

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.
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.

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.

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

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. 75-3711c(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.

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.

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.

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).

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,

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.

40 (c) 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

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.

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:

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.