

SENATE BILL NO. ____

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

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

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

(2) The provisions of sections 1 through 7, and amendments thereto, shall expire on January 1, 2025.

(b) As used in this act:

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

(2) (A) "Business" means a sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company or corporation that:

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

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

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

(3) "Governmental entity" means:

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

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

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

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

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

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

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

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

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

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

(D) administrative costs of the board and the office of the attorney general related to the COVID-19 business relief act; and

(E) any repayment required by the federal government.

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

(3) Payment of a final judgment described in subsection (b)(1)(B) shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired.

(c) (1) Notwithstanding the provisions of chapter 1 of the 2020 Special Session Laws of Kansas, any other statute, section 30(c) of 2021 House Bill No. 2007, or any other appropriation act, for the fiscal years ending June 30, 2021, and June 30, 2022, on or before July 15, 2021, the director of the budget shall determine the amount of moneys received by the state that are identified as moneys from the federal government for aid to the state of Kansas for coronavirus

relief as appropriated in the following acts that are eligible to be used for the purposes of this act, may be expended at the discretion of the state, in compliance with the office of management and budget's uniform administrative requirements, cost principles and audit requirements for federal awards, and are unencumbered: (A) The federal CARES act, public law 116-136; (B) the federal coronavirus preparedness and response supplemental appropriation act, 2020, public law 116-123; (C) the federal families first coronavirus response act, public law 116-127; (D) the federal paycheck protection program and health care enhancement act, public law 116-139; (E) the federal consolidated appropriations act, 2021, public law 116-260; (F) the American rescue plan act of 2021, public law 117-2; and (G) any other federal law that appropriates moneys to the state for aid for coronavirus relief. If the state receives any such moneys from the federal government for aid to the state of Kansas for coronavirus relief after July 15, 2021, the director of the budget shall also identify such moneys for the purposes of fulfilling transfers required by this section.

(2) Of such identified moneys, following transfers required in 2021 Senate Substitute for Substitute for House Bill No. 2196 and 2021 Senate Substitute for House Bill No. 2208, the director of the budget shall determine 25% of such remaining moneys available in special revenue funds. The director of the budget shall certify the amount so determined from each fund to the director of accounts and reports and, at the same time as such certification is transmitted to the director of accounts and reports, shall transmit a copy of such certification to the director of legislative research. Upon receipt of each such certification, or as soon thereafter as moneys are available, the director of accounts and reports shall immediately transfer such certified amount from such funds to the COVID-19 business relief fund of the attorney general.

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

(2) The board shall consist of three members appointed as follows: One member appointed by the governor; one member appointed by the president of the senate; and one member appointed by the speaker of the house of representatives. The appointments shall be made on or before July 1, 2021.

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

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

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

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

(c) On or before November 1, 2021, the board shall adopt policies and procedures necessary to facilitate the settlement of claims through the processes provided by the COVID-19 business relief act, including, but not limited to, the form and manner of submitting claims to the board and the procedures for review of claims by the board. The board may adopt rules and regulations to implement and administer the act.

New Sec. 4. (a) (1) The COVID-19 business relief act shall be administered by the

board, with the assistance and support of the office of the attorney general, and all claims submitted pursuant to this act shall be for businesses impacted by an order making a restriction related to the COVID-19 pandemic. A business may file a claim with the board in a form and manner provided by the board.

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

(3) Such claim shall be accompanied with:

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

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

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

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

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

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

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

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

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

restriction;

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

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

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

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

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

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

seq., and amendments thereto.

(c) In evaluating the claim award, the board shall consider the following factors for each claim:

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

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

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

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

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

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

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

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

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

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

(2) A written decision that grants relief shall:

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

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

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

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

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

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

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

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

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

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

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

(2) Determinations made by the board pursuant to this act, including, but not limited to, the eligibility of any business for relief and the determination of the proper amount of such relief,

if any, shall be committed to the sole discretion of the board based on the information available to it and shall not be subject to appeal or judicial review.

New Sec. 5. (a) The board of county commissioners of any county that issues, or previously issued, an order making a restriction under this act shall establish, by adoption of a resolution, a county COVID-19 business relief fund. The board of county commissioners shall designate an officer of the county as the administrator of such fund.

(b) The officer of the county designated as the administrator of such fund shall determine the amount of moneys received by the county on and after January 1, 2021, that are identified as moneys from the federal government for coronavirus relief aid to the county that may be expended at the discretion of the county and are unencumbered. Of such identified moneys, such officer shall determine 25% of such moneys available in county funds. The officer shall certify the amount so determined from each county fund to the board of county commissioners, and shall transfer such certified amount from such county funds to the county COVID-19 business relief fund. At the same time as such certification is transmitted to the board of county commissioners, the officer shall transmit a copy of such certification to the director of legislative research and to the attorney general.

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

(d) Beginning January 1, 2023, any remaining moneys in the county COVID-19 business relief fund may be used in any manner consistent with state and federal law upon

adoption of a resolution by the board of county commissioners. Such resolution shall abolish the county COVID-19 business relief fund on December 31, 2024, and all pending or future claims against the fund are hereby declared to be null and void.

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

(b) The officer of the city designated as the administrator of such fund shall determine the amount of moneys received by the city on and after January 1, 2021, that are identified as moneys from the federal government for coronavirus relief aid to the city that may be expended at the discretion of the city and are unencumbered. Of such identified moneys, such officer shall determine 25% of such moneys available in city funds. The officer shall certify the amount so determined from each city fund to the governing board of the city, and shall transfer such certified amount from such city funds to the city COVID-19 business relief fund. At the same time as such certification is transmitted to the governing body of the city, the officer shall transmit a copy of such certification to the director of legislative research and to the attorney general.

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

(d) Beginning January 1, 2023, any remaining moneys in the city COVID-19 business

relief fund may be used in any manner consistent with state and federal law upon adoption of an ordinance by the governing body of the city. Such ordinance shall abolish the city COVID-19 business relief fund on December 31, 2024, and all pending or future claims against the fund are hereby declared to be null and void.

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

Sec. 8. K.S.A. 48-933 is hereby amended to read as follows: 48-933. (a) Each person within this state shall act and manage the affairs of such person and such person's property in any way which reasonably will assist and not detract from the ability of the state and the public successfully to meet disasters. This obligation includes appropriate personal service and use or restriction on the use of property during a declared state of disaster emergency under K.S.A. 48-924, and amendments thereto, or a declared state of local disaster emergency under K.S.A. 48-932, and amendments thereto. This act neither increases nor decreases these obligations, but recognizes their existence under the constitution and statutes and the common law of this state. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this subsection are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered services or property without compensation.

(b) No personal services may be compensated by the state or any subdivision or agency thereof, except pursuant to statute enacted or ordinance duly adopted therefor.

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

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

(e) Nothing in this section:

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

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

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

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