

Substitute for SENATE BILL No. 286

By Committee on Judiciary

5-3

1 AN ACT enacting the COVID-19 business relief act; providing funds for
2 impacted businesses; making and concerning appropriations for the
3 fiscal years ending June 30, 2021, and June 30, 2022; authorizing
4 certain transfers and imposing certain limitations; creating the COVID-
5 19 business relief fund and the COVID-19 business relief claims board;
6 providing for administration of this act by the attorney general;
7 requiring certain counties to establish and administer a county COVID-
8 19 business relief fund and certain cities to establish and administer a
9 city COVID-19 business relief fund; amending K.S.A. 48-933 and
10 repealing the existing section.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. (a) Sections 1 through 7, and amendments thereto,
14 shall be known and may be cited as the COVID-19 business relief act.

15 (b) As used in sections 1 through 7, and amendments thereto:

16 (1) "Act" means the COVID-19 business relief act.

17 (2) "Board" means the COVID-19 business relief claims board
18 established under section 3, and amendments thereto.

19 (3) (A) "Business" means a sole proprietorship, partnership, limited
20 partnership, limited liability partnership, limited liability company or
21 corporation that:

22 (i) Had 50 or less full-time equivalent employees during the period
23 beginning March 12, 2021, and ending on the date such business files a
24 claim pursuant to section 4, and amendments thereto; and

25 (ii) was organized under the laws of this state or authorized to do
26 business in this state on March 12, 2020.

27 (B) "Business" does not include a not-for-profit corporation or
28 business entity.

29 (4) "Governmental entity" means:

30 (A) The state of Kansas and any department or branch of state
31 government, or any agency, authority, institution or other instrumentality
32 thereof; and

33 (B) any county or city, or any agency, authority, institution or other
34 instrumentality thereof.

35 (5) "Order" means any order issued by any governmental entity
36 related to the COVID-19 pandemic.

1 (6) "Restriction" means any occupancy limitation, limitation on
2 periods of operation or the exertion by any governmental entity of other
3 significant control on business resources or functionality related to the
4 COVID-19 pandemic. On and after May 31, 2021, any governmental
5 entity mandating the use of face masks related to the COVID-19 pandemic
6 that contains an enforcement requirement by Kansas businesses shall be
7 considered a "restriction" under this act and subject to a claim for relief
8 under this act.

9 (c) The provisions of this section shall expire on January 1, 2025.

10 New Sec. 2. (a) (1) There is hereby established in the state treasury
11 the COVID-19 business relief fund, which shall be administered by the
12 attorney general. All expenditures from such fund shall be made upon
13 warrants of the director of accounts and reports pursuant to vouchers
14 approved by the attorney general or by a designee of the attorney general.

15 (2) On and after January 1, 2023, any remaining moneys in the
16 COVID-19 business relief fund may be used in any manner consistent with
17 state and federal law. On December 31, 2024, the COVID-19 business
18 relief fund is hereby abolished, and all pending or future claims against the
19 fund are hereby declared to be null and void.

20 (b) (1) Except as provided in subsection (a)(2), unless prohibited by
21 federal law, moneys in the COVID-19 business relief fund shall be used
22 only for the purpose of paying:

23 (A) Claims as provided in section 4, and amendments thereto;

24 (B) compromises, settlements and final judgments arising from
25 claims related to an order making a restriction brought against the state,
26 including, but not limited to, claims under the Kansas emergency
27 management act or the eminent domain laws of the state of Kansas;

28 (C) compensation and other expenses paid to members of the board;

29 (D) administrative costs of the board and the office of the attorney
30 general related to this act; and

31 (E) any repayment required by the federal government.

32 (2) A compromise or settlement against the state described in
33 subsection (b)(1)(B) may be made or executed for and on behalf of the
34 state and a claimant by the attorney general with approval of the state
35 finance council. The approval of settlements and compromises by the state
36 finance council is hereby characterized as a matter of legislative delegation
37 and subject to the guidelines prescribed in K.S.A. 75-3711c(c), and
38 amendments thereto, except that such approval also may be given by the
39 legislature when in session. The state finance council shall have 60 days to
40 approve or deny the settlement after receipt of the proposed settlement by
41 the attorney general.

42 (3) Payment of a final judgment described in subsection (b)(1)(B)
43 shall be made from the fund if there has been a determination of any

1 appeal taken from the judgment or, if no appeal is taken, if the time for
2 appeal has expired.

3 (c) (1) Notwithstanding the provisions of sections 2 through 4 of
4 chapter 1 of the 2020 Special Session Laws of Kansas, any other statute,
5 section 30(c) of 2021 House Bill No. 2007, or any other appropriation act,
6 for the fiscal years ending June 30, 2021, and June 30, 2022, on or before
7 July 15, 2021, the director of the budget shall determine the amount of
8 moneys received by the state that are identified as moneys from the federal
9 government for aid to the state of Kansas for coronavirus relief as
10 appropriated in the following acts that are eligible to be used for the
11 purposes of this act, may be expended at the discretion of the state, in
12 compliance with the office of management and budget's uniform
13 administrative requirements, cost principles and audit requirements for
14 federal awards, and are unencumbered: (A) The federal CARES act, public
15 law 116-136; (B) the federal coronavirus preparedness and response
16 supplemental appropriation act, 2020, public law 116-123; (C) the federal
17 families first coronavirus response act, public law 116-127; (D) the federal
18 paycheck protection program and health care enhancement act, public law
19 116-139; (E) the federal consolidated appropriations act, 2021, public law
20 116-260; (F) the American rescue plan act of 2021, public law 117-2; and
21 (G) any other federal law that appropriates moneys to the state for aid for
22 coronavirus relief. If the state receives any such moneys from the federal
23 government for aid to the state of Kansas for coronavirus relief after July
24 15, 2021, the director of the budget shall also identify such moneys for the
25 purposes of fulfilling transfers required by this section.

26 (2) Of such identified moneys, following transfers required in 2021
27 Senate Substitute for Substitute for House Bill No. 2196 and 2021 Senate
28 Substitute for House Bill No. 2208, the director of the budget shall
29 determine 100% of such remaining moneys available in special revenue
30 funds. The director of the budget shall certify the amount so determined
31 from each fund to the director of accounts and reports and, at the same
32 time as such certification is transmitted to the director of accounts and
33 reports, shall transmit a copy of such certification to the director of
34 legislative research. Upon receipt of each such certification, or as soon
35 thereafter as moneys are available, the director of accounts and reports
36 shall immediately transfer such certified amount from such funds to the
37 COVID-19 business relief fund of the attorney general.

38 (d) The provisions of this section shall expire on January 1, 2025.

39 New Sec. 3. (a) (1) There is hereby established under the jurisdiction
40 of the attorney general the COVID-19 business relief claims board.

41 (2) The board shall consist of three members appointed as follows:
42 (A) One member appointed by the governor; (B) one member appointed
43 by the president of the senate; and (C) one member appointed by the

1 speaker of the house of representatives. The appointments shall be made
2 on or before July 1, 2021.

3 (3) Members of the board shall be: (A) Residents of the state; (B)
4 selected with special reference to training and experience for duties
5 imposed by this act; and (C) individuals who are recognized for
6 outstanding knowledge and leadership in the fields of finance or business.
7 At least one member of the board shall be an attorney regularly admitted to
8 practice law in the state of Kansas.

9 (4) The board shall elect a chairperson from among its members. The
10 board shall meet on call of the chairperson. A quorum shall consist of two
11 members of the board. All actions of the board shall be taken by a majority
12 of the members of the board.

13 (5) Members of the board attending meetings of the board shall be
14 paid compensation, subsistence allowances, mileage and other expenses as
15 provided in K.S.A. 75-3212, and amendments thereto, for members of the
16 legislature.

17 (b) The board shall have authority to hire expert consultants to
18 provide information and assistance and gather information as required to
19 carry out the board's duties.

20 (c) On or before November 1, 2021, the board shall adopt policies
21 and procedures necessary to facilitate the settlement of claims through the
22 processes provided by this act, including, but not limited to, the form and
23 manner of submitting claims to the board and the procedures for review of
24 claims by the board. The board may adopt rules and regulations to
25 implement and administer the provisions of this act.

26 (d) The provisions of this section shall expire on January 1, 2025.

27 New Sec. 4. (a) (1) This act shall be administered by the board, with
28 the assistance and support of the office of the attorney general, and all
29 claims submitted pursuant to this act shall be for businesses impacted by
30 an order making a restriction related to the COVID-19 pandemic. A
31 business may file a claim with the board in a form and manner provided by
32 the board.

33 (2) All claims brought under this act shall be filed with the board
34 during the period beginning on January 1, 2022, and ending on March 31,
35 2022.

36 (3) Any such claim shall be accompanied by:

37 (A) Proof that the claimant is a business as defined in section 1, and
38 amendments thereto;

39 (B) a copy of the claimant's 2019, 2020 and 2021 Kansas income tax
40 returns, if applicable;

41 (C) proof of the claimant's business income in 2019, 2020 and 2021,
42 if the claimant's business was in existence in any such years; and

43 (D) an affidavit as described in paragraph (4).

1 (4) The claimant shall submit an affidavit by an authorized
2 representative of the business under penalty of perjury stating:

3 (A) Whether the claimant was ordered by a governmental entity to
4 cease all operations or was otherwise restricted in such claimant's
5 operation by an order making a restriction;

6 (B) the number of days that the claimant was ordered by a
7 governmental entity to cease all operations and the number of days such
8 claimant was restricted in any way in its operations due to an order making
9 a restriction;

10 (C) the governmental entity that issued each applicable order making
11 a restriction;

12 (D) a description of how the claimant was impacted financially by
13 each order making a restriction;

14 (E) whether the claimant's operations were deemed essential or not
15 essential under the Kansas essential functions framework pursuant to an
16 executive order issued by the governor or an order issued by a local
17 authority; and

18 (F) the source and amount of any governmental grants related to the
19 COVID-19 pandemic that were received by the claimant or governmental
20 loans related to the COVID-19 pandemic made to the claimant that were
21 forgiven by a governmental entity.

22 (5) The claimant shall submit any other information required by the
23 board to resolve the claim.

24 (6) Any information received pursuant to this subsection shall be
25 confidential, shall not be disclosed and shall not be subject to subpoena,
26 discovery or introduction into evidence in any civil or criminal proceeding,
27 except that such information may be disclosed to: (A) The board; (B) any
28 employees of the board or the office of the attorney general in support of
29 the board's duties; and (C) federal or state agencies, when necessary in the
30 performance of their official duties or functions. Such information shall
31 not be a public record and shall not be subject to the Kansas open records
32 act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this
33 paragraph shall not be required to be reviewed by the legislature and shall
34 not expire in accordance with K.S.A. 45-229, and amendments thereto.

35 (b) (1) The board shall decide each claim based on the information
36 submitted pursuant to this section or otherwise obtained by the board, and
37 no hearings shall be required.

38 (2) Notwithstanding any other provision of law, a meeting of the
39 board to decide a claim shall not be subject to the Kansas administrative
40 procedure act, K.S.A. 77-501 et seq., and amendments thereto, and shall
41 not be subject to the Kansas open meetings act, K.S.A. 75-4317 et seq.,
42 and amendments thereto.

43 (c) In evaluating the claim award, the board shall consider the

1 following factors for each claim:

2 (1) The duration and nature of the impact of each order making a
3 restriction, including:

4 (A) The imposition of any curfew, occupancy restriction or other
5 restriction on business operations; and

6 (B) any added duties prescribed by law on businesses in order to
7 comply with any governmental order that applied to business operations;

8 (2) reasonable costs related to the filing of the claim under the
9 procedures outlined in this act;

10 (3) any extraordinary contributions by the business that benefited the
11 general public of the state;

12 (4) any relevant factors listed in the Kansas eminent domain
13 procedure act, the Kansas condemnation law or the Kansas private
14 property protection act;

15 (5) the moneys available for distribution from the applicable fund or
16 funds and the number of claims against such fund or funds;

17 (6) any governmental grants related to the COVID-19 pandemic that
18 were received by the claimant or governmental loans related to the
19 COVID-19 pandemic made to the claimant that were forgiven by a
20 governmental entity; and

21 (7) the extent to which non-governmental orders or restrictions and
22 consumer behavior contributed to the monetary loss claimed by the
23 business. The board shall quantify the amount of the claimed loss
24 attributable to non-governmental orders or restrictions and consumer
25 behavior and shall not grant relief for such amount.

26 (d) (1) On or before December 30, 2022, the board shall decide on all
27 claims filed pursuant to this section and issue a written decision that either
28 grants or denies relief for each claim.

29 (2) A written decision that grants relief shall:

30 (A) Specify the amount of relief to be paid to the claimant as
31 calculated under this section and approved by the board;

32 (B) identify the governmental entity that issued the applicable order
33 making a restriction; and

34 (C) assign the amount of relief to be paid to the claimant according to
35 the governmental entity that issued the applicable order making a
36 restriction.

37 (3) No relief to be paid shall be assigned to a county if the applicable
38 order issued by the county was less restrictive than an applicable order
39 issued by the state. If the applicable order issued by the county was the
40 same as an applicable order issued by the state, the board may assign up to
41 50% of the relief to be paid to the county based on availability of moneys
42 in such county's fund established pursuant to section 5, and amendments
43 thereto.

1 (4) No relief to be paid shall be assigned to a city if the applicable
2 order issued by the city was the same or less restrictive than an applicable
3 order issued by the state or the county where such city is located.

4 (5) The board shall report each written decision to the attorney
5 general and the claimant. If the decision grants relief, within 30 days of
6 receipt of such decision, the attorney general shall:

7 (A) Authorize payment of the amount of relief to be paid to such
8 claimant by the state from the COVID-19 business relief fund established
9 pursuant to section 2, and amendments thereto; and

10 (B) notify any county or city of the relief to be paid to such claimant
11 by such governmental entity from such entity's fund established pursuant
12 to section 5 or 6, and amendments thereto.

13 (6) If the attorney general determines that all moneys in the COVID-
14 19 business relief fund established pursuant to section 2, and amendments
15 thereto, or all moneys in a governmental entity's fund established pursuant
16 to section 5 or 6, and amendments thereto, are exhausted, the attorney
17 general shall certify such determination and cause a notice of such
18 certification to be published in the Kansas register. On and after the date of
19 publication of such notice, all pending or future claims against such fund
20 are hereby declared to be null and void.

21 (e) If a claimant files a claim with the board pursuant to this act, such
22 claimant shall be prohibited from filing any claim against the state and all
23 subdivisions of government and each of their officers, employees, agents
24 and representatives alleging damages or any other monetary claim based
25 on an order making a restriction related to the COVID-19 pandemic,
26 including, but not limited to, a claim under K.S.A. 48-933, and
27 amendments thereto, the Kansas private property protection act, K.S.A.
28 77-701 et seq., and amendments thereto, or any claim related to
29 compensation for a governmental taking. A claimant shall not be
30 prohibited from filing any claim seeking injunctive, declaratory or other
31 nonmonetary relief.

32 (f) (1) Nothing in this act shall create any property right or right in
33 action. The courts shall have no jurisdiction to entertain any action against
34 the board, the attorney general or the state of Kansas, or any officer or
35 agent thereof, founded on a claim that the claimant should have received
36 different or better treatment pursuant to this act.

37 (2) Determinations made by the board pursuant to this act, including,
38 but not limited to, the eligibility of any business for relief and the
39 determination of the proper amount of such relief, if any, shall be
40 committed to the sole discretion of the board based on the information
41 available to it and shall not be subject to appeal or judicial review.

42 (g) The provisions of this section shall expire on January 1, 2025.

43 New Sec. 5. (a) The board of county commissioners of any county

1 that issues, or previously issued, an order making a restriction under this
2 act shall establish, by adoption of a resolution, a county COVID-19
3 business relief fund. The board of county commissioners shall designate an
4 officer of the county as the administrator of such fund.

5 (b) The officer of the county designated as the administrator of such
6 fund shall determine the amount of moneys received by the county on and
7 after January 1, 2021, that are identified as moneys from the federal
8 government for coronavirus relief aid to the county that may be expended
9 at the discretion of the county and are unencumbered. Of such identified
10 moneys, such officer shall determine 100% of such moneys available in
11 county funds. The officer shall certify the amount so determined from each
12 county fund to the board of county commissioners and transfer such
13 certified amount from such county funds to the county COVID-19
14 business relief fund. At the same time as such certification is transmitted to
15 the board of county commissioners, the officer shall transmit a copy of
16 such certification to the director of legislative research and to the attorney
17 general.

18 (c) Except as provided in subsection (d), unless prohibited by federal
19 law, moneys in the county COVID-19 business relief fund shall be used
20 only for the purpose of paying relief amounts as calculated by the board
21 under section 4, and amendments thereto. Upon receipt of a notification
22 from the attorney general that relief is to be paid to a claimant by the
23 county from such fund, the county shall pay such relief and provide notice
24 of payment to the attorney general.

25 (d) On and after January 1, 2023, any remaining moneys in the
26 county COVID-19 business relief fund may be used in any manner
27 consistent with state and federal law upon adoption of a resolution by the
28 board of county commissioners. Such resolution shall abolish the county
29 COVID-19 business relief fund on December 31, 2024, and all pending or
30 future claims against the fund are hereby declared to be null and void.

31 (e) The provisions of this section shall expire on January 1, 2025.

32 New Sec. 6. (a) The governing body of a city that issues, or
33 previously issued, an order making a restriction under this act shall
34 establish, by adoption of an ordinance, a city COVID-19 business relief
35 fund. The governing body of the city shall designate an officer of the city
36 as the administrator of such fund.

37 (b) The officer of the city designated as the administrator of such
38 fund shall determine the amount of moneys received by the city on and
39 after January 1, 2021, that are identified as moneys from the federal
40 government for coronavirus relief aid to the city that may be expended at
41 the discretion of the city and are unencumbered. Of such identified
42 moneys, such officer shall determine 100% of such moneys available in
43 city funds. The officer shall certify the amount so determined from each

1 city fund to the governing board of the city and transfer such certified
2 amount from such city funds to the city COVID-19 business relief fund. At
3 the same time as such certification is transmitted to the governing body of
4 the city, the officer shall transmit a copy of such certification to the
5 director of legislative research and to the attorney general.

6 (c) Except as provided in subsection (d), unless prohibited by federal
7 law, moneys in the city COVID-19 business relief fund shall be used only
8 for the purpose of paying relief amounts as calculated by the board under
9 section 4, and amendments thereto. Upon receipt of a notification from the
10 attorney general that relief is to be paid to a claimant by the city from such
11 fund, the city shall pay such relief and provide notice of payment to the
12 attorney general.

13 (d) On and after January 1, 2023, any remaining moneys in the city
14 COVID-19 business relief fund may be used in any manner consistent with
15 state and federal law upon adoption of an ordinance by the governing body
16 of the city. Such ordinance shall abolish the city COVID-19 business relief
17 fund on December 31, 2024, and all pending or future claims against the
18 fund are hereby declared to be null and void.

19 (e) The provisions of this section shall expire on January 1, 2025.

20 New Sec. 7. (a) The provisions of this act are severable. If any
21 portion of the act is declared unconstitutional or invalid, or the application
22 of any portion of the act to any person or circumstance is held
23 unconstitutional or invalid, the invalidity shall not affect other portions of
24 the act that can be given effect without the invalid portion or application,
25 and the applicability of such other portions of the act to any person or
26 circumstance shall remain valid and enforceable.

27 (b) The provisions of this section shall expire on January 1, 2025.

28 Sec. 8. K.S.A. 48-933 is hereby amended to read as follows: 48-933.

29 (a) Each person within this state shall act and manage the affairs of such
30 person and such person's property in any way which reasonably will assist
31 and not detract from the ability of the state and the public successfully to
32 meet disasters. This obligation includes appropriate personal service and
33 use or restriction on the use of property during a declared state of disaster
34 emergency under K.S.A. 48-924, and amendments thereto, or a declared
35 state of local disaster emergency under K.S.A. 48-932, and amendments
36 thereto. This act neither increases nor decreases these obligations, but
37 recognizes their existence under the constitution and statutes and the
38 common law of this state. Compensation for services or for the taking or
39 use of property shall be only to the extent that obligations recognized in
40 this subsection are exceeded in a particular case and then only to the extent
41 that the claimant may not be deemed to have volunteered services or
42 property without compensation.

43 (b) No personal services may be compensated by the state or any

1 subdivision or agency thereof, except pursuant to statute enacted or
2 ordinance duly adopted therefor.

3 (c) Compensation for property shall be only if the property was
4 commandeered or otherwise used in coping with a disaster and its use or
5 destruction was ordered by the governor, adjutant general, an official of a
6 county, city or interjurisdictional disaster agency, or some other authorized
7 member of the emergency management forces of this state.

8 (d) Any person claiming compensation for the use, damage, loss or
9 destruction of property under this act shall file a claim therefor in the
10 district court in the same manner as any other civil action. The court shall
11 determine the validity of such claim in the same manner and under the
12 same conditions prescribed for condemnation actions pursuant to K.S.A.
13 26-501 et seq., and amendments thereto. Unless the amount of
14 compensation on account of property damaged, lost or destroyed is agreed
15 upon by the claimant and the adjutant general, the amount of
16 compensation shall be calculated in the same manner as compensation due
17 for a taking of property pursuant to the condemnation law of this state.

18 (e) Nothing in this section:

19 (1) *Authorizes compensation for intangible losses occurring during*
20 *the state of disaster emergency related to the COVID-19 health emergency*
21 *described in K.S.A. 2020 Supp. 48-924b, and amendments thereto; or*

22 (2) applies to or authorizes compensation for the destruction or
23 damaging of standing timber or other property in order to provide a fire
24 break or for the release of waters or the breach of impoundments in order
25 to reduce pressure or other danger from actual or threatened flood.

26 Sec. 9. K.S.A. 48-933 is hereby repealed.

27 Sec. 10. This act shall take effect and be in force from and after its
28 publication in the Kansas register.