

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2048

As Amended by House Committee on Judiciary

Brief*

HB 2048, as amended, would amend law regarding the governmental response to the coronavirus disease 2019 (COVID-19) pandemic in Kansas, as follows. The bill would be in effect upon publication in the *Kansas Register*.

***Ratification and Extension of State of Disaster
Emergency (Section 4)***

The bill would amend the statute ratifying and continuing the COVID-19-related state of disaster emergency declared by the Governor on March 12, 2020, to reflect the September 15, 2020, ratification and continuation of the state of disaster emergency by 2020 Special Session HB 2016 and subsequent extensions and continuations by the State Finance Council, and would ratify and continue in existence the state of disaster emergency through March 5, 2021. The bill also would amend this statute to extend from 2020 through 2021 a provision prohibiting the Governor from proclaiming any new state of disaster emergency related to the COVID-19 health emergency without approval by at least six legislative members of the State Finance Council.

Extension of Provisions

The bill would amend statutory provisions regarding the following to extend their expiration from January 26, 2021, until June 1, 2021:

*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>

- Removal of alcohol from premises of a licensed club or drinking establishment (Section 1); and
- In the section of the Kansas Emergency Management Act (KEMA) governing declaration of a state of disaster emergency, provisions regarding extension of the COVID-19 state of disaster emergency when the Legislature is not in session by application of the Governor to the State Finance Council (Section 3). This section also would be amended to permit this procedure when the Legislature is adjourned during session for three or more days and to remove a termination date of September 15, 2020.

The following provisions would be extended from January 26, 2021, until December 31, 2021:

- Telemedicine (Section 8); and
- Business immunity from liability for a COVID-19 claim (Section 11).

The bill would amend a statute regarding unemployment eligibility to extend the waiver of a waiting week requirement from December 26, 2020, through March 14, 2021, in accordance with the federal Families First Coronavirus Response Act and the federal CARES Act (Section 2).

In the section of KEMA governing powers of the Governor during a state of disaster emergency, the bill would extend provisions regarding the powers of the Governor and boards of county commissioners enacted in 2020 Special Session HB 2016 from January 26, 2021, until January 24, 2022 (Sections 5 and 6). [Note: Section 5 appears to make substantive amendments to the statute. However, these apparent substantive amendments reflect current statutory language and appear as amendments only to continue the current language beyond the original January 26, 2021, expiration date.]

Effective January 24, 2022, the bill (in Section 6) would return this section to the version effective before enactment of 2020 Special Session HB 2016, removing the amendments made by 2020 Special Session HB 2016 and continued by this bill.

Closure or Cessation of Business Activity (Section 7)

The bill would amend the KEMA statute limiting the Governor's closure or cessation of business activity by limiting its application to a state of disaster related to the COVID-19 public health emergency.

Under current law, this statute prohibits the Governor from ordering the closure or cessation of any for-profit or non-profit business or commercial activity for more than 15 days, requires the Governor to consult with the State Finance Council prior to issuing such an order, and requires approval of six legislative members of the State Finance Council for additional closure or cessation beyond 15 days. The bill would amend these provisions to instead prohibit the Governor from ordering the closure or cessation of any for-profit or non-profit business or commercial activity and from issuing an order preventing the movement or gathering of individuals.

The expiration date of this statute also would be extended from January 26, 2021, until June 1, 2021.

Temporary Licensure (Section 9) and Health Care Services (Section 10)

The bill would amend a statute allowing the State Board of Healing Arts (Board) to grant temporary emergency licenses to practice the professions overseen by the Board to add a provision allowing an applicant to practice in Kansas pursuant to such a license upon submission of a non-resident health care provider certification form to the Kansas Health

Care Stabilization Fund and without paying the annual premium surcharge required by the Health Care Provider Insurance Availability Act. The bill also would extend the expiration of this statute from January 26, 2021, until December 31, 2021.

The bill also would amend a statute temporarily expanding the scope of practice of various specified and unspecified health care professionals and providing related immunity to remove the provision allowing unspecified health care professionals licensed in another state to practice their profession in Kansas and providing immunity for the same. The bill would extend the expiration of this statute from January 26, 2021, until December 31, 2021.

Background

As passed by the 2020 Legislature, Senate Sub. for HB 2054 created and amended law and made appropriations in response to the 2020 COVID-19 pandemic in Kansas. Among the contents of the bill were provisions requiring Legislative Coordinating Council approval of expenditures from federal COVID-19 relief funds, ratification of state of disaster emergencies declared in response to the COVID-19 pandemic, additional legislative oversight in the KEMA, limitations on certain actions by or powers of the Governor in KEMA, additional authority for boards of county commissioners, liability limitations for health care professionals and businesses, and codification of elements of various executive orders issued in response to the COVID-19 pandemic.

On May 26, 2020, the Governor vetoed Senate Sub. for HB 2054, citing certain changes to KEMA, the requirements for approval of expenditures from federal COVID-19 relief funds, and the liability limitations contained in the bill as policy provisions she could not support.

The same day, the Governor issued a proclamation calling the Legislature into Special Session, beginning June 3, 2020, “to extend the state of disaster emergency and to enact appropriate amendments to the [KEMA] so as to provide for emergency response to the effects of the COVID-19 pandemic.”

The Legislative Coordinating Council authorized meetings of the House and Senate Committees on Judiciary to review portions of Senate Sub. for HB 2054. On June 2, 2020, the House and Senate Committees on Judiciary held informational hearings on the status of negotiations between legislative leadership and the Governor’s Office, including a draft bill based upon the negotiations. The draft bill, based upon 2020 Regular Session Senate Sub. for HB 2054, would have modified or added a number of provisions, including:

- Oversight of Coronavirus Relief Fund moneys (modified);
- KEMA additions and amendments related to state of disaster emergencies and the Governor’s powers (modified);
- Authority of local officials (modified);
- Requiring State Board of Education approval for school closure (added);
- The Liability Protection Act (modified);
- The Privacy Act (added); and
- Duties of the Kansas Department for Aging and Disability Services regarding adult care homes (modified).

Background information on Senate Sub. for HB 2054 may be found in the conference committee report brief for that bill.

During the 2020 Special Session, the Legislature passed HB 2016, based upon the language in the draft bill and further negotiations. The Governor signed HB 2016 into law on June 8, 2020. Multiple provisions in or amendments made by HB 2016 are set to expire on January 26, 2021, and in some cases the statutory language will revert to the language effective prior to the enactment of HB 2016.

HB 2048 was introduced by the House Committee on Federal and State Affairs at the request of Representative Arnberger.

House Committee on Judiciary

In the House Committee hearing on January 13, 2021, **proponents** of the bill included representatives of Centura Health, Kansas Association of Nurse Anesthetists, Kansas Chamber, Kansas Hospital Association, Kansas Justice Institute, Kansas Medical Society, Kansas Policy Institute, Kansas Restaurant and Hospitality Association, and National Federation of Independent Business. Representatives of Greater Kansas City Chamber of Commerce, Kansas Advanced Practice Nurses Association, Kansas Association of Counties, Kansas Wine and Spirits Wholesalers Association, League of Kansas Municipalities, National Council of State Boards of Nursing, Overland Park Chamber of Commerce, and Renew Kansas Biofuels Association provided written-only proponent testimony. A representative of the Kansas State Board of Healing Arts testified as a neutral conferee on the bill and requested several amendments. A private citizen testified as an **opponent** of the bill.

On January 14, 2021, the House Committee amended the bill to:

- Remove language regarding the termination of the COVID-19 state of disaster emergency on September 15, 2020;

- Adjust the language of the amendments to the provisions regarding closure or cessation of business activity;
- Extend the KEMA provisions regarding the powers of the Governor and boards of county commissioners enacted in 2020 Special Session HB 2016 until January 24, 2022, instead of June 1, 2021;
- Remove the provision allowing unspecified out-of-state health care professionals to temporarily practice in Kansas (requested by the Kansas State Board of Healing Arts); and
- Add the provision regarding the Kansas Health Care Stabilization Fund non-resident certification.

Fiscal Information

No fiscal note was available when the House Committee took action on the bill.

COVID-19; telemedicine; temporary emergency licensure for health care professionals; Kansas Emergency Management Act; sale of alcoholic liquor; business liability; unemployment eligibility