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Testimony on SB 286
Submitted to the Kansas Senate Judiciary Committee
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Thank you Chair Warren, Vice-Chair Wilborn, Minority Member Haley and Committee:

My Name is Ryan Kriegshauser, I am an attorney who represents a gym that has brought suit against the state for governmental use compensation under the Kansas Emergency Management Act. Our lawsuit is based on current law and a currently provided remedy under K.S.A. 48-933. Prior to the start of this legislative session, both my client and the Kansas Attorney General agreed to enter a Stay of Proceedings to allow the legislature to take up wide-spread public policy questions such litigation poses. The sheer number of businesses and individuals with similar claims that could be brought under current law implicates potentially hundreds of millions of dollars of liability to the state and county. We have introduced SB 286, the COVID-19 Government Use of Business Compensation Act, as a proposed solution to address this massive amount of potential state and local government liability and to provide some measure of relief to businesses still suffering as a result of government shut down orders.

This bill was compiled from input received from a number of organizations and the Attorney General's Office. While this legislation is not a perfect solution, it attempts provide a reasonable solution to state and local governments' potential liability to thousands of businesses across the state under current law. Even if our case is not ultimately successful, the litigation risk to the state and local subdivisions is very large, and some commentators have described it as potentially "ruinous." While this legislation will likely have a significant fiscal note, that cost is a drop in the bucket compared to the cost of doing nothing.

This bill provides an alternative remedy to businesses to obtain a portion of what they may be due under current law without having to file a formal lawsuit. The bill allows an independently appointed board operating under the Attorney General to resolve claims against the state in an efficient and far more cost-effective way than defending numerous lawsuits across the state. In addition, federal funds can be used to assist in softening the impact of this legislation and get funds to those who were most directly and financially affected by government shut down orders.

I want to be clear that our case is filed under current law, and we believe our client has a claim as the law currently stands. Accordingly, the legislature is on notice that it has an opportunity to clarify the nature of state and local liability under K.S.A. 48-933. Inaction by the legislature to create a cost-effective and efficient process for businesses to file claims under K.S.A. 48-933 may be interpreted by a court as complacency regarding the law as it currently stands, especially since a lawsuit has already been filed. This bill could just as easily be called the “COVID-19 Government Liability Reduction Act.” The cost of doing nothing is exponentially higher than the so called “cost” of this bill.

SB 286 provides a reasonable solution to limit the potential liability of the State of Kansas, counties, and municipalities. The bill is a proposed solution to a problem the state and its local subdivisions face under current law. I encourage the legislature act quickly to clarify how compensation for governmental use of businesses should work under the Kansas Emergency Management Act before this issue is taken up in court this summer.

You will find a number of relevant documents to this case attached to my March 23, 2021 testimony on this bill.