

SENATE BILL No. 411

By Committee on Judiciary

1-27

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

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

10 New Section 1. (a) Notwithstanding any provision of law to the
11 contrary, a governmental entity or public official shall not restrict any
12 business activity in this state in a manner that prevents a business entity
13 from providing the business entity's products or services to the public if
14 the business entity possesses all applicable licenses and permits to do
15 business in this state.

16 (b) As used in this section, "business entity" means any person or
17 group of persons performing or engaging in any activity, enterprise,
18 profession or occupation for gain, benefit, advantage or livelihood,
19 whether for-profit or not-for-profit. "Business entity" includes, but is not
20 limited to, self-employed individuals, business entities filing articles of
21 incorporation, partnerships, limited partnerships, limited liability
22 companies, foreign corporations, foreign limited partnerships, foreign
23 limited liability companies authorized to transact business in this state,
24 business trusts and any business entity that registers with the secretary of
25 state.

26 Sec. 2. K.S.A. 2021 Supp. 48-925 is hereby amended to read as
27 follows: 48-925. (a) During any state of disaster emergency declared under
28 K.S.A. 48-924, and amendments thereto, the governor shall be
29 commander-in-chief of the organized and unorganized militia and of all
30 other forces available for emergency duty. To the greatest extent
31 practicable, the governor shall delegate or assign command authority by
32 prior arrangement, embodied in appropriate executive orders or in rules
33 and regulations of the adjutant general, but nothing shall restrict the
34 authority of the governor to do so by executive orders issued at the time of
35 a disaster.

36 (b) Under the provisions of this act and for the implementation of this

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

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

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

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

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

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

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

39 (6) prescribe routes, modes of transportation and destinations in
40 connection with such evacuation;

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

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

3 (9) make provision for the availability and use of temporary
4 emergency housing;

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

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

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

21 (e) The governor shall not have the power under the provisions of the
22 Kansas emergency management act ~~or the provisions of any other law to:~~

23 (1) Alter or modify any provisions of the election laws of the state
24 including, but not limited to, the method by which elections are conducted
25 or the timing of such elections; *or*

26 (2) *restrict any business activity in this state in a manner that*
27 *prevents a business entity, as defined in section 1, and amendments*
28 *thereto, from providing the business entity's products or services to the*
29 *public if the business entity possesses all applicable licenses and permits*
30 *to do business in this state.*

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

38 (g) (1) Any party aggrieved by an executive order issued pursuant to
39 this section that has the effect of substantially burdening or inhibiting the
40 gathering or movement of individuals or the operation of any religious,
41 civic, business or commercial activity, whether for-profit or not-for-profit,
42 may file a civil action in the district court of the county in which such
43 party resides or in the district court of Shawnee county, Kansas, within 30

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

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

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

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

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

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

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

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

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

1 shall be filed with the county clerk or city clerk. Any such declaration may
2 be reviewed, amended or revoked by the board of county commissioners
3 or the governing body of the city, respectively, at a meeting of such
4 governing body.

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

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

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

29 (e) *Notwithstanding any other provision of law to the contrary, an*
30 *action taken by a local unit of government pursuant to this section that has*
31 *the effect of substantially burdening or inhibiting business or commercial*
32 *activity shall:*

33 (1) *Require a $\frac{2}{3}$ majority vote of the members of the governing body*
34 *of such local unit of government for passage; and*

35 (2) *have a duration of not more than 14 calendar days.*

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

1 within 72 hours after receipt of a petition in any such action. The court
2 shall grant the request for relief unless the court finds such action is
3 narrowly tailored to respond to the state of local disaster emergency and
4 uses the least restrictive means to achieve such purpose. The court shall
5 issue an order on such petition within seven days after the hearing is
6 conducted. If the court does not issue an order on such petition within
7 seven days, the relief requested in the petition shall be granted.

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

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

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

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

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

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

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

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

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

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

1 to compel compliance with such rules and regulations.

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

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

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

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

1 board determines is necessary. The ~~order~~ *recommendation* shall become
2 effective if approved by the board or, if the board is unable to meet, if
3 approved by the chairperson of the board or the vice chairperson of the
4 board in the chairperson's absence or disability.

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

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

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

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

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

1 (2) Such officer shall receive and distribute without delay in the
2 county all forms from the secretary of health and environment to the
3 rightful persons, all returns from persons licensed to practice medicine and
4 surgery, assessors and local boards to said secretary, shall keep an accurate
5 record of all of the transactions of such office and shall turn over all
6 records and documents kept by such officer, the successor in office, or to
7 the county or joint board electing such officer, on the expiration of the
8 term of office.

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

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

22 (2) ~~Any order recommendation~~ issued by the local health officer,
23 including ~~orders recommendations~~ issued as a result of an executive order
24 of the governor, on behalf of a county regarding the remediation of any
25 infectious, *contagious or communicable* disease may be reviewed,
26 ~~amended or revoked~~ by the board of county commissioners of any county
27 affected by such ~~order recommendation~~ in the manner provided by K.S.A.
28 65-201(b), and amendments thereto.

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

33 (d) For any failure or neglect of the local health officer to perform
34 any of the duties prescribed in this act, the officer may be removed from
35 office by the county board of health. In addition to removal from office,
36 for any failure or neglect to perform any of the duties prescribed by this
37 act, the local health officer shall be deemed guilty of a *an unclassified*
38 misdemeanor and, upon conviction, be fined not less \$10 nor more than
39 \$100 for each and every offense.

40 Sec. 7. K.S.A. 2021 Supp. 48-925, 48-932, 65-101, 65-201 and 65-
41 202 are hereby repealed.

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