

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

**SUMMARY OF HOUSE BILL 2054 – ENACTING THE GOVERNMENTAL RESPONSE
TO THE 2020 COVID-19 PANDEMIC IN KANSAS**

House Bill 2054, as enrolled and presented to the Governor on May 22, 2020, enacts the governmental response to the 2020 COVID-19 pandemic in Kansas and provides certain relief related to health, welfare, property, and economic security during this public health emergency. This memorandum summarizes the provisions of HB 2054.

Appropriations – coronavirus relief funds management and oversight by the Legislative Budget Committee and the Legislative Coordinating Council

For fiscal year 2020 (in Sec. 189 of chapter 68 of the 2019 Session Laws of Kansas) and fiscal year 2021 (in Sec. 179 of 2020 SB66), the Governor/state agency is granted the authority to receive federal funds “that is (are) not otherwise appropriated to that state agency for fiscal year (2020) 2021 by this or other appropriation act of the (2019) 2020 regular session of the legislature” and the moneys are appropriated to such state agency for expenditure as approved by the Governor. These sections are meant to authorize the Governor to accept federal funds that are unknown to the Legislature at the time the budget bill passed or during the interim. Because of these sections, the moneys received from the federal CARES act were deposited into the state treasury and credited to the coronavirus relief fund – federal fund of the Governor's department.

Section 1 transfers all moneys in the coronavirus relief fund – federal fund of the Governor's department to the coronavirus relief fund of the Legislative Coordinating Council (LCC). The section also appropriates the coronavirus relief fund of the LCC for fiscal year 2020. The bill requires the Director of the Budget to submit each request of a state agency for expenditures from the fund to the Legislative Budget Committee, which is required to meet, review each such request, and report a recommendation on each such request to the LCC. The LCC may approve the disbursement and expenditure of moneys from the fund and notify the Director of Accounts and Reports to transfer such moneys from the fund to a newly created special revenue fund of the requesting state agency. The money is appropriated for the requesting agency from the newly created special revenue fund. Section 2 is the same as Section 1 but applies to fiscal year 2021.

Section 3 appropriates any additional federal grant moneys under the federal CARES act to the coronavirus relief fund of the LCC for FY 2020 and FY 2021. The section also makes null and void the provisions of Sec. 189 of chapter 68 of the 2019 Session Laws of Kansas and Sec. 179 of 2020 SB66 that

would have applied to the federal moneys under the federal CARES act in order to implement LCC oversight of federal coronavirus relief funds.

Section 4 provides that federal grants applied for and received by state agencies that concern federal moneys for coronavirus relief shall not be spent without LCC approval in FY 2020 and FY 2021. The section requires the Director of the Budget to submit each request of a state agency for expenditures from such federal grants to the Legislative Budget Committee, which is required to meet, review such request, and report a recommendation on such request to the LCC. The LCC may then approve such request and authorize the requesting state agency to expend moneys from such federal grants. The section also makes null and void the provisions of Sec. 189 of chapter 68 of the 2019 Session Laws of Kansas and Sec. 179 of 2020 SB66 that would have applied to the federal grants for coronavirus relief act in order to implement LCC oversight of federal coronavirus relief funds.

State of disaster emergency declarations and Kansas emergency management act

Section 5 ratifies and continues the state of disaster emergency declared by the governor pursuant to K.S.A. 48-924 by proclamation on March 12, 2020, through May 31, 2020. The section also requires the Governor to receive approval from the State Finance Council for any new state of disaster emergency related to the COVID-19 health emergency during 2020. Finally, the section requires the Governor to receive approval from the State Finance Council for any order of closure or cessation of any business or commercial activity during 2020.

Section 6 provides limitations on closure or cessation of any business or commercial activity. During any state of disaster emergency declared pursuant to K.S.A. 48-924, the Governor may order the closure or cessation of any business or commercial activity, whether for-profit or not-for-profit, for 15 days, subject to additional extensions by the State Finance Council for specified periods not to exceed 30 days each. Any order issued that violates or exceeds such restrictions shall be null and void. This section expires on January 26, 2021.

Sections 29 through 32 amend the Kansas emergency management act. Section 29 amends K.S.A. 48-924 to provide that the state of disaster emergency described in Section 5 (see above) will terminate on May 31, 2020, except that when the Legislature is not in session, the Governor may apply to the State Finance Council for an extension for specified periods not to exceed 30 days each. No such extension shall continue past January 26, 2021.

Section 30 amends K.S.A. 2019 Supp. 48-925 regarding limitations and restrictions on the powers of the Governor and executive officers. The amendments clarify that the Governor may issue orders to exercise the powers conferred by this section and provide that, within 24 hours of the issuance of any order, the Governor shall call a meeting of the State Finance Council for the purposes of reviewing such order. The amendments also clarify that all orders are null and void after the period of a state of disaster emergency has ended. New subsection (d) specifies that the Governor shall not have the power or

authority to temporarily or permanently seize, or authorize seizure of, any ammunition or to suspend or limit the sale, dispensing or transportation of firearms or ammunition pursuant to this section or any other executive authority. Finally, new subsection (f) authorizes the board of county commissioners of any county to issue an order relating to public health that includes provisions that are less stringent than the provisions of an executive order effective statewide issued by the governor. Any board of county commissioners issuing such an order must make a finding based upon advice from the local health officer or other local health officials that the scope of the provisions in the Governor's executive order are not necessary to protect the public health and safety of the county.

Section 31 amends K.S.A. 48-932 concerning declaration of a state of local disaster emergency. The amendment provides that any such declaration must be approved by the board of county commissioners or the governing body of the city, respectively, at the next meeting of such governing body.

Section 32 amends K.S.A. 48-939 concerning violations of the emergency management act or any lawful order or proclamation issued under authority of the act. The bill changes the penalty for a violation from a class A misdemeanor to a civil penalty not to exceed \$2,500 per violation. New subsection (b) provides that violations shall be enforced through a civil action brought by the Attorney General or the county or district attorney in the county in which the violation took place. Finally, new subsection (c) provides that the Attorney General or any county or district attorney may seek an injunction or a restraining order against a person who has violated, is violating or is otherwise likely to violate this act.

County boards of health and local health officers

Section 22 amends K.S.A. 19-101a to provide that counties may not exempt from or effect changes in K.S.A. 65-201 and 65-202. Section 33 amends K.S.A. 65-201 to require the board of county commissioners to approve orders issued by the local health officer, including orders issued as a result of an executive order of the Governor, at the next meeting of the board. Section 34 amends K.S.A. 65-202 in the same manner, to require the board of county commissioners to approve orders issued by the local health officer regarding remediation of any infectious disease.

COVID-19 response and reopening for business liability protection act

Sections 7 through 13 enact the COVID-19 response and reopening for business liability protection act. Section 7 names the act and Section 8 provides definitions to be used in the act.

Section 9 provides that a healthcare provider is immune from civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decisions or the rendering of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a direct response to any state of disaster emergency related to the COVID-19 public health emergency. The provisions of this section do not apply to civil liability when it is established that the act, omission or healthcare

decision constituted gross negligence or willful, wanton or reckless conduct and do not apply to healthcare services not related to COVID-19 that have not been altered, delayed or withheld as a direct response to the COVID-19 public health emergency.

Section 10 provides that a person conducting business in this state shall not be held liable for a COVID-19 claim if the act or omission alleged to violate a duty of care was mandated or specifically and affirmatively permitted by a federal or state statute, regulation or executive order passed or issued in response to the COVID-19 pandemic and applicable to the activity at issue at the time of the alleged exposure.

Section 11 provides that a person who designs, manufactures, labels, sells, distributes, provides or donates a qualified product in response to the COVID-19 public health emergency shall not be liable in a civil action alleging a product liability claim if: (1) the product was manufactured, labeled, sold, distributed, provided or donated at the specific request of or in response to a written order or other directive finding a public need for a qualified product issued by the governor, the adjutant general or the division of emergency management; and (2) the damages are not occasioned by willful, wanton or reckless disregard of a known, substantial and unnecessary risk that the product would cause serious injury to others.

Section 12 provides that Sections 7 through 13 do not create, recognize or ratify a claim or cause of action, eliminate a required element of any claim, affect workers' compensation law, or affect any other immunity or limitation of liability. Finally, Section 13 provides that Sections 10 through 12 apply retroactively to any cause of action accruing on or after March 12, 2020.

Employment security law (unemployment)

Sections 24 through 28 amend the employment security law in response to the COVID-19 public health emergency. Section 24 amends K.S.A. 44-702 to add the following public policy statement: "The state of Kansas is committed to maintaining and strengthening access to the unemployment compensation system, including through initial and continuing claims."

Section 25 amends K.S.A. 44-705 concerning an unemployed individual's eligibility to receive benefits. Current law in subsection (c) requires an individual to be available for work as demonstrated by pursuit of employment, commonly referred to as the work search requirement. This subsection is amended to provide that an individual will not become ineligible for benefits because the individual is not actively seeking work during a state of disaster emergency proclaimed by the Governor, in response to the spread of the public health emergency of COVID-19, and the state's temporary waiver of the work search requirement is in compliance with the families first coronavirus response act. Current law in subsection (d) requires an individual to have been unemployed for a waiting period of one week. This subsection is amended to provide that the waiting week requirement shall not apply to new claims filed on or after

KANSAS OFFICE *of*
REVISOR *of* STATUTES
LEGISLATURE *of* THE STATE *of* KANSAS

April 5, 2020, through December 26, 2020, in accordance with the families first coronavirus response act and the federal CARES act.

Section 26 amends K.S.A. 44-709 concerning employer obligations. The section is amended to require each employer to provide notifications as required by the Secretary of Labor pursuant to the families first coronavirus response act.

Section 27 amends K.S.A. 44-710 concerning employer contributions. For calendar year 2021, unemployment tax rates for eligible employers shall be limited to the standard rate schedule. In addition, benefits paid for a claimant discharged from an employer directly impacted by COVID-19 in accordance with the families first coronavirus response act shall not be charged to the account of the employer. Finally, payments of unemployment compensation that are wholly reimbursed to the reimbursing employer by the federal government shall be charged for the purpose of such reimbursement under the federal CARES act.

Section 28 amends K.S.A. 44-757 concerning the shared work unemployment compensation program. Current law prohibits “a negative account employer” from participating in the program. The amendment removes this prohibition and allows the Secretary of Labor to approve a shared work plan if the contributing employer does not adversely impact the state’s eligibility under the federal CARES act and meets other requirements.

Health and healthcare

Section 17 authorizes the expanded use of telemedicine in response to the COVID-19 public health emergency, similar to the provisions of Executive Order 20-08. Subsection (a) allows a physician to issue a prescription or order the administration of medication for a patient without conducting an in-person examination of such patient. However, subsection (d) requires a physician practicing telemedicine to conduct an appropriate assessment and evaluation of the patient’s current condition and document the appropriate medical indication for any prescription issued. Subsection (b) allows a physician under quarantine to practice telemedicine. Subsection (c) allows a physician holding a license issued by the applicable licensing agency of another state to practice telemedicine to treat patients located in the state of Kansas, if such out-of-state physician advises the State Board of Healing Arts of such practice and holds an unrestricted license to practice medicine and surgery in the other state. Section 17 expires on January 26, 2021.

Section 19 authorizes certain temporary emergency licenses in response to the COVID-19 public health emergency, similar to the provisions of Executive Order 20-08. This section allows the State Board of Healing Arts to grant a temporary emergency license to practice any profession licensed, certified, registered or regulated by the board to an applicant with qualifications the board deems sufficient to protect public safety and welfare within the scope of professional practice authorized by the temporary

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS

emergency license for the purpose of preparing for, responding to or mitigating any effect of COVID-19. Section 19 expires on January 26, 2021.

Section 20 authorizes certain healthcare service providers to provide services, similar to the provisions of Executive Order 20-08. Subsection (a) allows a licensed physician assistant to provide healthcare services appropriate to such physician assistant's education, training and experience within a designated healthcare facility at which the physician assistant is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without a written agreement with a supervising physician. Subsection (b) contains similar provisions for a licensed advanced practice registered nurse and subsection (c) contains similar provisions for a registered nurse anesthetist. Subsection (d) allows a registered professional nurse or licensed practical nurse to order the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19 for purposes of testing and allows a licensed practical nurse to provide healthcare services without direction from a registered professional nurse. Subsection (e) allows a licensed pharmacist to provide care for routine health maintenance, chronic disease states or similar conditions appropriate to such pharmacist's education, training and experience within a designated healthcare facility at which the pharmacist is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without a collaborative practice agreement with a physician. Subsection (f) allows a registered professional nurse or licensed practical nurse who holds a license that is exempt or inactive or whose license has lapsed within the past five years from the effective date of this act to provide healthcare services appropriate to the nurse's education, training and experience.

Section 20(g) authorizes a designated healthcare facility, as necessary to support the facility's response to the COVID-19 pandemic, to allow certain individuals to volunteer or work within such facility in roles that are appropriate to such individual's education, training, and experience. Subsection (h) authorizes a healthcare professional licensed and in good standing in another state to practice such profession in the state of Kansas. Subsection (i) authorizes a designated healthcare facility to use a qualified volunteer or qualified personnel affiliated with any other designated healthcare facility as if such volunteer or personnel was affiliated with the facility using such volunteer or personnel, subject to any terms and conditions established by the secretary of health and environment. Subsection (j) allows a healthcare professional to be licensed, certified or registered or to have such license, certification or registration reinstated within five years of lapse or renewed by the applicable licensing agency of the state of Kansas without satisfying certain conditions of licensure, certification or registration. Subsection (k) provides that a professional certification in basic life support, advanced cardiac life support or first aid shall remain valid if such professional certification is due to expire or be canceled while the state of disaster emergency proclamation issued by the governor in response to the COVID-19 pandemic is in effect. Subsection (l) provides that fingerprinting of any individual shall not be required as a condition of

licensure and certification for any hospital, adult care home, county medical care facility or psychiatric hospital. Section 20 expires on January 26, 2021.

Section 18 authorizes a hospital to admit patients in excess of such hospital's number of licensed beds or inconsistent with the licensed classification of such hospital's beds to the extent that such hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients. This section also authorizes a hospital to utilize non-hospital space, including off-campus space, to perform COVID-19 testing, triage, quarantine or patient care as necessary. Finally, this section authorizes a medical care facility to permit healthcare providers authorized to provide healthcare services in the state of Kansas to provide healthcare services at such medical care facility without becoming a member of the medical care facility's medical staff. This section expires 120 calendar days after the expiration or termination of the state of disaster emergency proclamation issued by the governor in response to the COVID-19 public health emergency, or any extension thereof.

Section 35 amends K.S.A. 65-468, a statute concerning definitions related to rural health networks. The amendment to the definition of "critical access hospital" in subsection (f) provides that prior to June 30, 2021, to the extent that a critical access hospital determines it is necessary to treat COVID-19 patients or to separate COVID-19 patients and non-COVID-19 patients, such critical access hospital shall not be limited to 25 beds or, in the case of a facility with an approved swing bed agreement, to a combined total of 25 extended care and acute care beds, and shall not be limited to providing acute inpatient care for a period of time that does not exceed, on an annual average basis, 96 hours per patient.

Adult care homes

Section 16 imposes requirements on the Kansas Department for Aging and Disability Services (KDADS) related to infection prevention and control practices and recommendations, infection control inspections and providing personal protective equipment. For all entities required to be licensed pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated, KDADS is required to: (1) Promptly, and within 30 days of enactment, make or cause to be made infection control inspections; (2) provide the necessary personal protective equipment, sanitizing supplies and testing kits appropriate to the needs of each facility on an ongoing basis; and (3) ensure that infection prevention and control best practices and recommendations based upon guidance from the United States centers for disease control and prevention and the Kansas department of health and environment are adopted and made available publicly. The statutory reference encompasses all adult care homes, which includes nursing homes, nursing facilities for mental health, intellectual disability intermediate care, assisted living, residential healthcare, home plus, boarding care homes, and adult day care facilities.

Alcoholic liquor

Section 23 amends K.S.A. 2019 Supp. 41-2653, a statute concerning removal of containers of alcoholic liquor from licensed premises. The amendment in subsection (b) authorizes the temporary sale of alcoholic liquor for consumption off of certain licensed premises, similar to the provisions of Executive Order 20-27. Legal patrons of a club or drinking establishment are allowed to remove from the licensed premises one or more containers of alcoholic liquor that is not in the original container, subject to the following conditions: (1) It must be legal for the licensee to sell the alcoholic liquor; (2) each container of alcoholic liquor must have been purchased by a patron on the licensed premises; (3) the licensee or the licensee's employee must provide the patron with a dated receipt for the alcoholic liquor; and (4) before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must place the container in a transparent bag that is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened. This provision expires on January 26, 2021.

Courts

Section 21 amends Section 1 of 2020 House Substitute for Senate Bill No. 102, a provision enacted into law in March 2020 that allows the Chief Justice of the Kansas Supreme Court to extend or suspend deadlines or time limitations to secure the health and safety of court users, staff and judicial officers. Current law limits the Chief Justice to an order authorizing the use of two-way electronic audio-visual communication in any court proceeding only during a state of disaster emergency pursuant to K.S.A. 48-924. The amendment in subsection (b) removes this restriction and allows the Chief Justice to issue such an order at any time to secure the health and safety of court users, staff and judicial officers. This section expires on March 31, 2021.

First responders

Section 15 requires county health officers to share certain information with first responder agencies and 911 call centers. During a state of disaster emergency declared under K.S.A. 48-924, related to the COVID-19 public health emergency, each county health officer shall work with first responder agencies operating in the county to establish a method to share information indicating where a person testing positive for or under quarantine or isolation due to COVID-19 resides or can be expected to be present. Such information shall be provided to the 911 call center for the area serving the address provided and the 911 call center shall disseminate the information only to first responders responding to the listed address.

Notarial acts

Section 14 validates certain notarial acts performed while the requirements that a person must appear before a notary public are suspended pursuant to an executive order or other state law. All such

notarial acts performed by a notary public of this state shall be valid as if the individual had appeared before the notary public, notwithstanding any failure of any individual to appear personally before the notary public, if the notarial act meets all requirements prescribed by such executive order or other state law and all requirements prescribed by law that do not relate to appearance before the notary public.

Severability

Section 36 provides for severability of HB 2054. If any section or provision is declared unconstitutional or invalid, the invalidity shall not affect other provisions of the act that can be given effect without the invalid section or provision, and such other provisions shall remain valid and enforceable.