment. The proposal would make certain other changes to the program. Referred to the Senate Committee on Appropriations, Sen. Troy Waymaster, Chair.

**SB 493** – Would amend the Healthcare Stabilization Fund coverage requirements, would modify the description of who can serve on the fund’s board of governors, and would provide for the fund’s dissolution under specific circumstances. Referred to the Senate Committee on Public Health and Welfare. Sen. Gene Suellentrop, Chair.

**SB 495** – Would reinstate the Kansas Uninsurable Health Insurance Plan Act and would rename such plan the Kansas Guaranteed Coverage Pool Act. The proposal is contingent upon the Patient Protection and Affordable Care Act being held invalid or unconstitutional by the United State Supreme Court. Referred to the Senate

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Committee on Financial Institutions and Insurance, Sen. Robert Olson, Chair.

**SB 490** – Would authorize Kansas to join an interstate compact regarding the licensure of audiologists and speech-language pathologists. Referred to the Senate Committee on Education, Sen. Molly Baumgardner, Chair.

**SB 491** – As amended, would revise the definition of “infectious disease” to include diseases designated as infectious or contagious in nature by the Secretary of Health and Environment. Under current law, courts have the authority to order infectious disease testing solely for human immunodeficiency virus (HIV) and hepatitis B when it appears the transmission of body fluids from one person to another may have been involved given the nature of the crime or arrest. The bill would delete the limiting language defining infectious disease. The Committee has recommended the bill be passed as amended by the Senate Committee on Public Health and Welfare, Sen. Gene Suellentrop, Chair.

## TAXATION

**HB 2726** – Would extend the deadline for the filing of Kansas corporation income tax returns to one month after the due date established under federal law. The bill also would provide that no late-filing penalty could be assessed on taxpayers filing state corporation income tax returns when the return is filed within 30 days after having received an extension to file the federal return. The provisions of the bill would be applicable to 2019 returns and all future years. Referred to the House Committee on Taxation, Rep. Steven Johnson, Chair. A hearing has been scheduled for this matter on March 4, 2020.

**SB 486** – Would establish a new tax-payment program to be known as the Assessed Valuation Increase Deferral Program. The program would provide a payment plan for a portion of increased ad valorem property taxes when taxpayers experience certain extraordinary increases in valuation (and thus tax assessment) on property. The proposal would be applicable to all tax years commencing after Dec. 31, 2020. The bill establishes four essential criteria for eligibility. The fourth criteria would require that the total ad valorem property tax for the tax year at issue must exceed the total ad valorem property tax for the previous year by more than 40%. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

**HB 2722** – Would amend the law regarding individual income-tax-withholding requirements imposed on employers relative to certain employees' working in multiple states. The bill would provide that wages or other remuneration paid to certain employees would not be subject to Kansas withholding and reporting requirements unless the employees are Kansas residents or have worked in Kansas for more than 30 days during the calendar year. Withholding requirements involving certain public figures, professional athletes, professional entertainers, and qualified production employees, all as defined by the bill, would not be affected by the proposal. The provisions of the bill would be deemed part of and supplemental to the Kansas Withholding and Declaration of Estimated Tax Act. The Committee has recommended the bill be passed by the House Committee on Taxation, Rep. Steven Johnson, Chair.

**HB 2739** – Would change agricultural land property tax valuation rules (as they relate to production income). Referred to the House Committee on Taxation, Rep. Steven Johnson, Chair.

**HB 2689** – As amended, would revise certain tax credits pertaining to angel investors and home renovations for disabled family members. The bill passed the House as amended; 103-12.

**SB 500** – Would allow a member of the Kansas State Board of Tax Appeals (BOTA) to serve until a successor is appointed and confirmed by the Senate. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair. A hearing has been scheduled for this matter on March 18, 2020.

**HB 2517** – As amended, would expand the authority of county commissions to abate property taxes on certain types of property destroyed or substantially destroyed by natural disasters. The Committee has recommended the

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bill be passed as amended by the House Committee on Taxation, Rep. Steven Johnson, Chair.

## INSURANCE

**SB 489** – Would permit governmental entities and self-insurers to reject uninsured motorist coverage. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Robert Olson, Chair.

## EDUCATION

**SB 474** – As amended, would create law related to postsecondary student athletes and compensation for the use of student athletes' name, image, likeness, or athletic reputation. The Committee has recommended the bill be passed as amended by the Senate Committee on Commerce, Sen. Julia Lynn, Chair.

**SB 368** – Would transfer \$268.4 million from the State General Fund to the Kansas Public Employees Retirement System (KPERs) in fiscal year 2020 for payment of the remaining balance on delayed state and school group employer contributions from fiscal years 2017 and 2019. Employer-level contribution payment obligations are also adjusted. The Committee has reported the bill be passed by the Senate Committee on Ways and Means, Sen. Carolyn McGinn, Chair.

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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).

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## PRACTICE AREAS

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