

HOUSE BILL No. 2730

By Committee on Federal and State Affairs

3-8

1 AN ACT concerning governmental action; relating to freedom of worship;
2 prohibiting certain restrictions on such freedom by governmental
3 entities and public officials; limiting related state of disaster emergency
4 powers of the governor and state of local disaster emergency powers of
5 counties and cities; related powers of the secretary of health and
6 environment; local health officers to making recommendations;
7 amending K.S.A. 2021 Supp. 48-925, 48-932, 65-101, 65-201 and 65-
8 202 and repealing the existing sections.
9

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

11 New Section 1. (a) Notwithstanding any provision of law to the
12 contrary, a governmental entity or public official shall not:

13 (1) Restrict the manner of any worship service in this state, which is
14 part of a person's civil right to the free exercise of religion;

15 (2) suspend, regulate or prohibit the conduct of any worship service
16 in this state, which is part of a person's civil right to the free exercise of
17 religion, regardless of whether the worship service is conducted inside a
18 building, inside a temporary structure or outdoors; or

19 (3) limit the number of participants of any worship service in this
20 state, which is part of a person's civil right to the free exercise of religion,
21 other than by enforcing limitations on the number of persons in a building
22 imposed by fire codes.

23 (b) As used in this section, "exercise of religion" means the practice
24 or observance of religion under section 7 of the bill of rights of the
25 constitution of the state of Kansas and the free exercise clause of the first
26 amendment to the constitution of the United States and includes the right
27 to act or refuse to act in a manner substantially motivated by a sincerely
28 held religious tenet or belief, whether or not the exercise is compulsory or
29 a central part or requirement of the person's religious tenets or beliefs.

30 Sec. 2. K.S.A. 2021 Supp. 48-925 is hereby amended to read as
31 follows: 48-925. (a) During any state of disaster emergency declared under
32 K.S.A. 48-924, and amendments thereto, the governor shall be
33 commander-in-chief of the organized and unorganized militia and of all
34 other forces available for emergency duty. To the greatest extent
35 practicable, the governor shall delegate or assign command authority by
36 prior arrangement, embodied in appropriate executive orders or in rules

1 and regulations of the adjutant general, but nothing shall restrict the
2 authority of the governor to do so by executive orders issued at the time of
3 a disaster.

4 (b) Under the provisions of this act and for the implementation of this
5 act, the governor may issue executive orders to exercise the powers
6 conferred by subsection (c) that have the force and effect of law during the
7 period of a state of disaster emergency declared under K.S.A. 48-924(b),
8 and amendments thereto, or as provided in K.S.A. 2021 Supp. 48-924b,
9 and amendments thereto. The chairperson of the legislative coordinating
10 council shall call a meeting of the council to occur within 24 hours of the
11 issuance of an executive order issued pursuant to this section for the
12 purposes of reviewing such order. Such executive orders shall be null and
13 void after the period of a state of disaster emergency has ended. Such
14 executive orders may be revoked at any time by concurrent resolution of
15 the legislature or, when the legislature is not in session or is adjourned
16 during session for three or more days, such orders may be revoked by the
17 legislative coordinating council with the affirmative vote of five members
18 thereof.

19 (c) Except as provided in K.S.A. 2021 Supp. 48-924b, and
20 amendments thereto, during a state of disaster emergency declared under
21 K.S.A. 48-924, and amendments thereto, in addition to any other powers
22 conferred upon the governor by law and subject to the provisions of
23 subsections (d) and (e), the governor may:

24 (1) Suspend the provisions of any regulatory statute prescribing the
25 procedures for conduct of state business, or the orders or rules and
26 regulations of any state agency which implements such statute, if strict
27 compliance with the provisions of such statute, order or rule and regulation
28 would prevent, hinder or delay in any way necessary action in coping with
29 the disaster;

30 (2) utilize all available resources of the state government and of each
31 political subdivision as reasonably necessary to cope with the disaster;

32 (3) transfer the supervision, personnel or functions of state
33 departments and agencies or units thereof for the purpose of performing or
34 facilitating emergency management activities;

35 (4) subject to any applicable requirements for compensation under
36 K.S.A. 48-933, and amendments thereto, commandeer or utilize any
37 private property if the governor finds such action necessary to cope with
38 the disaster;

39 (5) direct and compel the evacuation of all or part of the population
40 from any area of the state stricken or threatened by a disaster, if the
41 governor deems this action necessary for the preservation of life or other
42 disaster mitigation, response or recovery;

43 (6) prescribe routes, modes of transportation and destinations in

1 connection with such evacuation;

2 (7) control ingress and egress of persons and animals to and from a
3 disaster area, the movement of persons and animals within the area and the
4 occupancy by persons and animals of premises therein;

5 (8) suspend or limit the sale, dispensing or transportation of alcoholic
6 beverages, explosives and combustibles;

7 (9) make provision for the availability and use of temporary
8 emergency housing;

9 (10) require and direct the cooperation and assistance of state and
10 local governmental agencies and officials; and

11 (11) perform and exercise such other functions, powers and duties in
12 conformity with the constitution and the bill of rights of the state of
13 Kansas and with the statutes of the state of Kansas, except any regulatory
14 statute specifically suspended under the authority of subsection (c)(1), as
15 are necessary to promote and secure the safety and protection of the
16 civilian population.

17 (d) The governor shall not have the power or authority to limit or
18 otherwise restrict the sale, purchase, transfer, ownership, storage, carrying
19 or transporting of firearms or ammunition, or any component or
20 combination thereof, including any components or combination thereof
21 used in the manufacture of firearms or ammunition, or seize or authorize
22 the seizure of any firearms or ammunition, or any component or
23 combination thereto, except as otherwise permitted by state or federal law
24 pursuant to subsection (c)(8) or any other executive authority.

25 (e) The governor shall not have the power under the provisions of the
26 Kansas emergency management act or ~~the provisions of any other law to~~
27 alter or modify any provisions of:

28 (1) The election laws of the state including, but not limited to, the
29 method by which elections are conducted or the timing of such elections;
30 or

31 (2) *section 1, and amendments thereto, or the Kansas preservation of*
32 *religious freedom act.*

33 (f) The governor shall exercise the powers conferred by subsection
34 (c) by issuance of executive orders under subsection (b). Each executive
35 order issued pursuant to the authority granted by subsection (b) shall
36 specify the provision or provisions of subsection (c) by specific reference
37 to each paragraph of subsection (c) that confers the power under which the
38 executive order was issued. The adjutant general, subject to the direction
39 of the governor, shall administer such executive orders.

40 (g) (1) Any party aggrieved by an executive order issued pursuant to
41 this section that has the effect of substantially burdening or inhibiting the
42 gathering or movement of individuals or the operation of any religious,
43 civic, business or commercial activity, whether for-profit or not-for-profit,

1 may file a civil action in the district court of the county in which such
2 party resides or in the district court of Shawnee county, Kansas, within 30
3 days after the issuance of such executive order. Notwithstanding any order
4 issued pursuant to K.S.A. 2021 Supp. 20-172(a), and amendments thereto,
5 the court shall conduct a hearing within 72 hours after receipt of a petition
6 in any such action. The court shall grant the request for relief unless the
7 court finds such executive order is narrowly tailored to respond to the state
8 of disaster emergency and uses the least restrictive means to achieve such
9 purpose. The court shall issue an order on such petition within seven days
10 after the hearing is conducted. If the court does not issue an order on such
11 petition within seven days, the relief requested in the petition shall be
12 granted.

13 (2) Relief under this section shall not include a stay or injunction
14 concerning the contested executive order that applies beyond the county in
15 which the petition was filed.

16 (3) The supreme court may adopt emergency rules of procedure to
17 facilitate the efficient adjudication of any hearing requested under this
18 subsection, including, but not limited to, rules for consolidation of similar
19 hearings.

20 (h) (1) The board of county commissioners of any county may issue
21 an order relating to public health that includes provisions that are less
22 stringent than the provisions of an executive order effective statewide
23 issued by the governor. Any board of county commissioners issuing such
24 an order must make the following findings and include such findings in the
25 order:

26 (A) The board has consulted with the local health officer or other
27 local health officials regarding the governor's executive order;

28 (B) following such consultation, implementation of the full scope of
29 the provisions in the governor's executive order are not necessary to
30 protect the public health and safety of the county; and

31 (C) all other relevant findings to support the board's decision.

32 (2) If the board of county commissioners of a county issues an order
33 pursuant to paragraph (1), such order shall operate in the county in lieu of
34 the governor's executive order.

35 Sec. 3. K.S.A. 2021 Supp. 48-932 is hereby amended to read as
36 follows: 48-932. (a) A state of local disaster emergency may be declared
37 by the chairperson of the board of county commissioners of any county, or
38 by the mayor or other principal executive officer of each city of this state
39 having a disaster emergency plan, upon a finding by such officer that a
40 disaster has occurred or the threat thereof is imminent within such county
41 or city. No state of local disaster emergency shall be continued for a period
42 in excess of seven days or renewed, except with the consent of the board
43 of county commissioners of such county or the governing body of such

1 city. Any order or proclamation declaring, continuing or terminating a
 2 local disaster emergency shall be given prompt and general publicity and
 3 shall be filed with the county clerk or city clerk. Any such declaration may
 4 be reviewed, amended or revoked by the board of county commissioners
 5 or the governing body of the city, respectively, at a meeting of such
 6 governing body.

7 (b) In the event of the absence of the chairperson of the board of
 8 county commissioners from the county or the incapacity of such
 9 chairperson, the board of county commissioners, by majority action of the
 10 remaining members thereof, may declare a state of local disaster
 11 emergency in the manner provided in and subject to the provisions of
 12 subsection (a). In the event of the absence of the mayor or other principal
 13 executive officer of a city from the city or the incapacity of such mayor or
 14 officer, the governing body of the city, by majority action of the remaining
 15 members thereof, may declare a state of local disaster emergency in the
 16 manner provided in and subject to the provisions of subsection (a). Any
 17 state of local disaster emergency and any actions taken pursuant to
 18 applicable local and interjurisdictional disaster emergency plans, under
 19 this subsection shall continue and have full force and effect as authorized
 20 by law unless modified or terminated in the manner prescribed by law.

21 (c) The declaration of a local disaster emergency shall activate the
 22 response and recovery aspects of any and all local and interjurisdictional
 23 disaster emergency plans which are applicable to such county or city, and
 24 shall initiate the rendering of aid and assistance thereunder.

25 (d) No interjurisdictional disaster agency or any official thereof may
 26 declare a local disaster emergency, unless expressly authorized by the
 27 agreement pursuant to which the agency functions. However, an
 28 interjurisdictional disaster agency shall provide aid and services in
 29 accordance with the agreement pursuant to which it functions in the case
 30 of a state of local disaster emergency declared under subsection (a).

31 (e) *A governmental entity or public official shall not have the power*
 32 *under the provisions of the Kansas emergency management act or any*
 33 *other law to take any action that violates section 1, and amendments*
 34 *thereto, or the Kansas preservation of religious freedom act.*

35 ~~(e)~~(f) (1) Any party aggrieved by an action taken by a local unit of
 36 government pursuant to this section that has the effect of substantially
 37 burdening or inhibiting the gathering or movement of individuals or the
 38 operation of any religious, civic, business or commercial activity, whether
 39 for-profit or not-for-profit, may file a civil action in the district court of the
 40 county in which such action was taken within 30 days after such action is
 41 taken. Notwithstanding any order issued pursuant to K.S.A. 2021 Supp.
 42 20-172(a), and amendments thereto, the court shall conduct a hearing
 43 within 72 hours after receipt of a petition in any such action. The court

1 shall grant the request for relief unless the court finds such action is
2 narrowly tailored to respond to the state of local disaster emergency and
3 uses the least restrictive means to achieve such purpose. The court shall
4 issue an order on such petition within seven days after the hearing is
5 conducted. If the court does not issue an order on such petition within
6 seven days, the relief requested in the petition shall be granted.

7 (2) Relief under this section shall not include a stay or injunction
8 concerning the contested action that applies beyond the county in which
9 the action was taken.

10 (3) The supreme court may adopt emergency rules of procedure to
11 facilitate the efficient adjudication of any hearing requested under this
12 subsection, including, but not limited to, rules for consolidation of similar
13 hearings.

14 Sec. 4. K.S.A. 2021 Supp. 65-101 is hereby amended to read as
15 follows: 65-101. (a) *Except as provided in section 1, and amendments*
16 *thereto*, the secretary of health and environment shall exercise general
17 supervision of the health of the people of the state and may:

18 (1) Where authorized by any other statute, require reports from
19 appropriate persons relating to the health of the people of the state so a
20 determination of the causes of sickness and death among the people of the
21 state may be made through the use of these reports and other records;

22 (2) investigate the causes of disease, including especially, epidemics
23 and endemics, the causes of mortality and effects of locality, employments,
24 conditions, food, water supply, habits and other circumstances affecting
25 the health of the people of this state and the causes of sickness and death;

26 (3) advise other offices and agencies of government concerning
27 location, drainage, water supply, disposal of excreta and heating and
28 ventilation of public buildings;

29 (4) make sanitary inspection and survey of such places and localities
30 as the secretary deems advisable;

31 (5) take action to prevent the introduction of infectious or contagious
32 disease into this state and to prevent the spread of infectious or contagious
33 disease within this state;

34 (6) provide public health outreach services to the people of the state
35 including educational and other activities designed to increase the
36 individual's awareness and appropriate use of public and other preventive
37 health services.

38 (b) The secretary of health and environment may adopt rules and
39 regulations necessary to carry out the provisions of subsection (a). In
40 addition to other remedies provided by law, the secretary is authorized to
41 apply to the district court, and such court shall have jurisdiction upon a
42 hearing and for cause shown to grant a temporary or permanent injunction
43 to compel compliance with such rules and regulations.

1 (c) In the event of a state of disaster emergency declared by the
2 governor pursuant to K.S.A. 48-924, and amendments thereto, or a state of
3 local disaster emergency declared pursuant to K.S.A. 48-932, and
4 amendments thereto, the legislature may revoke an order issued by the
5 secretary to take action related to such disaster emergency as provided in
6 this subsection. Such order may be revoked at any time by concurrent
7 resolution of the legislature or, when the legislature is not in session or is
8 adjourned during session for three or more days, such order may be
9 revoked by the legislative coordinating council with the affirmative vote of
10 five members thereof.

11 Sec. 5. K.S.A. 2021 Supp. 65-201 is hereby amended to read as
12 follows: 65-201. (a) The board of county commissioners of each county
13 shall act as the county board of health for the county. Each county board
14 shall appoint a person licensed to practice medicine and surgery,
15 preference being given to persons who have training in public health, who
16 shall serve as the local health officer and who shall act in an advisory
17 capacity to the county board of health. The appointing authority of city-
18 county, county or multicounty health units with less than 100,000
19 population may appoint a qualified local health program administrator as
20 the local health officer if a person licensed to practice medicine and
21 surgery or person licensed to practice dentistry is designated as a
22 consultant to direct the administrator on program and related medical and
23 professional matters. The local health officer or local health program
24 administrator shall hold office at the pleasure of the board.

25 (b) (1) Except as provided in paragraph (2), any ~~order~~
26 ~~recommendation~~ issued by the local health officer, including ~~orders~~
27 ~~recommendations~~ issued as a result of an executive order of the governor,
28 may be reviewed, ~~amended or revoked~~ by the board of county
29 commissioners of the county affected by such ~~order recommendation~~ at a
30 meeting of the board. ~~Any order reviewed or amended by the board shall~~
31 ~~include an expiration date set by the board and may be amended or~~
32 ~~revoked at an earlier date by a majority vote of the board.~~

33 (2) *Except as provided in section 1, and amendments thereto*, if a
34 local health officer determines it is necessary to issue ~~an order mandating~~
35 ~~a recommendation encouraging~~ the wearing of face masks, limiting the
36 size of gatherings of individuals, curtailing the operation of business; ~~or~~
37 ~~controlling the movement of the population of the county or limiting~~
38 ~~religious gatherings~~, the local health officer shall propose such ~~an order a~~
39 ~~recommendation~~ to the board of county commissioners. At the next
40 regularly scheduled meeting of the board or at a special meeting of the
41 board, the board shall review such ~~proposed order recommendation~~ and
42 may take any action related to the ~~proposed order recommendation~~ the
43 board determines is necessary. The ~~order recommendation~~ shall become

1 effective if approved by the board or, if the board is unable to meet, if
2 approved by the chairperson of the board or the vice chairperson of the
3 board in the chairperson's absence or disability.

4 (c) The board of county commissioners in any county having a
5 population of less than 15,000 may contract with the governing body of
6 any hospital located in such county for the purpose of authorizing such
7 governing body of the hospital to supply services to a county board of
8 health.

9 (d) (1) Any party aggrieved by ~~an order~~ *a recommendation* issued
10 pursuant to subsection (b)(2) may file a civil action in the district court of
11 the county in which the ~~order~~ *recommendation* was issued within 30 days
12 after such ~~order~~ *recommendation* is issued. Notwithstanding any order
13 issued pursuant to K.S.A. 2021 Supp. 20-172(a), and amendments thereto,
14 the court shall conduct a hearing within 72 hours after receipt of a petition
15 in any such action. The court shall grant the request for relief unless the
16 court finds such ~~order~~ *recommendation* is narrowly tailored to the purpose
17 stated in the ~~order~~ *recommendation* and uses the least restrictive means to
18 achieve such purpose. The court shall issue an order on such petition
19 within seven days after the hearing is conducted. If the court does not issue
20 an order on such petition within seven days, the relief requested in the
21 petition shall be granted.

22 (2) Relief under this section shall not include a stay or injunction
23 concerning the contested action that applies beyond the county in which
24 the action was taken.

25 (3) The supreme court may adopt emergency rules of procedure to
26 facilitate the efficient adjudication of any hearing requested under this
27 subsection, including, but not limited to, rules for consolidation of similar
28 hearings.

29 Sec. 6. K.S.A. 2021 Supp. 65-202 is hereby amended to read as
30 follows: 65-202. (a) (1) The local health officer in each county throughout
31 the state, immediately after such officer's appointment, shall take the same
32 oath of office prescribed by law for the county officers, shall give bond of
33 \$500 conditioned for the faithful performance of the officer's duties, shall
34 keep an accurate record of all the transactions of such office, shall turn
35 over to the successor in office or to the county or joint board of health
36 selecting such officer, on the expiration of such officer's term of office, all
37 records, documents and other articles belonging to the office and shall
38 faithfully account to *the* board of county commissioners and to the county
39 and state for all moneys coming into the office. Such officer shall notify
40 the secretary of health and environment of such officer's appointment and
41 qualification, and provide the secretary with such officer's contact
42 information.

43 (2) Such officer shall receive and distribute without delay in the

1 county all forms from the secretary of health and environment to the
2 rightful persons, all returns from persons licensed to practice medicine and
3 surgery, assessors and local boards to said secretary, shall keep an accurate
4 record of all of the transactions of such office and shall turn over all
5 records and documents kept by such officer, the successor in office, or to
6 the county or joint board electing such officer, on the expiration of the
7 term of office.

8 (3) The local health officer shall upon the opening of the fall term of
9 school, make a sanitary inspection of each school building and grounds,
10 and shall make such additional inspections as are necessary to protect the
11 public health of the students of the school.

12 ~~(e)(b)~~ (1) ~~Such~~ *The local health officer shall make an investigation of*
13 *each case of smallpox, diphtheria, typhoid fever, scarlet fever, acute*
14 *anterior poliomyelitis (infantile paralysis), epidemic cerebro-spinal*
15 *meningitis and such other acute infectious, contagious or communicable*
16 *diseases as may be required, and, except as provided in section 1, and*
17 *amendments thereto, shall: (A) Use all known measures to prevent the*
18 *spread of any such infectious, contagious or communicable disease;* and
19 ~~shall~~ *(B) perform such other duties as this act, the county or joint board,*
20 *board of health or the secretary of health and environment may require.*

21 (2) ~~Any order recommendation~~ issued by the local health officer,
22 including ~~orders~~ *recommendations* issued as a result of an executive order
23 of the governor, on behalf of a county regarding the remediation of any
24 infectious, *contagious or communicable* disease may be reviewed,
25 ~~amended or revoked~~ by the board of county commissioners of any county
26 affected by such ~~order recommendation~~ in the manner provided by K.S.A.
27 65-201(b), and amendments thereto.

28 (c) Such officer shall receive compensation as set by the board and
29 with the approval of the board of health may employ a skilled professional
30 nurse and other additional personnel whenever deemed necessary for the
31 protection of the public health.

32 (d) *For any failure or neglect of the local health officer to perform*
33 *any of the duties prescribed in this act, the officer may be removed from*
34 *office by the county board of health. In addition to removal from office,*
35 *for any failure or neglect to perform any of the duties prescribed by this*
36 *act, the local health officer shall be deemed guilty of—*~~a~~ *an unclassified*
37 *misdemeanor and, upon conviction, be fined not less \$10 nor more than*
38 *\$100 for each and every offense.*

39 Sec. 7. K.S.A. 2021 Supp. 48-925, 48-932, 65-101, 65-201 and 65-
40 202 are hereby repealed.

41 Sec. 8. This act shall take effect and be in force from and after its
42 publication in the Kansas register.