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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 7, 2022
Subject: Bill Brief for SB 541

Senate Bill 541 makes several changes to the law related to public health and contagious or infectious diseases.

New Section 1 requires compensation for the use, restriction on use, damage, loss or destruction of property as a result of certain governmental actions. In this section, “governmental action” means an order, resolution or ordinance related to a contagious or infectious disease issued or adopted by the state, county, city or other political subdivision of the state that mandates the wearing of face masks, limits the size of gatherings of individuals, restricts the operation of business, controls the movement of persons or limits religious gatherings. Compensation for property shall be provided only if the property was commandeered, restricted for use or otherwise used pursuant to a governmental action and the destruction, use or restriction on use of such property was ordered by a public official pursuant to such governmental action.

Any person claiming compensation under this section may file a civil action in district court. The court shall determine the validity of such claim in the same manner and under the same procedures prescribed for condemnation actions. Unless the amount of compensation on account of property damaged, lost or destroyed is agreed upon by the claimant and the governmental entity, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation law of this state. This section shall only apply to a governmental action taken on or after the effective date of this act.

New Section 2 provides that a city ordinance or action related to a contagious or infectious disease that mandates the wearing of face masks, limits the size of gatherings of individuals, restricts the operation of business, controls the movement of persons or limits religious gatherings shall not exceed 30 days in duration at a time before being renewed or allowed to expire. Any party

aggrieved by such an ordinance or action may file a civil action in the district court of the county in which the city is located within 30 days after such ordinance is adopted or such action is taken. The court shall conduct a hearing within 72 hours after receipt of a petition in any such action. The court shall grant the request for relief unless the court finds such order is narrowly tailored to the stated purpose and uses the least restrictive means to achieve such purpose. The court shall issue an order on such petition without unreasonable delay after the hearing is conducted and shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

Similar civil action and judicial review provisions that were enacted in 2021 Senate Bill 40 are amended in: Section 6, K.S.A. 48-925, related to certain executive orders issued during a state of disaster emergency; Section 7, K.S.A. 48-925c, related to certain actions taken, orders issued or policies adopted by the board of education of a school district; Section 8, K.S.A. 48-925d, related to certain actions taken, orders issued or policies adopted by the governing body of a community college or the governing body of a technical college; Section 9, K.S.A. 48-932, related to certain actions taken by a local unit of government during a state of local disaster emergency; and Section 14, K.S.A. 65-201, related to certain orders approved by a board of county commissioners and issued by a local health officer.

In each of these sections, current law is maintained so that an aggrieved party may file an action in district court and the court is required to conduct a hearing within 72 hours after receipt of the petition. Each section is changed to require the court to issue an order on such petition without unreasonable delay after the hearing is conducted, rather than within seven days after the hearing is conducted. The provision in each section that grants the relief requested in the petition if the court does not issue an order on such petition within seven days is removed. Finally, a provision is added to each section to require the court to award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

An additional substantive change is made in Section 7, K.S.A. 48-925c, and Section 8, K.S.A. 48-925d, to remove the current law provision that each section only applies during the state of disaster emergency related to the COVID-19 health emergency. Under the amended K.S.A. 48-925c, only the board of education has the authority to take any action, issue any order or adopt any policy made or taken in response to a contagious or infectious disease that affects the operation of any school or attendance center of such school district. Under the amended K.S.A. 48-925d, only the governing body of a community college or the governing body of a technical college has the

authority to take any action, issue any order or adopt any policy made or taken in response to a contagious or infectious disease that affects the operation of the community college or technical college governed by such governing body. Finally, each section is amended to provide that such an action taken, order issued or policy adopted by a board or governing body shall not exceed 30 days in duration at a time before being renewed or allowed to expire.

New Section 3 prohibits school officials from issuing or requiring use of a COVID-19 vaccination passport or discriminating against a student based upon COVID-19 vaccination status. Postsecondary educational institutions, as defined in K.S.A. 74-3201b, the state board of education, local boards of education, schools or school officials shall not: (1) Issue a COVID-19 vaccination passport to any individual without such individual's consent; (2) require an individual to use a COVID-19 vaccination passport for any purpose; or (3) refuse access to education or a place accessible to the general public or separate an individual from others based on such individual's COVID-19 vaccination status. Violation of this section is a class A nonperson misdemeanor.

New Section 4 requires schools to recognize exemptions from face mask mandates. If a school district or any school building or activity thereof requires some or all students, district personnel or visitors to wear a face mask covering the mouth or nose for any reason, any student, district personnel or visitor with a medical condition or religious opposition preventing the wearing of a face mask shall not be required to wear such face mask on school property or at school activities if such person presents: (1) A written statement signed by a licensed physician or parent or guardian, or signed by the person if such person is 18 years of age or older, stating the physical condition of the person to be such that wearing a face mask would seriously endanger the life or health of the person; or (2) a written statement signed by one parent or guardian, or signed by the person if such person is 18 years of age or older, that wearing a face mask would violate sincerely held religious beliefs of the person. The person shall be granted an exemption requested in accordance with this provision based on sincerely held religious beliefs without inquiring into the sincerity of the request. No student, district personnel or visitor who has presented a certification or other documentation pursuant to this section shall be: (1) Denied enrollment or full, in-person participation in any school activity because of such action; or (2) segregated or separated from other individuals because of such action.

Section 15 amends a similar provision in K.S.A. 72-6262 that requires schools to recognize exemptions from vaccination requirements. The current law exemption language is changed to refer to sincerely held religious beliefs and to require that a student shall be granted such an exemption without inquiring into the sincerity of the request. A new provision is added to allow an alternative certification for an exemption if an inoculation or test does not have final approval by the federal food and drug administration. The student may present: (1) An annual written statement signed by a licensed physician or a parent or guardian stating the physical condition of the child to be such that the test or inoculation would seriously endanger the life or health of the child; or (2) a written statement signed by one parent or guardian that such test or inoculation would violate sincerely held religious beliefs of the parent, guardian or child. The student shall be granted an exemption requested based on sincerely held religious beliefs without inquiring into the sincerity of the request. Finally, no student who has presented a certification or other documentation pursuant to either provision shall be: (1) Denied enrollment or full, in-person participation in any school activity because of such action; or (2) segregated or separated from other individuals because of such action.

Section 10 amends K.S.A. 48-961 to remove the sunset provision in the COVID-19 contact tracing privacy act. Notwithstanding the prior expiration of this section on May 1, 2021, the provisions of this section shall be in force and effect on and after the effective date of this act. No other substantive change is made to the section.

Section 11 amends K.S.A. 65-101 concerning the powers and duties of the secretary of health and environment. A new provision is added to require that if the secretary takes any action related to a contagious or infectious disease that mandates the wearing of face masks, limits the size of gatherings of individuals, restricts the operation of business, controls the movement of persons or limits religious gatherings, such action shall: (1) Be narrowly tailored to the purpose of the action and use the least restrictive means to achieve such purpose; and (2) not exceed 30 days in duration at a time before such action shall be renewed, modified, rescinded or allowed to expire.

Section 12 amends K.S.A. 65-119 concerning the powers and duties of any county or joint board of health or local health officer related to infectious or contagious disease. Two references are added to the restrictions on such powers provided in K.S.A. 65-201.

Section 13 amends K.S.A. 65-122 to prohibit schools and child care facilities from denying access to facilities unless there are reasonable grounds to believe that the person is actually infected with a disease suspected of being infectious or contagious. The new provision states that no person shall be denied access to any public, parochial or private school or licensed child care facility under this section unless there are reasonable grounds to believe that such person is actually infected with a disease suspected of being infectious or contagious. The provisions of K.S.A. 72-5180 shall not apply for the purposes of providing remote education to any student excluded from a facility under this section.

Section 16 amends K.S.A. 79-1614 to authorize reimbursement of property taxes levied upon businesses shut down or restricted as a result of certain governmental actions related to contagious or infectious disease. Current law allows the owner of any building listed and assessed for property taxation purposes as real property that maintains a business on the property that was shut down or restricted by the state, county, city or other political subdivision of the state pursuant to an executive order issued by the governor pursuant to K.S.A. 48-925 or any action taken by a county, city or other political subdivision of the state related to a state of disaster emergency declared pursuant to K.S.A. 48-924 or a state of local disaster emergency declared pursuant to K.S.A. 48-932 to make application to the board of county commissioners of the county in which such property is located for the reimbursement of the property taxes levied upon such property during the shutdown or restriction. The bill adds authorization to seek reimbursement of property taxes levied upon businesses shut down or restricted as a result of any action taken by a county, city or other political subdivision of the state related to contagious or infectious disease pursuant to chapter 65 of the Kansas Statutes Annotated. The change would only apply to actions taken on and after the effective date of this act.

The bill would take effect upon publication in the Kansas register.