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**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
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**MEMORANDUM**

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 24, 2021

Subject: Bill Brief on HB 2416

HB 2416 makes changes to the Kansas emergency management act.

New Section 1 provides that during a state of disaster emergency, when the governor determines it is necessary to issue an executive order to promote and secure the safety and protection of the civilian popular that is not expressly authorized by K.S.A. 48-925(c)(1) through (10), the governor shall make application to the legislative coordinating council to seek approval to issue an order that is in conformity with the constitution and bill of rights of the state of Kansas and statutes of the state of Kansas. Such application shall state the reason the order is necessary. Before making such application, subsection (b) requires the governor to submit the proposed executive order to the attorney general who shall review the order and provide an opinion on the legality of such order to the governor and the legislative coordinating council within 24 hours, unless the disaster prevents such review.

Upon application by the governor, subsection (c) requires the chairperson of the legislative coordinating council to call a meeting to take place within 24 hours to discuss the order. The governor or governor's designee shall appear at the meeting to provide information related to the proposed order. On an affirmative vote of 5 members, the proposed executive order shall be approved for issuance by the governor.

If the council does not approve the proposed order, they may (1) amend the proposed executive order and submit the amended order to the governor who shall decide whether to issue such order; (2) request the governor bring a new proposed order to the council for consideration within 24 hours; or (3) deny the order and take no further action. Subsection (d) provides that orders issued pursuant to this section shall be null and void after state of the disaster emergency has ended and may be revoked at any time by concurrent resolution of the legislature. Subsection

(e) provides that orders issued pursuant to this section shall not exercise a power granted in statute in a way that does not conform with the existing statutory requirement or criminalize conduct that is not otherwise criminal.

Subsection (f) provides that a party aggrieved by an executive order issued pursuant to this section may file an action in district court. The court shall conduct a hearing within 72 hours and shall grant relief unless the court finds such order is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to achieve that purpose. Subsection (g) provides that the governor shall not exercise a power conferred by K.S.A. 48-925(c) after the initial 15-day state of disaster emergency unless authorized by this section or K.S.A. 48-924(f)(2).

New Section 2 provides that during a state of disaster emergency when the legislature is not in session or is adjourned for three or more days during session, the legislative coordinating council may extend a state of disaster emergency and authorize the use of powers conferred by K.S.A. 48-925(c). Upon application by the governor, the chairperson of the legislative coordinating council shall call a meeting to occur within 24 hours and the governor shall not exercise the powers conferred by K.S.A. 48-925(c) without authorization pursuant to this section or K.S.A. 48-925(f). At the meeting of the council, the governor or governor or the governor's designee shall appear before the committee to provide information related to application to exercise such powers. The legislative coordinating council may extend the state of disaster emergency for a specified period of time as and, if such extension occurs, authorize the governor to continue exercising powers conferred by K.S.A. 48-925(c). The bill also provides a list of items for the council to consider when deciding whether to extend the state of disaster emergency or authorize use of powers under K.S.A. 48-925(c).

Section 3 amends K.S.A. 46-1202 to provide that the legislative coordinating council shall meet as authorized by the Kansas emergency management act to review proposed executive orders and extend a state of disaster emergency as authorized by the act.

Section 4 amends K.S.A. 48-924 to remove the state of disaster emergency provisions that relate only to disasters of the spread of contagious or infectious disease among domestic animals. The bill also changes the extension process for state of disaster emergencies to provide that extension may only occur by concurrent resolution of the legislature, except when the legislature is not in session or is adjourned for three or more days and upon specific application of the governor, the legislative coordinating council may extend the disaster for specified periods in accordance with section 2. If the legislature extends the disaster by concurrent resolution, such

resolution shall state whether the governor is authorized to exercise the powers conferred upon the governor pursuant to K.S.A. 48-925. The governor shall not issue a subsequent proclamation declaring a state of disaster emergency for the same or similar disaster if the originally state of disaster emergency was not ratified by the legislature or extended by the legislative coordinating council.

Section 5 amends K.S.A. 48-925 to provide that when the governor issues an executive order, the chairperson of the legislative coordinating council shall call a meeting within 24 hours to review such order. If an order suspends the provisions of any regulatory statute, order or rule and regulation pursuant to subsection (c)(1), the order shall specify each statute, order or rule and regulation being suspended. Subsection (c)(11) is amended to provide that the governor may perform and exercise other duties and functions as authorized by section 1. After the initial 15-day state of disaster emergency, if the disaster is extended by the legislature (when in session) or the legislative coordinating council (when not in session), and the governor determines it is necessary to exercise the powers conferred by subsection (c), the governor may make application to the speaker of the house and the senate president when the legislature is in session, or the legislative coordinating council when the legislature is not in session to extend the authorization to use such powers.

Subsection (g) provides that prior to issuing an executive order, the governor shall submit to proposed executive order to the attorney general who shall review the order and provide an opinion on the legality of such order to the governor and the legislative coordinating council within 24 hours unless the disaster prevents such review. Subsection (h) allows a board of county commissioners to adopt a less stringent order relating to public health of humans that is not related to the food supply. If the board of county commissioners adopts a less stringent order, it shall operate in the county in lieu of the governor's order. Subsection (i) allows a party aggrieved by an executive order issued pursuant to this section to file an action in district court. The court shall conduct a hearing within 72 hours and shall grant relief unless the court finds such order is necessary to achieve an important interest related to the state of disaster emergency and is substantially related to that interest. If the order has the effect of substantially burdening or inhibiting the gathering or movement of individuals or the operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit, the court shall grant the request unless the court finds the order is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to achieve that purpose.

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Section 6 amends K.S.A. 48-925b to provide that an executive order issued by the governor and affirmed by the state board of education that has the effect of closing schools or school attendance centers may only affect the operations of schools under the jurisdiction of the state board of education and shall not apply to private schools.

New Section 7 provides that the legislature intends the provisions of the act to be severable and any portion declared invalid shall not affect the other portions that can be given effect without the invalid portion.

If passed, this bill would become effective on publication in the Kansas register.