

SESSION OF 2013

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2049**

As Agreed to June 1, 2013

**Brief\***

HB 2049 would create or amend law related to elections crimes and prosecution of those crimes. It also would amend provisions related to appearance bonds and surety. Finally, it would amend law related to collection of DNA samples by the Kansas Bureau of Investigation (KBI) and make a technical correction related to the criminal statute of limitations.

***Elections Crimes and Prosecution***

With regard to elections crimes and prosecution of them, the bill would:

- Create a new section for the crime of voting more than once, which is currently incorporated in the crime of voting without being qualified. The new crime would be defined as intentionally voting or attempting to vote more than once in the same jurisdiction, voting in more than one U.S. jurisdiction in an election held on a particular date, or inducing or aiding any person to take the above actions. The crime would be a severity level 8, nonperson felony.
- Create a new section that would vest independent authority to prosecute any person for a Kansas

---

\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

election crime in the district attorney or county attorney of the county where such violations occurred, the Kansas Attorney General, or the Kansas Secretary of State. Once one of the listed officers has commenced prosecution of a person for an election crime, the other officers could assist in the prosecution, but none could commence a separate prosecution.

- Amend the statute prohibiting or requiring certain actions with regard to advance voting to increase the severity level for a violation of its provisions from a class C misdemeanor to a class A misdemeanor;
- Amend the election bribery statute to add an exemption for a business or organization providing a product worth less than \$3.00 to any person who asserts such person has voted, without regard to the voter's vote for or against a candidate or issue;
- Amend the crime of voting without being qualified to remove the provision regarding voting more than once (moved to the new section described above) and define the crime as voting or attempting to vote in any election district by a person who is not a lawfully registered voter in that district, or voting or attempting to vote at any election by a person who is not a U.S. citizen, or who does not otherwise qualify as an elector. The severity level of this crime would be increased from a class A misdemeanor to a severity level 8, nonperson felony;
- Increase the severity level of the crime of election tampering from a severity level 8 to a severity level 7, nonperson felony;
- Clarify that the crime of false impersonation of a voter can occur by representing oneself as another

person whether real or fictitious, and increase the severity level of this crime from a severity level 9 to a severity level 8, nonperson felony; and

- Amend the declaration signed by voters in the registration book to replace the phrase “at this election” with “in the election held on this date, in this or any other jurisdiction in the United States, for any offices or ballot issues.”

### ***Appearance Bonds and Surety***

The bill would prohibit a person convicted of a felony from acting as a surety or as an agent of a surety unless at least 10 years have passed since the person was released from prison or discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release, or a suspended sentence. Currently, only persons convicted of person felonies fall under this prohibition.

An out-of-state surety or agent of a surety intending to apprehend a person in Kansas would be required to contract with an authorized Kansas surety or agent of a surety before attempting the apprehension. The out-of-state surety or agent would also be required to be accompanied by the Kansas surety or agent during the apprehension.

### ***KBI Collection of DNA Samples***

To align the law concerning the KBI’s collection of DNA samples with current practices, the bill would remove references to drawing blood and require the specified persons to submit biological samples to the KBI when a person is fingerprinted as part of the booking procedure. The KBI would provide the necessary kits and supplies for collection and the samples would not be accepted for admission or comparison unless obtained in substantial

compliance with the provisions of the bill by an accredited forensic laboratory meeting the national DNA index guidelines established by the Federal Bureau of Investigation. If the person's DNA sample was not properly obtained, the person would be required to provide another sample. Additionally, a sample collected by a law enforcement agency or juvenile justice agency in substantial compliance with the provisions of the bill, or any evidence based upon or derived from such sample, could not be excluded as evidence in any criminal proceeding on the basis that the sample was not validly obtained.

The bill also would amend provisions outlining who is required to submit such a sample. The bill would clarify that a person would be required to submit a sample when convicted of lewd and lascivious behavior only if the crime was committed in the presence of a person 16 or more years of age. Further, the bill would specify that persons who were incarcerated on May 2, 1991, for a crime committed prior to that date would be required to submit a sample prior to final discharge or conditional release. Finally, the bill would strike provisions that are outdated, make other technical amendments, and define key terms.

#### ***Statute of Limitations Technical Correction***

The bill would restore a sentence to the criminal statute of limitations statute that was inadvertently removed by the Legislature's passage of HB 2252.

#### **Conference Committee Action**

The second Conference Committee agreed to remove the contents of HB 2049, as it entered conference. The Committee then added the language of SB 63, as passed by the Senate (thereby removing the House political committee

amendments, disenfranchisement provision, and severity level amendments), with the following changes:

- Remove the Senate political committee provision;
- Change the crime of voting more than once to a severity level 8, nonperson felony;
- Change the severity level of advance voting crimes in KSA 25-1128 to a class A misdemeanor; and
- Change the crime of voting without being qualified to a severity level 8, nonperson felony.

The second Conference Committee then added the provisions relating to appearance bonds and surety, which were modified from provisions contained in HB 2070.

Finally, the second Conference Committee added the KBI DNA collection provisions and criminal statute of limitations correction from HB 2120.

## **Background**

### ***HB 2049***

As it entered the second conference committee, HB 2049 would have amended provisions regarding licenses and fees administered by the Kansas Department of Agriculture (KDA). None of these provisions are contained in the second Conference Committee report.

### ***SB 63***

The bill was introduced by the Senate Committee on Ethics, Elections and Local Government.

In the Senate Judiciary Committee, Secretary of State Kris Kobach testified in support of the bill. A former member of the House of Representatives testified as a neutral conferee. The Johnson County District Attorney testified in opposition to the bill on behalf of the Kansas County and District Attorneys Association. The Edwards County Attorney submitted written testimony opposing the bill.

The Senate Committee amended the bill by adopting technical amendments, changing the culpability requirement for the crime of voting more than once from “knowingly” to “intentionally,” and changing the word “offering” to “attempting” in the definition of voting more than once.

The Senate Committee of the Whole amended the bill by adding the new section prohibiting the Secretary of State from establishing political committees other than those supporting a candidate for Secretary of State.

The House Committee on Elections amended the bill by deleting language that prohibited the Secretary of State from establishing political committees other than those supporting a candidate for Secretary of State, and by reducing the severity level of the following crimes, which had been increased in severity level in the introduced version of the bill:

- Voting more than once, reduced from severity level 7 to severity level 9, nonperson felony;
- Advance voting violations specified in KSA 25-1128, reduced from severity level 9, nonperson felony to class A misdemeanor;
- Voting without being qualified, reduced from severity level 7 to severity level 9, nonperson felony;
- Election tampering, reduced from severity level 7 to severity level 8, nonperson felony; and

- False impersonation of a voter, reduced from a severity level 8 to severity level 9, nonperson felony.

The House Elections Committee also adopted provisions that would remove the right of any person convicted of an election crime to vote for four years and would amend the Campaign Finance Act to abolish any political committee established by a member of the Legislature, in accordance with KSA 25-4153b, which existed prior to the effective date of the bill.

The House Committee of the Whole amended the bill to specify that when a political committee is abolished in accordance with the bill, its remaining funds could be donated in their entirety to a political party.

The fiscal note prepared by the Division of the Budget on the original bill states the Secretary of State indicates any fiscal effect could be absorbed within existing resources. The Kansas Association of Counties and the Office of the Attorney General state they believe the bill would have no fiscal effect. The Kansas Sentencing Commission states the bill would have no effect on prison admission or bed needs.

The fiscal note further indicates the bill has the potential to increase the number of cases related to voting crimes filed in district and appellate courts and could increase the time required by judicial and non-judicial personnel. The bill could also generate additional revenue from docket fees and penalties. However, a precise fiscal effect cannot be determined at this time and would most likely be accommodated within the existing schedule of court cases. Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.

### **HB 2070**

In the House Committee on Corrections and Juvenile Justice, representatives of the Kansas Bail Agents Association and local bail agents offered testimony in support of the bill. Representatives of the Kansas Association of Counties, Kansas District Judges Association, Sedgwick County Corrections, and the Sedgwick County Sheriff's Office appeared as opponents of the bill.

The House Committee amended the bill to remove provisions that would have amended conditions for appearance and own recognizance bonds (OR bonds).

The Division of the Budget's fiscal note for HB 2070, as introduced, indicates the provisions concerning appearance and OR bonds could increase workload for court personnel, which would be difficult to handle with existing staff; however, the amount of additional staffing required is unknown. Additionally, because these provisions could limit the number of persons who qualify for OR bonds, the fiscal note indicates local governments could incur some additional expenses for the continued incarceration of these individuals.

### **HB 2120**

In the House Corrections and Juvenile Justice Committee, a representative of the KBI appeared in support of HB 2120 and explained that these revisions are recommended as saliva, rather than blood, is used more often for DNA samples, and other technical changes are necessary to remove conflicts and clean up the language.

The House Committee amended the bill to strike language that would have allowed a court to order a person to submit a sample upon conviction or adjudication for any crime and to clarify language concerning the validity of these samples as evidence.



In the Senate Judiciary Committee, a representative of the KBI offered testimony in support of the bill. Senator Jay Emler requested an amendment concerning raffles, an issue originally considered by the Senate Federal and State Affairs Committee in SB 148 and SB 220. He indicated the proposed amendment was a means of avoiding lengthy floor debate on gaming, not just raffles.

The Senate Committee agreed to adopt the Emler amendment, which would exclude raffles, as defined in the amendment, from the definition of “bet.”

The conference committee on HB 2120 added the criminal statute of limitations correction and the text of SB 41, concerning a special sentencing rule related to firearms. The Senate and the House adopted the conference committee report on HB 2120.

Governor Sam Brownback vetoed HB 2120. In his veto message, the governor cited constitutional concerns with the raffle provision. (The raffle provisions are not included in the second conference committee report on HB 2049.)

The fiscal note prepared by the Division of the Budget for HB 2120, as introduced, indicates passage of the bill could have an effect on the Judicial Branch, but the precise impact is unknown. Passage of the bill would have no effect on the KBI or the Juvenile Justice Authority.

voting crimes; elections crimes; elections; Secretary of State; Attorney General; county attorneys; district attorneys; appearance bonds; out-of-state surety; criminal procedure; DNA evidence; Kansas Bureau of Investigation

ccrb\_hb2049\_01\_0000.odt