

**Substitute for SENATE BILL No. 286**

By Committee on Judiciary

5-3

1 AN ACT enacting the COVID-19 business relief act; providing funds for  
2 impacted businesses; making and concerning appropriations for the  
3 fiscal years ending June 30, 2021, ~~and June 30, 2022~~, **{ June 30, 2023,**  
4 **and June 30, 2024}**; authorizing certain transfers and imposing certain  
5 limitations; creating the COVID-19 business relief fund and the  
6 COVID-19 business relief claims board; **{the COVID-19 relief fund**  
7 **and procedures for the administration of such fund by the legislative**  
8 **coordinating council;}** providing for administration of this act by the  
9 attorney general; requiring certain counties to establish and administer  
10 a county COVID-19 business relief fund and certain cities to establish  
11 and administer a city COVID-19 business relief fund; amending K.S.A.  
12 48-933 and repealing the existing section.  
13

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

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

17 (b) As used in sections 1 through 7, and amendments thereto:

18 (1) "Act" means the COVID-19 business relief act.

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

21 (3) (A) "Business" means a sole proprietorship, partnership, limited  
22 partnership, limited liability partnership, limited liability company or  
23 corporation that:

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

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

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

31 (4) "Governmental entity" means:

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

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

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

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

11 (c) The provisions of this section shall expire on January 1, 2025.

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

17 (2) ~~On and after January 1, 2023, {the director of accounts and~~  
18 ~~reports shall transfer}~~ any remaining moneys in the COVID-19 business  
19 relief fund ~~may be used in any manner consistent with state and federal~~  
20 ~~law {to the COVID-19 relief fund of the legislative coordinating~~  
21 ~~council}~~. On December 31, 2024, the COVID-19 business relief fund is  
22 hereby abolished, and all pending or future claims against the fund are  
23 hereby declared to be null and void.

24 *{(3) (A) There is hereby established in the state treasury the*  
25 *COVID-19 relief fund, which shall be administered by the legislative*  
26 *coordinating council. All expenditures from such fund shall be made in*  
27 *accordance with appropriation acts upon warrants of the director of*  
28 *accounts and reports pursuant to vouchers approved by the chairperson*  
29 *of the legislative coordinating council or the designee of the*  
30 *chairperson.*

31 *(B) (i) During the fiscal year ending June 30, 2023, on and after*  
32 *January 1, 2023, and during the fiscal year ending June 30, 2024, state*  
33 *agencies may submit requests for expenditures from the COVID-19*  
34 *relief fund in accordance with this paragraph.*

35 *(ii) The legislative budget committee shall meet and review each*  
36 *such request and shall report such committee's recommendation to the*  
37 *legislative coordinating council.*

38 *(iii) After receiving recommendations from the legislative budget*  
39 *committee, expenditures may be authorized by the legislative*  
40 *coordinating council and such requests may be approved by the*  
41 *members of the legislative coordinating council, as provided in K.S.A.*  
42 *46-1202, and amendments thereto, acting on this matter, which is hereby*  
43 *characterized as a matter of legislative delegation, except that such*

1 *disbursements and expenditures may also be approved while the*  
2 *legislature is in session.}*

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

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

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

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

12 (D) administrative costs of the board and the office of the attorney  
13 general related to this act; and

14 (E) any repayment required by the federal government.

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

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

29 (c) (1) Notwithstanding the provisions of sections 2 through 4 of  
30 chapter 1 of the 2020 Special Session Laws of Kansas, any other statute,  
31 section 30(c) of 2021 House Bill No. 2007, or any other appropriation act,  
32 for the fiscal years ending June 30, 2021, and June 30, 2022, on or before  
33 July 15, 2021, the director of the budget shall determine the amount of  
34 moneys received by the state that are identified as moneys from the federal  
35 government for aid to the state of Kansas for coronavirus relief as  
36 appropriated in the following acts that are eligible to be used for the  
37 purposes of this act, may be expended at the discretion of the state, in  
38 compliance with the office of management and budget's uniform  
39 administrative requirements, cost principles and audit requirements for  
40 federal awards, and are unencumbered: (A) The federal CARES act, public  
41 law 116-136; (B) the federal coronavirus preparedness and response  
42 supplemental appropriation act, 2020, public law 116-123; (C) the federal  
43 families first coronavirus response act, public law 116-127; (D) the federal

1 paycheck protection program and health care enhancement act, public law  
2 116-139; (E) the federal consolidated appropriations act, 2021, public law  
3 116-260; (F) the American rescue plan act of 2021, public law 117-2; and  
4 (G) any other federal law that appropriates moneys to the state for aid for  
5 coronavirus relief. If the state receives any such moneys from the federal  
6 government for aid to the state of Kansas for coronavirus relief after July  
7 15, 2021, the director of the budget shall also identify such moneys for the  
8 purposes of fulfilling transfers required by this section.

9 (2) Of such identified moneys, following transfers required in 2021  
10 Senate Substitute for Substitute for House Bill No. 2196 and 2021 Senate  
11 Substitute for House Bill No. 2208, the director of the budget shall  
12 determine ~~100%~~ {35%} of such remaining moneys available in special  
13 revenue funds. The director of the budget shall certify the amount so  
14 determined from each fund to the director of accounts and reports and, at  
15 the same time as such certification is transmitted to the director of  
16 accounts and reports, shall transmit a copy of such certification to the  
17 director of legislative research. Upon receipt of each such certification, or  
18 as soon thereafter as moneys are available, the director of accounts and  
19 reports shall immediately transfer such certified amount from such funds  
20 to the COVID-19 business relief fund of the attorney general.

21 (d) The provisions of this section shall expire on January 1, 2025.

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

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

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

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

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

43 (b) The board shall have authority to hire expert consultants to

1 provide information and assistance and gather information as required to  
2 carry out the board's duties.

3 (c) On or before November 1, 2021, the board shall adopt policies  
4 and procedures necessary to facilitate the settlement of claims through the  
5 processes provided by this act, including, but not limited to, the form and  
6 manner of submitting claims to the board and the procedures for review of  
7 claims by the board. The board may adopt rules and regulations to  
8 implement and administer the provisions of this act.

9 (d) The provisions of this section shall expire on January 1, 2025.

10 New Sec. 4. (a) (1) This act shall be administered by the board, with  
11 the assistance and support of the office of the attorney general, and all  
12 claims submitted pursuant to this act shall be for businesses impacted by  
13 an order making a restriction related to the COVID-19 pandemic. A  
14 business may file a claim with the board in a form and manner provided by  
15 the board.

16 (2) All claims brought under this act shall be filed with the board  
17 during the period beginning on January 1, 2022, and ending on March 31,  
18 2022.

19 (3) Any such claim shall be accompanied by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (6) any governmental grants related to the COVID-19 pandemic that

1 were received by the claimant or governmental loans related to the  
2 COVID-19 pandemic made to the claimant that were forgiven by a  
3 governmental entity; and

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

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

12 (2) A written decision that grants relief shall:

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

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

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

20 (3) No relief to be paid shall be assigned to a county if the applicable  
21 order issued by the county was less restrictive than an applicable order  
22 issued by the state. If the applicable order issued by the county was the  
23 same as an applicable order issued by the state, the board may assign up to  
24 50% of the relief to be paid to the county based on availability of moneys  
25 in such county's fund established pursuant to section 5, and amendments  
26 thereto.

27 (4) No relief to be paid shall be assigned to a city if the applicable  
28 order issued by the city was the same or less restrictive than an applicable  
29 order issued by the state or the county where such city is located.

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

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

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

39 (C) *publish on the official website of the attorney general the*  
40 *claimant's name and address and the amount of relief to be paid to such*  
41 *claimant by each governmental entity}.*

42 (6) If the attorney general determines that all moneys in the COVID-  
43 19 business relief fund established pursuant to section 2, and amendments

1 thereto, or all moneys in a governmental entity's fund established pursuant  
2 to section 5 or 6, and amendments thereto, are exhausted, the attorney  
3 general shall certify such determination and cause a notice of such  
4 certification to be published in the Kansas register. On and after the date of  
5 publication of such notice, all pending or future claims against such fund  
6 are hereby declared to be null and void.

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

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

23 (2) Determinations made by the board pursuant to this act, including,  
24 but not limited to, the eligibility of any business for relief and the  
25 determination of the proper amount of such relief, if any, shall be  
26 committed to the sole discretion of the board based on the information  
27 available to it and shall not be subject to appeal or judicial review.

28 (g) The provisions of this section shall expire on January 1, 2025.

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

34 (b) The officer of the county designated as the administrator of such  
35 fund shall determine the amount of moneys received by the county on and  
36 after January 1, 2021, that are identified as moneys from the federal  
37 government for coronavirus relief aid to the county that may be expended  
38 at the discretion of the county and are unencumbered. Of such identified  
39 moneys, such officer shall determine ~~100%~~ *35%* of such moneys  
40 available in county funds. The officer shall certify the amount so  
41 determined from each county fund to the board of county commissioners  
42 and transfer such certified amount from such county funds to the county  
43 COVID-19 business relief fund. At the same time as such certification is



1 transmitted to the board of county commissioners, the officer shall  
2 transmit a copy of such certification to the director of legislative research  
3 and to the attorney general.

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

11 (d) On and after January 1, 2023, any remaining moneys in the  
12 county COVID-19 business relief fund may be used in any manner  
13 consistent with state and federal law upon adoption of a resolution by the  
14 board of county commissioners. Such resolution shall abolish the county  
15 COVID-19 business relief fund on December 31, 2024, and all pending or  
16 future claims against the fund are hereby declared to be null and void.

17 (e) The provisions of this section shall expire on January 1, 2025.

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

23 (b) The officer of the city designated as the administrator of such  
24 fund shall determine the amount of moneys received by the city on and  
25 after January 1, 2021, that are identified as moneys from the federal  
26 government for coronavirus relief aid to the city that may be expended at  
27 the discretion of the city and are unencumbered. Of such identified  
28 moneys, such officer shall determine—100% {35%} of such moneys  
29 available in city funds. The officer shall certify the amount so determined  
30 from each city fund to the governing board of the city and transfer such  
31 certified amount from such city funds to the city COVID-19 business relief  
32 fund. At the same time as such certification is transmitted to the governing  
33 body of the city, the officer shall transmit a copy of such certification to  
34 the director of legislative research and to the attorney general.

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

42 (d) On and after January 1, 2023, any remaining moneys in the city  
43 COVID-19 business relief fund may be used in any manner consistent with

1 state and federal law upon adoption of an ordinance by the governing body  
2 of the city. Such ordinance shall abolish the city COVID-19 business relief  
3 fund on December 31, 2024, and all pending or future claims against the  
4 fund are hereby declared to be null and void.

5 (e) The provisions of this section shall expire on January 1, 2025.

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

13 (b) The provisions of this section shall expire on January 1, 2025.

14 Sec. 8. K.S.A. 48-933 is hereby amended to read as follows: 48-933.

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

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

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

37 (d) Any person claiming compensation for the use, damage, loss or  
38 destruction of property under this act shall file a claim therefor in the  
39 district court in the same manner as any other civil action. The court shall  
40 determine the validity of such claim in the same manner and under the  
41 same conditions prescribed for condemnation actions pursuant to K.S.A.  
42 26-501 et seq., and amendments thereto. Unless the amount of  
43 compensation on account of property damaged, lost or destroyed is agreed

1 upon by the claimant and the adjutant general, the amount of  
2 compensation shall be calculated in the same manner as compensation due  
3 for a taking of property pursuant to the condemnation law of this state.

4 (e) Nothing in this section:

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

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

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

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