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NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MARCH 30, 2018

DROP DEAD DAY

“Drop Dead Day” isn’t as sinister as it sounds. It is simply legislative jargon for an important day in the legislative process. It occurred yesterday, which was the last day that any non-exempt bills can be considered in either the House or Senate. This deadline significantly narrows the number of bills that can still be considered for the rest of this session. It should be noted that certain committees in both houses (Taxation, Ways and Means, Federal and State, etc.) are exempt from deadlines, so there will still be bills introduced right down to the 11th hour of the session.

This has been one of the more interesting weeks of the session with lengthy, and sometimes heated, debates on issues such as abortion, medical marijuana, firearms in schools, and finally, the introduction of a major school finance plan that may become the vehicle for the Legislature’s response to the demands by the Kansas Supreme Court for a plan with sufficient “equity” and “adequacy.”

Next week will be devoted mainly to conference committee meetings where three House and three Senate members meet to reconcile differences between the two bodies on dozens of bills. Legislators then embark on a three-week recess and are scheduled to resume the session on Thursday, April 26.

One important event that will occur during the April recess is the announcement on the 15th of revenue projections for the State General Fund (SGF) for the remainder of this fiscal year (FY 2018) which ends on June 30 and for all of FY 2019. It is on those projections that the final budget bill of the session will be built and will likely determine whether there will be enough projected revenue to fund a new school finance plan without raising taxes.

BILL SUMMARIES

Listed below are select bills which were acted on during the week. Additional information on any of the bills can be accessed by clicking on the bill number.

AGRIBUSINESS

SB 263 - Creates the Alternative Crop Research Act allowing the Kansas Department of Agriculture (KDA), in conjunction with Kansas institutions of higher learning, to do research and cultivate industrial hemp as an

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alternative crop. Allows KDA to set up multiple-county pilot programs. Establishes a licensing fee fund. Grants KDA authority to promulgate rules and regulations by Dec. 31, 2018, to carry out the provisions of the Act. Requires individuals in the test programs to be licensed, and such license must be carried at all times. Eliminates any possible references to industrial hemp as marijuana or a cannabinoid. A program for growing and selling industrial hemp must be forwarded by the KDA to the Legislature by Jan. 12, 2019. *(Passed by the House on a vote of 123-1. Placed in a House/Senate conference committee, Sen. Dan Kerschen, Chair)*

HB 2583 - Creates the Noxious Weed Act which empowers the Kansas Secretary of Agriculture to make an emergency declaration of noxious weeds in certain situations. Establishes a noxious weed advisory committee with enumerated powers and duties. Makes it unlawful to knowingly sell or transport noxious weeds. Once a noxious weed is identified, it is declared to be a noxious weed in all counties. Specifies the powers and duties of county commissions to carry out the various provisions of the Act. *(Passed by the Senate on a vote of 36-4. Awaiting further action by the House)*

BUSINESS AND ECONOMIC DEVELOPMENT

SB 429 – Moves the enforcement date for several sections of the Scrap Metal Theft Reduction Act from Jan. 1, 2019 to Jan. 1, 2020. Included in the delay are establishment of a central database, certain civil penalties, and identification card and photo requirements. *(Referred to the Senate Committee on Judiciary, Sen. Rick Wilborn, Chair)*

SB 455 – Creates the Kansas Sports Wagering Act which would allow sports wagering to be conducted in conjunction with the Kansas Lottery Act and the Kansas Expanded Lottery Act. The Kansas Lottery would be allowed to offer sports wagering through lottery retailers, over the internet, in-person at a facility operated by the Kansas Lottery, and through “an interactive sports wagering platform.” *(Referred to the Senate Committee on Federal and State Affairs, Sen. Bud Estes, Chair)*

SB 391 – Creates a joint legislative transportation vision task force composed of legislators, individuals appointed by the legislative leadership and the governor, as well as representatives of various associations and companies. Specifies who is to serve on the designated task force subcommittees and what issues the subcommittees shall consider. The task force must submit a report and recommendations to the full Legislature by Jan. 31, 2019. *(Passed by the House on a vote of 123-1. Placed in a House/Senate conference committee, Rep. Richard Proehl, Chair)*

HB 2701 – Establishes a 25-member (19 voting) Statewide Broadband Expansion Task Force composed of legislators and representatives of various statewide organizations and associations with interest in greater broadband availability throughout the rural areas of Kansas. The Task Force would sunset on June 30, 2020. *(Passed by the Senate on a vote of 40-0. Awaiting further action by the House)*

HB 2778 – Prohibits the state from entering into contracts exceeding \$100,000 with a company (as defined) unless the company submits a written certification that the company is not involved in a boycott of Israel. *(Passed by the House on a vote of 93-30. Referred to the Senate Committee on Federal and State Affairs, Sen. Bud Estes, Chair)*

HB 2792 – Contains the same provisions as **SB 455** (see above). *(Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair)*

ENERGY AND NATURAL RESOURCES

SB 194 – Grants the boards of groundwater management districts the right to increase the maximum water withdrawal charge from \$1.50 for each acre-foot to \$2.00 for each acre-foot. Eliminates the authority of boards to assess a higher annual water withdrawal charge in certain circumstances. *(Passed by the House on a vote of 106-18. Awaiting action by the Governor)*

FINANCIAL SERVICES

HB 2580 - Prohibits a consumer reporting agency from charging a fee “for placing, temporarily lifting or removing each security freeze.” *(Passed by the Senate on a vote of 40-0. Awaiting action by the Governor)*

HEALTH CARE

SB 282 – As amended by the House Committee on Health and Human Services, SB 282 would amend the Uniformed Controlled Substances Act and certain statutes pertaining to crimes involving controlled substances. The bill would amend the definition of “marijuana” and authorize the sale of certain CBD (cannabidiol) products provided they meet the appropriate THC dry weight test. The bill would add several synthetic opioid fentanyl compounds and an opioid analgesic drug to Schedule I; update several cannabinoid classes in Schedule I to include new synthetics and substitutes; add oral solutions certain chemical precursor to fentanyl to Schedule II. Also, the bill updates the list of anabolic steroids in Schedule III. We first reported on this measure in our Feb. 2, 2018, issue. Proponents argue drug schedules must be updated for public safety reasons, and have supported adding a drug known as kratom to Schedule I. The House Committee on Health and Human Services, Rep. Daniel Hawkins, Chair, amended the bill to delete kratom. The House Committee heard testimony indicating kratom has benefits in managing addiction to more serious drugs. *(Passed by the House on a vote of 121-3. Awaiting further action by the Senate)*

SB 351 – Introduced by the Senate Committee on Public Health and Welfare at the request of the Kansas Pharmacists Association (KPhA). The KPhA supported the bill, arguing it provides protections for patients related to the cost of medications, medication alternatives, and choice of pharmacy provider; eliminates practices that impede cost transparency and restrict the patient’s choice of provider; and allows pharmacists to have the ability to discuss lower cost medication alternatives with their patients. Opponents, generally pharmacy benefit providers (PBMs), argued the bill interferes with the contractual relationship between PBMs and pharmacies and unnecessarily expands oversight by the Kansas Insurance Department to include civil fines. They also expressed concern with language related to mail pharmacy services. The Senate Committee amended the bill to address certain concerns expressed by PBMs and the Senate Committee of the Whole amended the bill to exempt supplemental insurance policies from coverage under the Act. The bill, as amended, would create the Kansas Pharmacy Patients Fair Practices Act. A pharmacy or pharmacist would have the right to provide a covered person with information regarding the amount of the covered person’s cost share for a prescription drug. Further, the bill would specify neither a pharmacy nor a pharmacist would be prescribed by a PBM from discussing any such information or selling a more affordable alternative to the covered person, if such alternative is available. The bill passed on Senate on final action: *(Passed by the House on a vote of 124-1. Awaiting action by the Governor)*

SB 348 – Amends the Electronic Notice and Document Act (Act) under the Insurance Code. The bill would authorize health benefit plans, subject to prior notification to the recipient, to utilize electronic delivery as the standard method of delivery for explanation of benefits and policy, including federally required summary of benefit and coverage documents to a party. The bill would require a plan to deliver paper documents *via* U.S. mail to a party if the party notifies the plan of a desire to receive the documents in such a manner. Basically, the bill is designed to reduce operating costs for health and dental insurers. *(Passed by the House on a vote of 124-0. Awaiting action by the Governor)*

SB 386 – The bill would liberalize the Professional Counselor’s Act. Under current law, an individual may be licensed as a professional counselor or clinical professional counselor through the Behavioral Sciences Regulatory Board upon meeting certain requirements that include obtaining a graduate degree in counseling from a college or university approved by the Board. The bill would modify this requirement so that licensees may obtain a graduate degree in counseling *or* a related field. The bill clarifies that the degree must include 45 graduate semester hours of counseling coursework. *(Passed by the House on a vote of 124-0. Awaiting action by the Governor)*

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SB 428 – Amends K.S.A. 65-527 concerning child care programs serving school age children and youth, including drop-in programs. We reported on a more expansive bill, SB 305 (which also addressed drop-in programs) in our Jan. 26, 2018, issue. SB 305 has not moved forward, perhaps due to anticipated costs. SB 428 is narrower and essentially clarifies that a facility (often a recreation center) will qualify for drop-in program licensure even if there are environmental deficiencies posing no imminent risk to children or youth. *(Passed by the House on a vote of 124-0. Awaiting action by the Governor)*

HB 2308 – The bill, as amended, was originally introduced during the 2017 Session and now is known as “Gordy’s Gift” and would require that a patient be evaluated at the time of admission to a treatment facility as to whether he or she is at risk of attempting suicide. The staff person conducting the evaluation must be knowledgeable about suicide risk management. If, after the evaluation, the patient is found to be at risk of attempting suicide, the treatment facility must provide the level of patient monitoring and assistance as indicated by the level of risk to the patient. The bill defines “treatment facility” as community health centers, hospitals with psychiatric units, mental health clinics, and the like. *(The bill, as amended, passed the House- Yea: 124 Nay: 0. Awaiting action by the Senate)*

HB 2457 – The bill was introduced by the House Committee on Judiciary at the request of the Kansas Chamber and we reported on in our Jan. 12, 2018, issue. The bill, as amended by the House Committee, would enact the Asbestos Trust Claims Transparency Act, which would apply to all asbestos claims (as defined in the Silica and Asbestos Claims Act) filed on or after July 1, 2018. The bill would require the plaintiff to provide certain statements and materials no later than 30 days prior to the date the court establishes for the completion of all fact discovery. *(Passed by the Senate on a vote of 23-16. Awaiting action by the Governor)*

HB 2590 – As amended, would revise the laws related to the State Long-Term Care Ombudsman and the State Long-Term Ombudsman Program. We reported on the bill in our March 2, 2018, issue. The bill would update the Kansas Long-Term Care Ombudsman Act and align Kansas statutes with federal law and regulation. Opponents of the legislation have expressed concerns about volunteer ombudsman having broad access to facility records. Given the concerns expressed, the House Committee amended the bill to remove certain language related to volunteer ombudsman; clarify the records, policies, and documents an ombudsman or volunteer ombudsman would have access to; and make technical corrections. *(Passed by the Senate on a vote of 40-0 and the House by a vote of 122-0. Awaiting action by the Governor)*

Senate Sub for HB 2600 – Would amend the Nuclear Energy Development and Radiation Control Act and provide for the study *and* investigation of maternal deaths by the Secretary of Health and Environment (KDHE Secretary). First, the bill would increase license charges for noncontiguous sites holding radioactive material. Second, the bill would provide for the study and investigation of maternal deaths by the KDHE Secretary and provide for access to records related to maternal deaths. The bill contains the contents of HB 2600, as amended by the Senate Committee on Public Health and Welfare, and the contents of HB 2573, as amended by the House Committee on Health and Human Services. HB 2543 was introduced in the House Committee on Health and Human Services at the request of the Kansas Section of the American Congress of Obstetricians and Gynecologists (ACOG). The OB/GYNs argued to the Committee that maternal deaths in the United States are increasing, and an estimated half of these deaths could be prevented. Potential causes should be the subject of a statewide study. The bill, including only its nuclear energy component, passed the House on final action- Yea: 106 Nay: 16. The Senate Committee on Public Health and Welfare has included the maternal death component. *(Passed by the Senate on a vote of 40-0. Awaiting further action by the House)*

Senate Sub Bill for HB 2674 – The substitute bill would establish the Kansas Telemedicine Act (KTA) and expand the Dental Practices Act (DPA) by creating the practice of dental therapy and requiring the Kansas Dental Board (Dental Board) to authorize a person to practice as a dental therapist if such person meets the qualifications set forth in the bill. Senate Sub for HB 2674 aggregates the essential aspects of HB 2674 (KTA) which we reported on

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in our Feb. 9, 2018, issue and SB 312 (DPA) which we reported on in our Feb. 16, 2018, issue. (The bill's procedural history is complicated, as are the amendments, but as amended, the bill passed the House February 22, 2018 - Yea: 117 Nay: 0. *Now the substitute bill is recommended to Senate passage by the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, Chair.*)

HB 2676 – As amended by the House Committee on Federal and State Affairs, HB 2676 would create a law allowing the Secretary for Aging and Disability Services to issue correction orders to community service providers when a provider is found to be in non-compliance with the Developmental Disabilities Reform Act, and such noncompliance is likely to adversely impact the health, safety, nutrition, or sanitation of consumers or the public. The amended bill provides for civil penalties and if necessary, in the case of licensure revocation, development of an orderly transition plan for moving all consumers currently receiving services from the licensee to another licensed provider. *(Passed by the House on a vote of 124-0. Referred to the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, Chair)*

INSURANCE

SB 410 – Would create the Captive Insurance Act (Act) under the Insurance Code by amending existing law related to captive insurance companies. This bill, as amended, represents major and needed modernization of Kansas insurance law. A captive is an insurance company created and wholly owned by one or more non-insurance companies and designed to insure the risks of its owner or owners. The bill would create two new captive insurance types - branch captive insurance companies and special purpose insurance captives. The bill would specify the regulatory structure for each. The bill was introduced in the Senate and we first reported on the measure in our Feb. 9, 2018, issue. The Senate Committee on Financial Institutions and Insurance amended the bill, and it passed the Senate - Yea: 38 Nay: 0. The House Committee on Insurance has also amended the bill. *(Passed by the House on a vote of 109-15. Awaiting further action by the Senate)*

HB 2469 – The bill would permit insurance companies to provide temporary claim services to their client in the case of a catastrophic event. The bill would also restrict local governments from imposing restrictions and licensing requirements for insurance claims during an emergency, catastrophe, or other life or property-threatening event. However, the insurance company would be required to provide notice to the city or county before establishing a temporary claims handling operation. ***(Signed by the Governor and becomes effective on July 1, 2018)***

STATE GOVERNMENT

HB 2539 – Starting in 2019, it would require candidates for Governor and Lt. Governor to be 30 years of age or older “at the time of becoming a candidate.” Also requires candidates for Secretary of State, Attorney General, State Treasurer, and Insurance Commissioner to be a “qualified elector” when filing for any of these offices. Would also require candidates for Attorney General to be licensed to practice law in Kansas. *(Awaiting action by the House)*

HB 2597 – Designates Sedgwick County as an urban county, thus allowing legislation to be enacted that applies exclusively to that county. Also exempts non-profit cemetery corporations in urban counties from certain maintenance requirements. *(Passed by the Senate on a vote of 39-1. Awaiting further action by the House)*

TAXES

SB 430 – Starting in 2018, tax credits available to taxpayers under the High Performance Incentive Program (HPIP) are extended to 25 years if certain limitations are met. Participants must certify annually under oath that they are meeting HPIP standards. *(Passed by the Senate on a vote of 40-0. Awaiting action by the House)*

WORKERS COMPENSATION

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Senate Sub for HB 2184 – Increases the benefits on a workplace death and on burial expenses, and alters the amounts that can be received by children of the deceased. Also allows heirs to receive a lump sum payment, but that payment could be impacted by life insurance policies owned by the deceased. *(Passed by the Senate on a vote of 35-5. Passed by the House on a vote of 120-0. Awaiting action by the Governor)*

Kansas Legislative Insights is a publication developed by the Governmental Relations & Public Policy Law practice group of Foulston Siefkin LLP. It is designed to inform business executives, human resources and governmental relations professionals, and general counsel about current developments occurring in current Kansas legislation. Published regularly during the Kansas legislative session, it focuses on issues involving health care, insurance, public finance, taxation, financial institutions, business & economic development, energy, real estate & construction, environmental, agribusiness, employment, and workers compensation. Bill summaries are by necessity brief, however, for additional information on any issue before the Kansas Legislature, contact Foulston Siefkin's Governmental Relations & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or jrankin@foulston.com.

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PRACTICE AREAS

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