

SENATE BILL No. 541

By Committee on Federal and State Affairs

3-1

Proposed Amendments to
Senate Bill No. 541
KEMA-Exercise of Religion
Senate Committee on Judiciary
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governmental action; relating to

1 AN ACT concerning public health; requiring compensation for the use,
2 restriction on use, damage, loss or destruction of property as a result of
3 certain governmental actions; providing that orders and similar actions
4 by public officials relating to face mask mandates, gathering
5 limitations, business restrictions and religious gathering limitations
6 shall not exceed 30 days in duration at a time before being renewed or
7 allowed to expire; requiring court petitions challenging such orders and
8 actions to be ruled on without unreasonable delay; prohibiting school
9 officials from issuing or requiring use of a COVID-19 vaccination
10 passport or discriminating against a student based upon COVID-19
11 vaccination status; requiring schools to recognize exemptions from
12 vaccination requirements and face mask mandates; modifying judicial
13 review provisions related to certain executive orders issued during a
14 state of disaster emergency and certain actions taken by a local unit of
15 government during a state of local disaster emergency; prescribing
16 powers, duties and functions of the board of education of each school
17 district, the governing body of each community college and the
18 governing body of each technical college related to contagious or
19 infectious disease and modifying judicial review provisions related
20 thereto; removing the sunset provision in the COVID-19 contact
21 tracing privacy act; prohibiting schools and child care facilities from
22 denying access to facilities unless there are reasonable grounds to
23 believe that the person is actually infected with a disease suspected of
24 being infectious or contagious; authorizing reimbursement of property
25 taxes levied upon businesses shut down or restricted as a result of
26 certain governmental actions related to contagious or infectious
27 disease; amending K.S.A. 65-119, 65-122 and 72-6262 and K.S.A.
28 2021 Supp. 48-925, 48-925c, 48-925d, 48-932, 48-961, 65-101, 65-201
29 and 79-1614 and repealing the existing sections.
30

limiting powers of the governor and other governmental entities
under the Kansas emergency management act related to the
exercise of religion;

31 *Be it enacted by the Legislature of the State of Kansas:*
32 New Section 1. (a) Each person within this state shall act and manage
33 the affairs of such person and such person's property in any way that
34 reasonably will assist and not detract from the ability of the state and the
35 public successfully to prevent and respond to contagious or infectious
36 disease. This obligation includes appropriate personal service and

1 the person if such person is 18 years of age or older, that wearing a face
2 mask would violate sincerely held religious beliefs of the person. The
3 person shall be granted an exemption requested in accordance with this
4 paragraph based on sincerely held religious beliefs without inquiring into
5 the sincerity of the request.

6 (b) On or before May 15 of each school year, the school board of
7 every school affected by this section shall notify all district personnel and
8 the parents or guardians of all known students who are enrolled or who
9 will be enrolling in the school of the provisions of this section and any
10 policy regarding the implementation of the provisions of this section
11 adopted by the school board.

12 (c) If a student transfers from one school to another, the school from
13 which the student transfers shall forward with the student's transcript the
14 certification or statement described in subsection (a) to the school to which
15 the student transfers.

16 (d) No student, district personnel or visitor who has presented a
17 certification or other documentation pursuant to subsection (a) shall be:

18 (1) Denied enrollment or full, in-person participation in any school
19 activity because of such action; or

20 (2) segregated or separated from other individuals because of such
21 action.

22 (e) As used in this section:

23 (1) "Religious beliefs" includes, but is not limited to, theistic and
24 non-theistic moral and ethical beliefs as to what is right and wrong that are
25 sincerely held with the strength of traditional religious views; and

26 (2) all other terms mean the same as defined in K.S.A. 72-6261, and
27 amendments thereto.

28 New Sec. 5. The provisions of this act are severable. If any portion of
29 the act is declared unconstitutional or invalid, or the application of any
30 portion of the act to any person or circumstance is held unconstitutional or
31 invalid, the invalidity shall not affect other portions of the act that can be
32 given effect without the invalid portion or application, and the
33 applicability of such other portions of the act to any person or
34 circumstance shall remain valid and enforceable.

35 Sec. 6. K.S.A. 2021 Supp. 48-925 is hereby amended to read as
36 follows: 48-925. (a) During any state of disaster emergency declared under
37 K.S.A. 48-924, and amendments thereto, the governor shall be
38 commander-in-chief of the organized and unorganized militia and of all
39 other forces available for emergency duty. To the greatest extent
40 practicable, the governor shall delegate or assign command authority by
41 prior arrangement, embodied in appropriate executive orders or in rules
42 and regulations of the adjutant general, but nothing shall restrict the
43 authority of the governor to do so by executive orders issued at the time of

1 a disaster.

2 (b) Under the provisions of this act and for the implementation of this
3 act, the governor may issue executive orders to exercise the powers
4 conferred by subsection (c) that have the force and effect of law during the
5 period of a state of disaster emergency declared under K.S.A. 48-924(b),
6 and amendments thereto, or as provided in K.S.A. 2021 Supp. 48-924b,
7 and amendments thereto. The chairperson of the legislative coordinating
8 council shall call a meeting of the council to occur within 24 hours of the
9 issuance of an executive order issued pursuant to this section for the
10 purposes of reviewing such order. Such executive orders shall be null and
11 void after the period of a state of disaster emergency has ended. Such
12 executive orders may be revoked at any time by concurrent resolution of
13 the legislature or, when the legislature is not in session or is adjourned
14 during session for three or more days, such orders may be revoked by the
15 legislative coordinating council with the affirmative vote of five members
16 thereof.

17 (c) Except as provided in K.S.A. 2021 Supp. 48-924b, and
18 amendments thereto, during a state of disaster emergency declared under
19 K.S.A. 48-924, and amendments thereto, in addition to any other powers
20 conferred upon the governor by law and subject to the provisions of
21 subsections (d) and (e), the governor may:

subsection (d)

22 (1) Suspend the provisions of any regulatory statute prescribing the
23 procedures for conduct of state business, or the orders or rules and
24 regulations of any state agency which implements such statute, if strict
25 compliance with the provisions of such statute, order or rule and regulation
26 would prevent, hinder or delay in any way necessary action in coping with
27 the disaster;

28 (2) utilize all available resources of the state government and of each
29 political subdivision as reasonably necessary to cope with the disaster;

30 (3) transfer the supervision, personnel or functions of state
31 departments and agencies or units thereof for the purpose of performing or
32 facilitating emergency management activities;

33 (4) subject to any applicable requirements for compensation under
34 K.S.A. 48-933, and amendments thereto, commandeer or utilize any
35 private property if the governor finds such action necessary to cope with
36 the disaster;

37 (5) direct and compel the evacuation of all or part of the population
38 from any area of the state stricken or threatened by a disaster, if the
39 governor deems this action necessary for the preservation of life or other
40 disaster mitigation, response or recovery;

41 (6) prescribe routes, modes of transportation and destinations in
42 connection with such evacuation;

43 (7) control ingress and egress of persons and animals to and from a

1 disaster area, the movement of persons and animals within the area and the
2 occupancy by persons and animals of premises therein;

3 (8) suspend or limit the sale, dispensing or transportation of alcoholic
4 beverages, explosives and combustibles;

5 (9) make provision for the availability and use of temporary
6 emergency housing;

7 (10) require and direct the cooperation and assistance of state and
8 local governmental agencies and officials; and

9 (11) perform and exercise such other functions, powers and duties in
10 conformity with the constitution and the bill of rights of the state of
11 Kansas and with the statutes of the state of Kansas, except any regulatory
12 statute specifically suspended under the authority of subsection (c)(1), as
13 are necessary to promote and secure the safety and protection of the
14 civilian population.

(1)

15 (d) The governor shall not have the power or authority to limit or
16 otherwise restrict the sale, purchase, transfer, ownership, storage, carrying
17 or transporting of firearms or ammunition, or any component or
18 combination thereof, including any components or combination thereof
19 used in the manufacture of firearms or ammunition, or seize or authorize
20 the seizure of any firearms or ammunition, or any component or
21 combination thereto, except as otherwise permitted by state or federal law
22 pursuant to subsection (c)(8) or any other executive authority.

(2)

23 (e) The governor shall not have the power under the provisions of the
24 Kansas emergency management act or the provisions of any other law to
25 alter or modify any provisions of the election laws of the state including,
26 but not limited to, the method by which elections are conducted or the
27 timing of such elections.

(3) No rule, regulation or executive order issued by the
governor or any other governmental entity pursuant to the
Kansas emergency management act shall apply to the exercise
of religion in a church, synagogue or other place of worship.

(e)

28 (f) The governor shall exercise the powers conferred by subsection
29 (c) by issuance of executive orders under subsection (b). Each executive
30 order issued pursuant to the authority granted by subsection (b) shall
31 specify the provision or provisions of subsection (c) by specific reference
32 to each paragraph of subsection (c) that confers the power under which the
33 executive order was issued. The adjutant general, subject to the direction
34 of the governor, shall administer such executive orders.

(f)

35 (g) (1) Any party aggrieved by an executive order issued pursuant to
36 this section that has the effect of substantially burdening or inhibiting the
37 gathering or movement of individuals or the operation of any religious,
38 civic, business or commercial activity, whether for-profit or not-for-profit,
39 may file a civil action in the district court of the county in which such
40 party resides or in the district court of Shawnee county, Kansas, within 30
41 days after the issuance of such executive order. Notwithstanding any order
42 issued pursuant to K.S.A. 2021 Supp. 20-172(a), and amendments thereto,
43 the court shall conduct a hearing within 72 hours after receipt of a petition

1 in any such action. The court shall grant the request for relief unless the
 2 court finds such executive order is narrowly tailored to respond to the state
 3 of disaster emergency and uses the least restrictive means to achieve such
 4 purpose. The court shall issue an order on such petition ~~within seven days~~
 5 *without unreasonable delay* after the hearing is conducted. ~~If the court~~
 6 ~~does not issue an order on such petition within seven days, the relief~~
 7 ~~requested in the petition shall be granted.~~

8 (2) Relief under this section shall not include a stay or injunction
 9 concerning the contested executive order that applies beyond the county in
 10 which the petition was filed.

11 (3) *In an action under this section, the court shall award a prevailing*
 12 *plaintiff the cost of the suit, including reasonable attorney fees.*

13 (4) The supreme court may adopt emergency rules of procedure to
 14 facilitate the efficient adjudication of any hearing requested under this
 15 subsection, including, but not limited to, rules for consolidation of similar
 16 hearings.

(g) ~~(h)~~ (1) The board of county commissioners of any county may issue
 17 an order relating to public health that includes provisions that are less
 18 stringent than the provisions of an executive order effective statewide
 19 issued by the governor. Any board of county commissioners issuing such
 20 an order must make the following findings and include such findings in the
 21 order:
 22

23 (A) The board has consulted with the local health officer or other
 24 local health officials regarding the governor's executive order;

25 (B) following such consultation, implementation of the full scope of
 26 the provisions in the governor's executive order are not necessary to
 27 protect the public health and safety of the county; and

28 (C) all other relevant findings to support the board's decision.

29 (2) If the board of county commissioners of a county issues an order
 30 pursuant to paragraph (1), such order shall operate in the county in lieu of
 31 the governor's executive order.

32 Sec. 7. K.S.A. 2021 Supp. 48-925c is hereby amended to read as
 33 follows: 48-925c. (a) (1) ~~During the state of disaster emergency related to~~
 34 ~~the COVID-19 health emergency described in K.S.A. 2021 Supp. 48-924b,~~
 35 ~~and amendments thereto, Only the board of education responsible for the~~
 36 maintenance, development and operation of a school district shall have the
 37 authority to take any action, issue any order or adopt any policy made or
 38 taken in response to ~~such disaster emergency~~ *a contagious or infectious*
 39 *disease* that affects the operation of any school or attendance center of
 40 such school district, including, but not limited to, any action, order or
 41 policy that:

42 (A) Closes or has the effect of closing any school or attendance center
 43 of such school district;

1 action taken, order issued or policy adopted by the governing body is
2 narrowly tailored to respond to the state of disaster emergency and uses the
3 least restrictive means to achieve such purpose. The court shall issue an
4 order on such petition ~~within seven days~~ *without unreasonable delay* after
5 the hearing is conducted. ~~If the court does not issue an order on such~~
6 ~~petition within seven days, the relief requested in the petition shall be~~
7 ~~granted.~~

8 (2) Relief under this section shall not include a stay or injunction
9 concerning the contested action taken, order issued or policy adopted by
10 the governing body that applies beyond the county in which the petition
11 was filed.

12 (3) *In an action under this section, the court shall award a prevailing*
13 *plaintiff the cost of the suit, including reasonable attorney fees.*

14 (4) The supreme court may adopt emergency rules of procedure to
15 facilitate the efficient adjudication of any hearing requested under this
16 subsection, including, but not limited to, rules for consolidation of similar
17 hearings.

18 Sec. 9. K.S.A. 2021 Supp. 48-932 is hereby amended to read as
19 follows: 48-932. (a) A state of local disaster emergency may be declared
20 by the chairperson of the board of county commissioners of any county, or
21 by the mayor or other principal executive officer of each city of this state
22 having a disaster emergency plan, upon a finding by such officer that a
23 disaster has occurred or the threat thereof is imminent within such county
24 or city. No state of local disaster emergency shall be continued for a period
25 in excess of seven days or renewed, except with the consent of the board
26 of county commissioners of such county or the governing body of such
27 city. Any order or proclamation declaring, continuing or terminating a
28 local disaster emergency shall be given prompt and general publicity and
29 shall be filed with the county clerk or city clerk. Any such declaration may
30 be reviewed, amended or revoked by the board of county commissioners
31 or the governing body of the city, respectively, at a meeting of such
32 governing body.

33 (b) In the event of the absence of the chairperson of the board of
34 county commissioners from the county or the incapacity of such
35 chairperson, the board of county commissioners, by majority action of the
36 remaining members thereof, may declare a state of local disaster
37 emergency in the manner provided in and subject to the provisions of
38 subsection (a). In the event of the absence of the mayor or other principal
39 executive officer of a city from the city or the incapacity of such mayor or
40 officer, the governing body of the city, by majority action of the remaining
41 members thereof, may declare a state of local disaster emergency in the
42 manner provided in and subject to the provisions of subsection (a). Any
43 state of local disaster emergency and any actions taken pursuant to

1 applicable local and interjurisdictional disaster emergency plans, under
2 this subsection shall continue and have full force and effect as authorized
3 by law unless modified or terminated in the manner prescribed by law.

4 (c) The declaration of a local disaster emergency shall activate the
5 response and recovery aspects of any and all local and interjurisdictional
6 disaster emergency plans which are applicable to such county or city, and
7 shall initiate the rendering of aid and assistance thereunder.

8 (d) No interjurisdictional disaster agency or any official thereof may
9 declare a local disaster emergency, unless expressly authorized by the
10 agreement pursuant to which the agency functions. However, an
11 interjurisdictional disaster agency shall provide aid and services in
12 accordance with the agreement pursuant to which it functions in the case
13 of a state of local disaster emergency declared under subsection (a).

14 (e) (1) Any party aggrieved by an action taken by a local unit of
15 government pursuant to this section that has the effect of substantially
16 burdening or inhibiting the gathering or movement of individuals or the
17 operation of any religious, civic, business or commercial activity, whether
18 for-profit or not-for-profit, may file a civil action in the district court of the
19 county in which such action was taken within 30 days after such action is
20 taken. Notwithstanding any order issued pursuant to K.S.A. 2021 Supp.
21 20-172(a), and amendments thereto, the court shall conduct a hearing
22 within 72 hours after receipt of a petition in any such action. The court
23 shall grant the request for relief unless the court finds such action is
24 narrowly tailored to respond to the state of local disaster emergency and
25 uses the least restrictive means to achieve such purpose. The court shall
26 issue an order on such petition ~~within seven days~~ without unreasonable
27 delay after the hearing is conducted. ~~If the court does not issue an order on~~
28 ~~such petition within seven days, the relief requested in the petition shall be~~
29 ~~granted.~~

30 (2) Relief under this section shall not include a stay or injunction
31 concerning the contested action that applies beyond the county in which
32 the action was taken.

33 (3) *In an action under this section, the court shall award a prevailing*
34 *plaintiff the cost of the suit, including reasonable attorney fees.*

35 (4) The supreme court may adopt emergency rules of procedure to
36 facilitate the efficient adjudication of any hearing requested under this
37 subsection, including, but not limited to, rules for consolidation of similar
38 hearings.

39 Sec. 10. K.S.A. 2021 Supp. 48-961 is hereby amended to read as
40 follows: 48-961. (a) This section shall be known and may be cited as the
41 COVID-19 contact tracing privacy act.

42 (b) The purpose of this act is to protect the privacy of persons whose
43 information is collected through contact tracing and the confidentiality of

No action taken by a governmental entity or public official pursuant to the Kansas emergency management act shall apply to the exercise of religion in a church, synagogue or other place of worship.
(f)