

SESSION OF 2020

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2396**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2396 would create and amend law and make appropriations regarding the governmental response to the 2020 COVID-19 pandemic in Kansas, as follows.

Coronavirus Relief Funds

The bill would appropriate the Coronavirus Relief Fund (CRF) in the Legislative Coordinating Council (LCC) to provide relief for the effects of coronavirus in the state of Kansas in both FY 2020 and FY 2021. The bill would transfer all moneys and obligations upon the current Coronavirus Relief Fund – Federal Fund of the Office of the Governor into the newly created fund in the LCC. The bill would also abolish the current Coronavirus Relief Fund – Federal Fund in the Office of the Governor.

Prior to expenditures or transfers from the CRF, Kansas state agencies would submit expenditure requests to the Director of the Budget, who would present the requests to the Legislative Budget Committee (LBC). The LBC would meet and review each request and make recommendations regarding the agency requests to the LCC. The expenditures would be approved upon an affirmative vote of five members of the LCC. The bill would also permit the LCC to continue approving such requests during the Legislative Session. If

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

approval is granted, the Director of Accounts and Reports would appropriate any funds necessary and transfer the moneys in the CRF to either existing or newly appropriated funds.

In addition to the CRF funds, the bill would apply the same approval process described above to any federal funds received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Families First Coronavirus Response Act (Families First Act), the Paycheck Protection Program and Health Care Enhancement Act, and any other federal law that provides moneys to the state for aid for coronavirus relief.

The bill would render the provisions of the 2019 and 2020 appropriations bills that provide general authority for the Governor to approve expenditure of federal funds as null and void, as it relates to aid received for the purposes of federal coronavirus relief.

State of Disaster Emergencies and Kansas Emergency Management Act

The bill would create and amend law related to state of disaster emergencies and the Kansas Emergency Management Act (KEMA), including the following provisions.

Ratification and Limitation of 2020 State of Disaster Emergencies

The bill would create a new section of law ratifying the COVID-19-related state of disaster emergency declared by the Governor on March 12, 2020, and ratified and continued by concurrent resolution through May 1, 2020. The bill also would ratify and continue through May 26, 2020, the state of disaster emergency declared by the Governor on April 30, 2020, and extended by the State Finance Council through May 26, 2020.

This section also would prohibit the Governor from proclaiming any new COVID-19-related state of disaster emergency during 2020, unless the Governor makes specific application to the State Finance Council and such action is approved by an affirmative vote of at least six legislative members.

Closure or Cessation of Business or Commercial Activity

The bill would create a new section of law applicable during any state of disaster emergency declared under KEMA, prohibiting the Governor or any executive officer or employee of the state of Kansas from ordering the closure or cessation of any business or commercial activity in response to any or all conditions necessitating the declared state of disaster emergency for more than a cumulative total of 15 days in duration during 2020.

Any order violating or exceeding these restrictions would not have force and effect of law during the period of a state of disaster emergency and would be null and void.

Upon the expiration of any order by the Governor or any other executive officer or employee of the State of Kansas requiring the closure or cessation of any business or commercial activity during a state of disaster emergency declared under KEMA, the authority to determine whether such business or commercial activity should be prohibited from reopening and resuming business or commercial activities would be vested in local health officials, pursuant to applicable provisions of Chapter 65, *Kansas Statutes Annotated*. In such event, the bill would require any order of local health officials to be based on local needs and conditions, and the order would be subject to review and approval, disapproval, or modification by the applicable board of county commissioners within three days.

The provisions of this section would expire on January 1, 2021.

Amendments to KEMA

The bill would amend the section of KEMA providing limitations on its effect to add a provision that nothing in KEMA shall be construed to authorize the Governor or any other state officer or employee to order the closure or cessation of any business or commercial activity in response to any or all conditions necessitating the declaration of any state of disaster emergency, except the Governor or other state officer or employee could order such closure or cessation for a total period of time not exceeding 15 days during any declared state of disaster emergency.

The bill would amend the section of KEMA governing the powers of the Governor during a state of disaster emergency to:

- Require orders issued by the Governor to conform with the *Kansas Constitution* and *Bill of Rights*;
- Remove a provision allowing the Governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles;
- Make the Governor's ability to require and direct the cooperation and assistance of state and local governmental agencies and officials subject to the limitation regarding the closure or cessation of business or commercial activity described elsewhere in the bill;
- Amend a provision allowing the Governor to perform and exercise other functions, powers, and duties to specify these must be administrative in nature and be exercised in conformity with the *Kansas Constitution* and *Bill of Rights*; and
- State 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's listing of powers or any other executive authority.

The bill also would make technical amendments to this section to ensure consistency in statutory references.

Penalty for Violations

The bill would amend the KEMA section making violation of KEMA or of any rule and regulation or lawful order or proclamation made pursuant to it a class A misdemeanor to require, prior to February 1, 2021, each complaint alleging a violation of this section be brought or maintained by a county or district attorney and the Attorney General or by the Attorney General.

First Responder Notifications

The bill would create a new section requiring, during a COVID-19-related state of disaster emergency declared under KEMA, each county health officer to work with first responder agencies operating in the county 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. The bill would require the information include the person's address and duration of any quarantine, isolation, or expected recovery period, as determined by the county health officer, and only be used for the purpose of allowing the first responders to be alert to the need for utilizing appropriate personal protective equipment during the response activity.

The bill would require the above information be provided to the 911 call center serving the address provided, and would limit the 911 call center to disseminating the

information only to first responders responding to the listed address.

The information would not be a public record and would not be subject to the Kansas Open Records Act (KORA). This records provision would expire on July 1, 2025, unless the Legislature reviews and reenacts the provision pursuant to the applicable section of KORA.

Adult Care Homes

The bill would create a new section of law requiring the Kansas Department for Aging and Disability Services (KDADS) to take the following actions with regard to adult care homes:

- Promptly, and no later than 30 days following the effective date of the bill, make or cause to be made infection control inspections;
- Provide the necessary personal protective equipment, sanitizing supplies, and testing kits appropriate to the needs of each facility on an ongoing basis, based upon:
 - Current number of residents;
 - Current number of full-time and part-time staff members;
 - Number of residents and staff who have tested positive for COVID-19 in the last 14 days;
 - Ability to separate COVID-19 residents from non-COVID-19 residents; and
 - Any other factors deemed relevant by the Secretary for Aging and Disability Services; and
- Ensure that infection prevention and control best practices and recommendations based upon

guidance from the U.S. Centers for Disease Control and Prevention and the Kansas Department of Health and Environment (KDHE) are adopted and made available publicly.

Health Care

Telemedicine

The bill would create a new section of law addressing telemedicine, including the following provisions.

The bill would allow a physician to issue a prescription or order administration of medication, including a controlled substance, for a patient, without conducting an in-person examination of the patient.

A physician under quarantine, including self-imposed quarantine, would be allowed to practice telemedicine.

A physician licensed in another state could practice telemedicine to treat patients in Kansas, if the physician advises the Board of Healing Arts (Board) of such practice in writing and in a manner determined by the Board and the physician holds an unrestricted license to practice medicine and surgery in the other state and is not the subject of any investigation or disciplinary action by the licensing agency. The Board would be allowed to extend this provision to other healthcare professionals licensed and regulated by the Board as deemed necessary by the Board to address the impacts of COVID-19 and consistent with ensuring patient safety.

The bill would require a physician practicing telemedicine under this section to conduct an appropriate assessment and evaluation of the patient's current condition and document the appropriate medical indication for any prescription issued.

The bill would specify this section would not supersede or otherwise affect the provisions of statutes governing performance of abortions or prohibition of abortions delivered *via* telemedicine.

The section would define “physician” and “telemedicine.” The section would expire 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.

Hospitals and Medical Care Facilities

The bill would create a new section of law regarding hospital and medical care facility usage, including the following provisions.

The section would allow a hospital to admit patients in excess of its number of licensed beds or inconsistent with its licensed classification of beds, to the extent the hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients. A hospital admitting patients in this manner would be required to notify KDHE as soon as practicable, but prior authorization would not be required.

The section would allow a hospital to use non-hospital space, including off-campus space, to perform COVID-19 testing, triage, quarantine, or patient care, to the extent the hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients. The KDHE could impose reasonable safety requirements on such use to maximize the availability of patient care, and non-hospital space used in this manner would be deemed to meet the requirements of a statute governing provision of services by a hospital consisting of more than one establishment. A hospital using non-hospital space in this manner would be required to notify the KDHE as

soon as practicable, but prior authorization would not be required.

The section would allow a medical care facility to permit healthcare providers authorized to provide healthcare services in Kansas to provide healthcare services at such medical facility without becoming a member of the facility's medical staff.

“Hospital” and “medical care facility” would have the same meaning as in statutes governing hospital and related facility licensing, inspection, and regulation.

The section would expire 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.

Temporary Emergency License

The bill would create a new section of law allowing the Board 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 emergency license, for the purpose of preparing for, responding to, or mitigating any effect of COVID-19.

The section would expire 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.

Critical Access Hospitals

The bill would amend the definition of “critical access hospital” in a statute governing rural health networks to add a provision stating that, prior to June 30, 2021, to the extent a

critical access hospital determines is necessary to treat COVID-19 patients or to separate COVID-19 patients and non-COVID-19 patients, the hospital would not be limited to 25 beds, and a facility with an approved swing bed agreement would not be limited to a combined total of 25 extended care and acute care beds or limited to providing acute inpatient care for a period of time that does not exceed, on an annual average basis, 96 hours per patient.

The bill also would make technical amendments to this statute to ensure consistency in statutory phrasing.

Unemployment Compensation

The bill would make a number of temporary changes to the state unemployment compensation system in response to the COVID-19 pandemic.

The bill would include a policy statement that Kansas is committed to maintaining and strengthening access to its unemployment compensation system.

The bill would provide that a claimant is not ineligible for benefits on the basis of not actively seeking work during a disaster emergency proclaimed by the Governor and in response to the spread of COVID-19 and the State has temporarily waived the work search requirement in compliance with the Families First Act.

Additionally, the bill would waive the waiting week requirement for new claims filed from April 5, 2020, through December 26, 2020, in accordance with the Families First Act and the CARES Act.

The bill would require employers to provide any notifications to individuals in the service of the employer as required by the Secretary of Labor pursuant to the Families First Act.

For calendar year 2021, the bill would limit unemployment contribution rates for employers to the standard rate schedule and prohibit an additional solvency adjustment.

The bill would provide that benefits paid as a result of employees being discharged by an employer directly impacted by COVID-19 in accordance with the Families First Act would not be charged to the account of the contributing employer.

Under the bill, payments of unemployment compensation that are wholly reimbursed to a reimbursing employer by the federal government shall be charged for the purpose of such reimbursement under the CARES Act.

The bill also would eliminate the prohibition of negative account employers participating in shared work plans, but would provide that shared work plans may be approved only if the Secretary of Labor determines the contributing employer does not adversely impact the State's eligibility under Section 2108 of the CARES Act, which provides for federal reimbursement of certain shared work plan payments.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Background

As passed by the House in 2019, HB 2396 would have amended criminal sentencing law regarding drug abuse treatment programs and probation violation sanctions. These provisions were subsequently enacted in 2019 SB 18.

On May 19, 2020, the Senate Committee on Judiciary held an informational hearing on the topic of the Governor's

state of disaster emergency responsibilities and powers pursuant to the KEMA. Conferees testifying before the Committee included the Kansas Attorney General; the Governor's chief of staff; a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association; representatives of Advanced Baseball / Fast Pitch Academy, Billy's Ayr Lanes, Cornerstone Data, Inc., Luke's Barber Shop, Patterson Sports Academy, Rapid Fit Health Club, and Summit Counseling; and a private citizen.

Four private citizens and representatives of the following businesses and organizations submitted written-only testimony on the topic: Burtis Motor Co., Drive 5 Sports Center, Eric Fisher Salon, Kansas Licensed Beverage Association, Kansas Policy Institute and Kansas Justice Institute, Kansas State Bowling Proprietors Association, Legal Shield, Midwest Sports Productions, Natural Baseball Academy, PARISI Speed School, Salon Knotty, Westurban Baseball, and Wichita Sports Forum.

On May 21, 2020, the Senate Committee recommended a substitute bill for HB 2396, replacing the existing language of the bill with COVID-19-related provisions regarding telemedicine, hospital and medical care facilities, temporary emergency licensure for regulated healthcare professionals, critical access hospitals, unemployment compensation (based upon language adopted by the Senate Committee on Commerce in Senate Sub. for HB 2154), creation and oversight of the Coronavirus Relief Fund, state of disaster emergencies, limitation on the Governor's powers under KEMA, first responder notifications, and KDADS responsibilities for adult care homes.

No fiscal note was available for the bill at the time of the Senate Committee action.

Background of Senate Sub. for HB 2154 (Unemployment Compensation)

HB 2154, as introduced, related to unemployment insurance benefits for furloughed state and federal workers required to perform work but not paid through the furlough. The Senate Committee on Commerce, on May 14, 2020, removed the contents of the bill, inserted contents regarding unemployment compensation, and created a substitute bill.

On May 14, 2020, the Secretary of Labor provided testimony to the Senate Committee that federal legislation enacted in response to the COVID-19 pandemic included several categories of expanded federal funding for unemployment compensation. The Secretary testified that full receipt of these funds required the unemployment compensation system to meet certain requirements that were being satisfied through Executive Orders 20-17 and 20-28. However, the pending expiration of these orders jeopardized the further receipt of certain federal unemployment compensation funds. The Senate Committee created the substitute bill in response to this concern. A fiscal note on the substitute bill was not immediately available.