

SENATE BILL No. 286

By Committee on Assessment and Taxation

3-2

1 AN ACT concerning economic development; relating to the COVID-19
2 pandemic in Kansas; creating the COVID-19 governmental use claims
3 fund; providing funds for impacted businesses; providing for income
4 tax credits for impacted businesses; providing for the reimbursement to
5 certain property owners of property taxes resulting from a forced
6 shutdown or capacity limitation; providing for a business loan
7 forgiveness program.

providing for administration of this act by the attorney
general; requiring certain counties to establish and administer
a county COVID-19 governmental use claims fund and
certain cities to establish and administer a city COVID-19
governmental use claims fund

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) Sections 1 through 8, and amendments thereto, shall
11 be known and may be cited as the COVID-19 governmental use of
12 business compensation act.

6

13 (b) As used in this act:

14 (1) "Restriction" means any occupancy limitation, limitation on
15 periods of operation or the exertion by any governmental entity of other
16 significant control on business resources or functionality. Commencing
17 May 1, 2021, any governmental entity mandating the use of face masks
18 and any enforcement requirement by Kansas businesses shall be
19 considered a "restriction" under this act and entitled to compensation
20 hereunder.

21 (2) "Order" means any order issued by any governmental entity
22 pursuant to the Kansas emergency management act related to the COVID-
23 19 pandemic.

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

29 (2) ~~On July 1, 2025, the director of accounts and reports shall transfer~~
30 ~~all moneys in the COVID-19 governmental use claims fund to the state~~
31 ~~general fund. On July 1, 2025, all liabilities of the COVID-19~~
32 ~~governmental use claims fund are hereby transferred to and imposed on~~
33 ~~the state general fund, and the COVID-19 governmental use claims fund is~~
34 ~~hereby abolished.~~

Beginning January 1, 2024, any remaining

may be used in any manner consistent with state and federal law

December 31, 2024

35 (b) (1) ~~Moneys in the COVID-19 governmental use claims fund shall~~
36 ~~be used only for the purpose of paying compromises, settlements and final~~

Except as provided in subsection (a)(2), unless prohibited
by federal law,

1 judgments arising from claims against the state under the Kansas
2 emergency management act, the eminent domain laws of the state of
3 Kansas or any claim related to compensation for a governmental taking.

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

or the legislature

14 (3) Payment of a final judgment shall be made from the fund if there
15 has been a determination of any appeal taken from the judgment or, if no
16 appeal is taken, if the time for appeal has expired.

17 (c) Notwithstanding the provisions of section 4 of chapter 1 of the
18 2020 Special Session Laws of Kansas, any appropriation act of the 2021
19 regular session of the legislature or any other statute, for the fiscal years
20 ending June 30, 2021, and June 30, 2022, on or before July 15, 2021, the
21 director of the budget shall determine the amount of moneys received by
22 the state on and after January 1, 2021, that are identified as moneys from
23 the federal government for coronavirus relief aid to the state of Kansas that
24 may be expended at the discretion of the state and are unencumbered. Of
25 such identified moneys, the director of the budget shall determine in the
26 aggregate \$100,000,000 available in special revenue funds. The director of
27 the budget shall certify the amount so determined from each special
28 revenue fund to the director of accounts and reports and, at the same time
29 as such certification is transmitted to the director of accounts and reports,
30 shall transmit a copy of each such certification to the director of legislative
31 research. Upon receipt of each such certification, or as soon thereafter as
32 moneys are available, the director of accounts and reports shall transfer an
33 aggregate of \$100,000,000 from such funds to the COVID-19
34 governmental use claims fund of the attorney general.

25% of such moneys

Strike in lines 31 & 32

such certified amount

35 (d) The attorney general may adopt rules and regulations necessary to
36 implement and facilitate the settlement of claims as alternative remedies
37 through the processes provided by this act.

38 (e) Nothing in this act shall be used to retroactively apply to K.S.A.
39 48-933, and amendments thereto, and shall instead provide an alternative
40 remedy for settling a claim of governmental commandeering or use under
41 K.S.A. 48-933, and amendments thereto, of the Kansas emergency
42 management act. Any claimant filing and receiving any monetary benefit
43 of a claim under this act shall be prohibited from filing any claim against

1 the state and all subdivisions of government and each of their officers,
 2 employees, agents and representatives alleging damages or any other
 3 monetary claim based on any governmental orders and other governmental
 4 restrictions involving the government's use of claimant's property to
 5 otherwise use in coping with the COVID-19 pandemic under K.S.A. 48-
 6 933, and amendments thereto, the Kansas private property protection act,
 7 K.S.A. 77-701 et seq., and amendments thereto, or any claim related to
 8 compensation for a governmental taking. A claimant shall not be
 9 prohibited from filing any claim seeking injunctive, declaratory or other
 10 nonmonetary relief.

11 (f) (1) All claims brought under this act shall be filed with the
 12 attorney general on or before December 31, 2022, ~~or 365 days after the~~
 13 ~~termination of any state of disaster emergency declared pursuant to K.S.A.~~
 14 ~~48-924, and amendments thereto, related to COVID-19 that apply to the~~
 15 ~~claimant's property, whichever date is later in time.~~

Strike in lines 12-15

16 (2) No claims shall be allowed related to an order issued under
 17 K.S.A. 48-933, and amendments thereto, issued pursuant to this act, or
 18 otherwise pursuant to law, on and after the final date for claims allowed
 19 under paragraph (1).

(1)

20 Sec. 3. (a) ~~This act shall be administered by the attorney general and~~
 21 ~~all claims submitted hereunder shall be for businesses impacted by the~~
 22 ~~COVID-19 pandemic. Any application for such a claimant shall be~~
 23 ~~accompanied with a copy of the claimant's 2019 Kansas income tax return~~
 24 ~~and an affidavit by an authorized representative of the business under~~
 25 ~~penalty of perjury stating that the claimant was ordered to cease all~~
 26 ~~operations or was otherwise restricted in such claimant's operation by a~~
 27 ~~governmental order. The affidavit shall specifically state the number of~~
 28 ~~days that the claimant was ordered by a governmental entity to cease all~~
 29 ~~operations and the number of days such claimant was restricted in any way~~
 30 ~~in its operations due to a governmental order. The affidavit shall state the~~
 31 ~~governmental entity issuing the applicable order. The claimant shall state~~
 32 ~~the source and amount of any governmental grants related to COVID-19~~
 33 ~~that were received by the claimant or governmental loans related to~~
 34 ~~COVID-19 made to the claimant that were forgiven by a governmental~~
 35 ~~entity. The claimant shall submit proof of the claimant's 2019 income with~~
 36 ~~the application, if the claimant's business was in existence in 2019. Any~~
 37 ~~information received pursuant to this subsection shall be confidential and~~
 38 ~~shall not be disclosed except to the attorney general and any employees of~~
 39 ~~the attorney general. Any information received pursuant to this subsection~~
 40 ~~shall be confidential and not a public record and shall not be subject to the~~
 41 ~~Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.~~
 42 ~~The provisions of this subsection shall expire on July 1, 2026, unless the~~
 43 ~~legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,~~

pursuant to this act

(2)

, 2020 and 2021 Kansas income tax returns, if applicable,

business income in 2019, 2020 and 2021, if the claimant's business was in existence in such year. The claimant shall submit any other information required by the attorney general to resolve the claim.

(3)

paragraph

1 and amendments thereto, prior to July 1, 2026.

2 (b) In evaluating the claim award, the attorney general shall consider
3 the following factors for each claim:

4 (1) The nature of the claimant's property or equitable or contractual
5 interest in the property commandeered or used by the government pursuant
6 to K.S.A. 48-933, and amendments thereto;

7 (2) the duration and nature of governmental commandeering or use of
8 the property, including:

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

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

13 (3) reasonable costs and attorney fees related to the filing of the claim
14 under the procedures outlined in this act;

15 (4) extraordinary contributions by the business that benefited the
16 general public of the state of Kansas; and

17 (5) any other factors listed in the Kansas eminent domain procedure
18 act, the Kansas condemnation law or the Kansas private property
19 protection act.

20 (c) All valid claims shall be recorded by the attorney general and
21 communicated by the attorney general to all other appropriate
22 governmental offices upon the issuance of any funds under this section.

23 (d) All valid claims approved by the attorney general for settlement
24 or other payment under this act shall be paid from funds then existing in
25 the COVID-19 governmental use claims fund. ~~In lieu of payment of such
26 claim, a claimant may elect either a tax credit or tax abatement or both as
27 an exclusive remedy as further provided in this act.~~

28 ~~Sec. 4. (a) Any tax credit under this act shall be an exclusive
29 alternative remedy to any other claim that can or has been made under the
30 act. No person shall be eligible for a tax credit under this act if such person
31 has otherwise received any monetary benefit for a claim under section 3,
32 and amendments thereto.~~

33 (b) ~~No tax credit claimed~~ under this act shall be denied if the
34 claimant's operations were restricted in any manner by a governmental
35 order. All valid ~~tax credit claims~~ under this act shall be communicated by
36 the attorney general to all other appropriate government offices. Claimants
37 shall also be issued a certificate of government use by the attorney general,
38 and such certificate shall entitle the claimant to the ~~tax credits as
39 calculated in section 5,~~ and amendments thereto.

(b) 40 (e) All certificates of government use shall state the amount of tax
41 credit owed to each claimant as calculated in section 5, and amendments
42 thereto, and identify the government entity issuing an applicable order. The
43 certificate of government use shall further assign the amount of tax credit

Strike in line 16

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

or a fund established pursuant to section 5 or 6, and amendments
thereto, as applicable

Strike in lines 28-33

compensation approved

compensation amounts approved

compensation as calculated by the attorney general pursuant to section 3

compensation

compensation

1 owed to each claimant as calculated in section 5, and amendments thereto,
 2 according to the governmental entity issuing an applicable order. If
 3 concurrent orders were in place as to a claimant, the amount of awarded
 4 claim shall apply to any governmental entity issuing an applicable order
 5 and applied to the claimant's income or property tax liability at the
 6 discretion of the claimant. No tax credit shall be used to resolve any tax
 7 liability to a governmental entity in excess of the amount of the awarded
 8 claim applicable to that governmental entity as described herein based on
 9 the issuance of an applicable order.

by the attorney general pursuant to section 3

based on the availability of moneys in the applicable fund

compensation shall be paid by a governmental entity's fund established pursuant to section 5 or 6, and amendments thereto,

10 Sec. 5.—(a) For any taxpayer operating a business with a valid claim
 11 under this act that was ordered to cease operation or was restricted in
 12 operating, such taxpayer shall be allowed a credit against the income tax
 13 liability imposed upon a taxpayer by the Kansas income tax act to offset
 14 taxes, fees and assessments paid to the state or any subdivision thereof
 15 issuing an applicable order as stated in the certificate of government use.
 16 Such credit shall be equal to the following:

Strike lines 10-43

17 (1) $\frac{1}{12}$ of such claimant's 2019 Kansas income tax liability for every
 18 30 days the claimant ceased operation pursuant to an order of the governor
 19 of the state of Kansas or any other subdivision of the state;

20 (2) $\frac{1}{48}$ of such claimant's 2019 Kansas income tax liability for every
 21 30 days the claimant was restricted in operations pursuant to an order of
 22 the governor of the state of Kansas or any other subdivision of the state;
 23 and

24 (3) for claimants not in operation in 2019, $\frac{1}{6}$ of such claimant's 2020
 25 Kansas income tax liability for every 30 days the claimant ceased
 26 operation pursuant to an order of the governor of the state of Kansas and
 27 $\frac{1}{12}$ of such claimant's 2020 Kansas income tax liability for every 30 days
 28 the claimant was restricted in operations pursuant to an order of the
 29 governor of the state of Kansas or any other subdivision of the state.

30 (b) The amount of any grants issued or loans forgiven by the state of
 31 Kansas with state funds shall be subtracted from the applicable amount
 32 above.

33 (c) If the amount of the credit allowed by subsection (a) exceeds the
 34 claimant's income tax liability imposed under the Kansas income tax act,
 35 such excess amount shall be refundable to the claimant.

36 Sec. 6.—(a) For tax years 2021 and 2022, there shall be allowed a
 37 credit against the income tax liability imposed upon a taxpayer by the
 38 Kansas income tax act an amount equal to the credit amount stated in the
 39 claimant's certificate of government use. Any property tax abatements
 40 received pursuant to this act shall decrease the credit amount stated in the
 41 claimant's certificate of government use.

42 (b) No credit shall be allowed under this section if:
 43 (1) The claimant's tax return on which the credit is claimed is not

1 timely filed, including any extension; or
 2 ~~(2) the claimant is delinquent in filing any return with, or paying any~~
 3 ~~tax due to, the state of Kansas or any political subdivision thereof.~~
 4 ~~(c) If the amount of the credit allowed by subsection (a) exceeds the~~
 5 ~~taxpayer's income tax liability imposed under the Kansas income tax act,~~
 6 ~~such excess amount shall be refundable to the claimant.~~
 7 ~~(d) The secretary of revenue shall adopt such rules and regulations as~~
 8 ~~deemed necessary to carry out the provisions of this section.~~
 9 ~~Sec. 7. The owner of any building listed and assessed for property~~
 10 ~~taxation purposes as real property that maintains a business on the property~~
 11 ~~that was shut down or restricted in conducting its operations by a~~
 12 ~~government entity as indicated in a claimant's certificate of government~~
 13 ~~use may elect to make application to the governing body of such~~
 14 ~~government entity for the reimbursement of any property taxes levied~~
 15 ~~upon such property after December 31, 2019, as described in this section.~~
 16 ~~Such application shall be accompanied with a copy of the claimant's~~
 17 ~~certificate of government use issued by the attorney general and an~~
 18 ~~affidavit stating any tax credits or property tax abatement amounts~~
 19 ~~previously received by the claimant. Upon receiving a certificate of~~
 20 ~~government use issued by the attorney general, the governmental entity~~
 21 ~~shall reimburse from the governmental entity's general fund any amount~~
 22 ~~paid in property taxes and credited to the applicable governmental entity~~
 23 ~~by the claimant not to exceed the unused amount stated on the claimant's~~
 24 ~~certificate of government use. If the paid property tax amount is more than~~
 25 ~~the unused amount stated on the claimant's certificate of government use,~~
 26 ~~such excess amount may be carried forward as credit for property taxes~~
 27 ~~paid over the next 10 years.~~
 28 ~~Sec. 8. The secretary of commerce shall create a business loan~~
 29 ~~forgiveness program for state loans given to applicable businesses due to~~
 30 ~~the COVID-19 pandemic. A business may submit a claim to the secretary~~
 31 ~~of commerce, and the secretary shall request such information from~~
 32 ~~applicable businesses necessary to assess the amount of loss to the~~
 33 ~~business due to a governmental restriction and deducting any state and~~
 34 ~~federal grants received by the business and any other benefit provided by~~
 35 ~~this act. Any loan amount received from the department of commerce shall~~
 36 ~~be forgiven from any loan given to applicable businesses due to the~~
 37 ~~COVID-19 pandemic.~~
 38 ~~Sec. 9. This act shall take effect and be in force from and after its~~
 39 ~~publication in the statute book.~~

Strike lines 1-37

Insert Attachment

And by renumbering sections accordingly

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 governmental use claims 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 governmental use claims 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 governmental use claims fund shall be used only for the purpose of paying compensation amounts as calculated by the attorney general under section 3, and amendments thereto, and listed on a certificate of government use issued by the attorney general under this act.

(d) Beginning January 1, 2024, any remaining moneys in the county COVID-19 governmental use claims 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 transfer and impose on the county general fund all liabilities of the county COVID-19 governmental use claims fund existing on December 31, 2024, and shall abolish the county COVID-19 governmental use claims fund on December 31, 2024.

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 governmental use claims 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 governmental use 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 governmental use claims fund shall be used only for the purpose of paying compensation amounts as calculated by the attorney general under section 3, and amendments thereto, and listed on a certificate of government use issued by the attorney general under this act.

(d) Beginning January 1, 2024, any remaining moneys in the city COVID-19 governmental use claims 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 resolution shall transfer and impose on the city general fund all liabilities of the city COVID-19 governmental use claims fund existing on December 31, 2024, and shall abolish the city COVID-19 governmental use claims fund on December 31, 2024.