

HOUSE BILL No. 2416

By Committee on Federal and State Affairs

2-23

Proposed Amendments to HB 2416 - combined
House Judiciary Committee
Prepared by the Office of Revisor of Statutes
February 28, 2021

1 AN ACT concerning governmental response to certain emergencies;
2 relating to the Kansas emergency management act; modifying the
3 procedure for the declaration and extension of a state of disaster
4 emergency; limiting powers granted to the governor during a state of
5 disaster emergency; authorizing the legislative coordinating council and
6 the legislature to take certain actions related to a state of disaster
7 emergency; prohibiting the governor or the state board of education
8 from closing private schools during a state of disaster emergency;
9 amending K.S.A. 46-1202 and K.S.A. 2019 Supp. 48-925, as amended
10 by section 4 of 2021 Senate Bill No. 14, and K.S.A. 2020 Supp. 48-
11 924, as amended by section 2 of 2021 Senate Bill No. 14, and 48-925b
12 and repealing the existing sections; also repealing K.S.A. 2019 Supp.
13 48-925, as amended by section 5 of 2021 Senate Bill No. 14.
14

and 48-923

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

16 New Section 1. (a) During a state of disaster emergency declared
17 under K.S.A. 48-924, and amendments thereto, when the governor
18 determines it is necessary to issue an executive order to promote and
19 secure the safety and protection of the civilian population of the state of
20 Kansas that is not expressly authorized by K.S.A. 48-925(c)(1) through
21 (10), and amendments thereto, the governor shall make specific
22 application to the legislative coordinating council to seek approval to issue
23 an executive order that is in conformity with the constitution and the bill of
24 rights of the state of Kansas and the statutes of the state of Kansas. Such
25 application shall state the reasons the executive order is necessary and
26 provide the language of the proposed executive order.

27 (b) Not less than 24 hours prior to making application to the
28 legislative coordinating council pursuant to subsection (a), the governor
29 shall submit the proposed executive order to the attorney general. The
30 attorney general shall review the proposed executive order and provide an
31 opinion on the legality of such executive order to the governor and the
32 legislative coordinating council within 24 hours of receipt of such
33 executive order and prior to the meeting of the legislative coordinating
34 council at which the governor will submit the application for approval of
35 such executive order, unless the circumstances attendant upon the disaster
36 prevent such review.

1 (c) (1) Upon application of the governor pursuant to subsection (a),
2 the chairperson of the legislative coordinating council shall call a meeting
3 of the council to take place within 24 hours for the purpose of discussing
4 the proposed executive order. At such meeting, the governor, or the
5 governor's designee, shall appear before the council to provide information
6 related to the proposed executive order. Upon an affirmative vote of five
7 members of the council, the proposed executive order shall be approved
8 for issuance by the governor.

9 (2) If the council does not approve the proposed executive order, the
10 council, upon an affirmative vote of five members of the council, may:

11 (A) Amend the proposed executive order and submit such amended
12 executive order to the governor, who shall decide whether to issue such
13 amended executive order;

14 (B) request the governor bring a new proposed executive order to the
15 council for consideration within 24 hours; or

16 (C) deny the executive order and take no further action.

17 (d) An executive order authorized by the legislative coordinating
18 council and issued by the governor pursuant to this section:

19 (1) Shall be null and void after the period of a state of disaster
20 emergency declared under K.S.A. 48-924, and amendments thereto, has
21 ended; and

22 (2) may be revoked at any time by concurrent resolution of the
23 legislature.

24 (e) An executive order issued pursuant to subsection (a) shall not:

25 (1) Exercise a power granted in statute in a way that does not
26 conform with the existing statutory requirements; or

27 (2) criminalize conduct that is not otherwise criminal.

28 (f) Any party aggrieved by an executive order issued pursuant to this
29 section may file an action in the district court of the county where such
30 party resides or in the district court of Shawnee county, Kansas, within 30
31 days after the issuance of such executive order. Notwithstanding any order
32 issued pursuant to K.S.A. 2020 Supp. 20-172(a), and amendments thereto,
33 the court shall conduct a hearing within 72 hours after receipt of a petition
34 in any such action. The court shall grant the request for relief unless the
35 court finds such executive order is narrowly tailored to respond to the state
36 of disaster emergency and uses the least restrictive means to achieve that
37 purpose.

38 (g) The governor shall not exercise a power conferred by K.S.A. 48-
39 925(c), and amendments thereto, after the initial 15-day state of disaster
40 emergency declared under K.S.A. 48-924, and amendments thereto, unless
41 authorized to exercise such power by K.S.A. 48-924(f)(2), and
42 amendments thereto, or this section.

43 (h) This section shall be a part of and supplemental to the Kansas

1 emergency management act.

2 New Sec. 2. (a) During a state of disaster emergency declared under
3 K.S.A. 48-924, and amendments thereto, when the legislature is not in
4 session or is adjourned during session for three or more days, the
5 legislative coordinating council may extend such state of disaster
6 emergency and authorize the governor to use the powers conferred by
7 K.S.A. 48-925(c), and amendments thereto, as authorized by this section.
8 Upon specific application by the governor pursuant to K.S.A. 48-924(b)(2)
9 or 48-925(f)(2), and amendments thereto, the chairperson of the legislative
10 coordinating council shall call a meeting of the legislative coordinating
11 council to occur within 24 hours of receipt of such application. The
12 governor shall not exercise the powers conferred by K.S.A. 48-925(c), and
13 amendments thereto, without authorization pursuant to K.S.A. 48-925(f),
14 and amendments thereto, when the legislature is in session or pursuant to
15 this section when the legislature is not in session or is adjourned during
16 session for three or more days.

17 (b) At such council meeting, the governor, or the governor's designee,
18 shall appear before the council to provide information related to the
19 application to extend a state of disaster emergency pursuant to K.S.A. 48-
20 924(b)(3), and amendments thereto, or the application to exercise the
21 powers conferred by K.S.A. 48-925(c), and amendments thereto.

22 (c) Upon an affirmative vote of five members of the council, the
23 council may:

24 (1) Extend the state of disaster emergency declared under K.S.A. 48-
25 924, and amendments thereto, for a specified period of time as determined
26 by the council; and

27 (2) if such state of disaster emergency is extended, authorize the
28 governor to continue exercising the powers granted in K.S.A. 48-925(c),
29 and amendments thereto, during any period of the extension.

30 (d) When making a determination as to whether to extend a state of
31 disaster emergency and whether to authorize the governor to continue
32 exercising the powers granted in K.S.A. 48-925(c), and amendments
33 thereto, the council shall consider:

34 (1) The size, scope, nature and likely duration of the disaster
35 emergency;

36 (2) the risk to life and property posed by the disaster emergency;

37 (3) the number of Kansans affected by the disaster emergency;

38 (4) the benefits and assistance made available to the state from the
39 federal government by the disaster emergency declaration;

40 (5) the economic effects of such disaster emergency declaration;

41 (6) the type of governmental response necessary to respond to the
42 disaster emergency;

43 (7) the likelihood that the disaster emergency or its effects become

1 worse without direct governmental intervention;

2 (8) whether executive orders are necessary to further the
3 governmental response to the disaster emergency;

4 (9) whether other means of governmental responses are more
5 appropriate to respond to the disaster emergency; and

6 (10) the type of executive orders proposed to be issued by the
7 governor.

8 (e) This section shall be a part of and supplemental to the Kansas
9 emergency management act.

10 Sec. 3. K.S.A. 46-1202 is hereby amended to read as follows: 46-
11 1202. (a) The legislative coordinating council shall have general authority
12 over all legislative services and such authority shall be exercised by such
13 council as it shall determine, except as otherwise provided by chapter 46
14 of Kansas Statutes Annotated, *and amendments thereto*. The legislative
15 coordinating council shall represent the legislature when the legislature is
16 not in session. *The legislative coordinating council shall have authority as*
17 *to any matter provided by law.*

18 (b) The legislative coordinating council may adopt and amend rules
19 applicable to its affairs or to the meetings and activities of special
20 committees, standing committees or advisory committees, except that such
21 rules shall not apply to standing committees meeting while the legislature
22 is in session. When the legislature is not in session, the legislative
23 coordinating council shall govern the mechanics and procedure of all
24 legislative committee work and activities, except that of the interstate
25 cooperation commission, legislative post-audit committee, state finance
26 council and the ways and means of the senate and the committee on
27 appropriations of the house of representatives when meeting under
28 authority of K.S.A. 46-134a, and amendments thereto.

29 (c) *The legislative coordinating council shall meet as authorized by*
30 *the Kansas emergency management act to discuss and approve extensions*
31 *of a state of disaster emergency declared under K.S.A. 48-924, and*
32 *amendments thereto, authorize the use of powers conferred by K.S.A. 48-*
33 *925(c), and amendments thereto, and section 1, and amendments thereto,*
34 *and review proposed executive orders as provided in section 2, and*
35 *amendments thereto.*

36 (d) A majority vote of five members of the legislative coordinating
37 council shall be required for any action of the council, except that action
38 relating solely to one house of the legislature may be authorized by the
39 unanimous vote of the members of the legislative coordinating council
40 ~~who are members of such house of the legislature.~~

41 Sec. 4. K.S.A. 2020 Supp. 48-924, as amended by section 2 of 2021
42 Senate Bill No. 14, is hereby amended to read as follows: 48-924. (a) The
43 governor *and the legislature* shall be responsible for meeting the dangers

Sec 4. K.S.A. 48-923 is hereby amended to read as follows: (a) Nothing in the Kansas emergency management act shall be construed to:

(a) (1) Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this act may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(b) (2) interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services and newspapers, may be required by the governor to transmit or print public service messages, information or instructions in connection with a declared state of disaster emergency;

(c) (3) affect, other than during a declared state of disaster emergency, the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but the state disaster emergency plan and local and interjurisdictional disaster emergency plans shall place reliance upon such forces which are available for performance of functions related to a declared state of disaster emergency; or

(d) (4) limit, modify or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in the governor under the constitution, statutes or common law of this state independent of, or in conjunction with, any provisions of this act.

(b) Notwithstanding any other provision of law to the contrary, the governor shall not have the power or authority to temporarily or permanently:

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

(2) limit the movement or gathering on individuals connected to the worship of God or the exercise of religion or to regulate the conduct of religious services; or

(3) take any action that gives preferential treatment for elective abortion as defined in K.S.A. 65-4a01, and amendments thereto, over any other elective medical procedure or for an abortion provider over any other business or commercial activity.

Renumber sections

1 to the state and people presented by disasters.

2 (b) (1) ~~Subject to the provisions of K.S.A. 2020 Supp. 48-924b, and~~
3 ~~amendments thereto,~~ The governor, upon finding that a disaster has
4 occurred or that occurrence or the threat thereof is imminent, shall issue a
5 proclamation declaring a state of disaster emergency.

6 (2) ~~In addition to or instead of the proclamation authorized by K.S.A.~~
7 ~~47-611, and amendments thereto, the governor, upon a finding or when~~
8 ~~notified pursuant to K.S.A. 47-611, and amendments thereto, that a~~
9 ~~quarantine or other regulations are necessary to prevent the spread among~~
10 ~~domestic animals of any contagious or infectious disease, may issue a~~
11 ~~proclamation declaring a state of disaster emergency. In addition to or~~
12 ~~instead of any actions pursuant to the provisions of K.S.A. 2-2114, and~~
13 ~~amendments thereto, the governor, upon a finding or when notified~~
14 ~~pursuant to K.S.A. 2-2112 et seq., and amendments thereto, that a~~
15 ~~quarantine or other regulations are necessary to prevent the spread among~~
16 ~~plants, raw agricultural commodities, animal feed or processed food of any~~
17 ~~contagious or infectious disease, may issue a proclamation declaring a~~
18 ~~state of disaster emergency.~~

19 (3) ~~The state of disaster emergency so declared shall continue until~~
20 ~~the governor finds that the threat or danger of disaster has passed, or the~~
21 ~~disaster has been dealt with to the extent that emergency conditions no~~
22 ~~longer exist. Upon making such findings the governor shall terminate the~~
23 ~~state of disaster emergency by proclamation, but except as provided in~~
24 ~~paragraph (4),. No state of disaster emergency may continue for longer~~
25 ~~than 15 days unless ratified by concurrent resolution of the legislature,~~
26 ~~with the single exception that when the legislature is not in session or is~~
27 ~~adjourned during session for three or more days, upon specific application~~
28 ~~by the governor to the state finance council and an affirmative vote of a~~
29 ~~majority of the legislative members thereof legislative coordinating~~
30 ~~council, a state of disaster emergency may be extended—once for—a~~
31 ~~specified period not to exceed 30 days beyond such 15-day period periods~~
32 ~~as provided in section 2, and amendments thereto. A concurrent resolution~~
33 ~~ratifying a state of disaster emergency shall state the duration of the~~
34 ~~extension of such state of disaster emergency and shall state whether the~~
35 ~~governor is authorized to exercise the powers conferred upon the governor~~
36 ~~pursuant to K.S.A. 48-925, and amendments thereto.~~

37 (4) ~~If the state of disaster emergency is proclaimed pursuant to~~
38 ~~paragraph (2), the governor shall terminate the state of disaster emergency~~
39 ~~by proclamation within 15 days, unless ratified by concurrent resolution of~~
40 ~~the legislature, except that when the legislature is not in session and upon~~
41 ~~specific application by the governor to the state finance council and an~~
42 ~~affirmative vote of a majority of the legislative members thereof, a state of~~
43 ~~disaster emergency may be extended for a specified period not to exceed~~

1 30 days. The state finance council may authorize additional extensions of
2 the state of disaster emergency by a unanimous vote of the legislative
3 members thereof for specified periods not to exceed 30 days each. Such
4 state of disaster emergency shall be terminated on the 15th day of the next
5 regular legislative session following the initial date of the state of disaster
6 emergency unless ratified by concurrent resolution of the legislature.

7 ~~(5) The state of disaster emergency described in K.S.A. 2020 Supp.~~
8 ~~48-924b, and amendments thereto, shall terminate on September 15, 2020,~~
9 ~~as provided in K.S.A. 2020 Supp. 48-924b, and amendments thereto,~~
10 ~~except that when the legislature is not in session or is adjourned during~~
11 ~~session for three or more days, and upon specific application by the~~
12 ~~governor to the state finance council and an affirmative vote of at least six~~
13 ~~of the legislative members of the council, this state of disaster emergency~~
14 ~~may be extended for specified periods not to exceed 30 days each. No such~~
15 ~~extension granted by the state finance council shall continue past March~~
16 ~~31, 2021.~~

17 ~~(6)(3)~~ At any time, the legislature by concurrent resolution may
18 require the governor to terminate a state of disaster emergency. Upon such
19 action by the legislature, the governor shall issue a proclamation
20 terminating the state of disaster emergency.

21 ~~(7)(4)~~ Any proclamation declaring or terminating a state of disaster
22 emergency ~~which that~~ is issued under this ~~subsection~~ section shall indicate
23 the nature of the disaster, the area or areas of the state threatened or
24 affected by the disaster and the conditions ~~which that~~ have brought about,
25 or ~~which that~~ make possible the termination of, the state of disaster
26 emergency. Each such proclamation shall be disseminated promptly by
27 means calculated to bring its contents to the attention of the general public
28 and, unless the circumstances attendant upon the disaster prevent the same,
29 each such proclamation shall be filed promptly with the division of
30 emergency management, the office of the secretary of state and each city
31 clerk or county clerk, as the case may be, in the area or areas of the state
32 to which such proclamation applies.

33 ~~(5) The governor shall not issue a subsequent proclamation declaring~~
34 ~~a state of disaster emergency for the same or similar disaster if the~~
35 ~~legislature did not ratify and continue the original state of disaster~~
36 ~~emergency pursuant to this section or the legislative coordinating council~~
37 ~~did not extend original the state of disaster emergency pursuant to section~~
38 ~~2, and amendments thereto.~~

39 (c) In the event of the absence of the governor from the state or the
40 existence of any constitutional disability of the governor, an officer
41 specified in K.S.A. 48-1204, and amendments thereto, in the order of
42 succession provided by that section, may issue a proclamation declaring a
43 state of disaster emergency in the manner provided in and subject to the

1 provisions of subsection ~~(a)~~ (b). During a state of disaster emergency
2 declared pursuant to this subsection, such officer may exercise the powers
3 conferred upon the governor by K.S.A. 48-925, and amendments thereto.
4 If a preceding officer in the order of succession becomes able and
5 available, the authority of the officer exercising such powers shall
6 terminate and such powers shall be conferred upon the preceding officer.
7 Upon the return of the governor to the state or the removal of ~~any~~ the
8 constitutional disability of the governor, the authority of an officer to
9 exercise the powers conferred by this section shall terminate immediately
10 and the governor shall resume the full powers of the office. Any *such* state
11 of disaster emergency and any actions taken by an officer under this
12 subsection shall continue and shall have full force and effect as authorized
13 by law unless modified or terminated by the governor in the manner
14 prescribed by law.

15 (d) A proclamation declaring a state of disaster emergency shall
16 activate the disaster response and recovery aspects of the state disaster
17 emergency plan and of any local and interjurisdictional disaster plans
18 applicable to the ~~political subdivisions or areas of the state and any~~
19 *political subdivisions thereof* affected by the proclamation. Such
20 proclamation shall ~~be constitute the~~ authority necessary for the
21 deployment and use of any forces to which the plan or plans apply and for
22 use or distribution of any supplies, equipment, materials or facilities
23 assembled, stockpiled or arranged to be made available pursuant to this act
24 during a disaster.

25 (e) The governor, when advised pursuant to K.S.A. 74-2608, and
26 amendments thereto, that conditions indicative of drought exist, ~~shall be~~ is
27 authorized to declare by proclamation that a state of drought exists. This
28 declaration of a state of drought can be for specific areas or communities,
29 can be statewide or for specific water sources and shall effect immediate
30 implementation of drought contingency plans contained in state approved
31 conservation plans, including those for state facilities.

32 Sec. 5. K.S.A. 2019 Supp. 48-925, as amended by section 4 of 2021
33 Senate Bill No. 14, is hereby amended to read as follows: 48-925. (a)
34 During any state of disaster emergency declared under K.S.A. 48-924, and
35 amendments thereto, the governor shall be commander-in-chief of the
36 organized and unorganized militia and of all other forces available for
37 emergency duty. To the greatest extent practicable, the governor shall
38 delegate or assign command authority by prior arrangement, embodied in
39 appropriate executive orders or in rules and regulations of the adjutant
40 general, but nothing ~~herein~~ shall restrict the authority of the governor to do
41 so by *executive* orders issued at the time of a disaster.

42 (b) Under the provisions of this act and for the implementation of this
43 act, the governor may issue *executive* orders to exercise the powers

1 conferred by subsection (c) that have the force and effect of law during the
2 period of a state of disaster emergency declared under K.S.A. 48-924(b),
3 and amendments thereto, or as provided in K.S.A. 2020 Supp. 48-924b,
4 and amendments thereto. ~~Within 24 hours of the issuance of any such~~
5 ~~order, The governor chairperson of the legislative coordinating council~~
6 ~~shall call a meeting of the state finance council to take place within 24~~
7 ~~hours of the issuance of an executive order issued pursuant to this section~~
8 for the purposes of reviewing such *executive* order. Such *executive* orders
9 shall be null and void after the period of a state of disaster emergency has
10 ended. Such *executive* orders may be revoked at any time by concurrent
11 resolution of the legislature.

12 (c) During a state of disaster emergency declared under K.S.A. 48-
13 924, and amendments thereto, in addition to any other powers conferred
14 upon the governor by law and subject to the provisions of subsection (d),
15 ~~(e) and, (f), (g) and (h) and sections 1 and 2, and amendments thereto,~~ the
16 governor may:

17 (1) Suspend the provisions of any regulatory statute prescribing the
18 procedures for conduct of state business, or the orders or rules and
19 regulations of any state agency which implements such statute, if strict
20 compliance with the provisions of such statute, order or rule and regulation
21 would prevent, hinder or delay in any way necessary action in coping with
22 the disaster, *and an executive order exercising such power shall specify*
23 *each statute, order or rule and regulation being suspended;*

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

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

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

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

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

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

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

1 (9) make provision for the availability and use of temporary
2 emergency housing;

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

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

11 (d) The governor shall not have the power or authority to temporarily
12 or permanently seize, or authorize seizure of, any ammunition or to
13 suspend or limit the sale, dispensing or transportation of firearms or
14 ammunition pursuant to subsection (c)(8) or any other executive authority.

15 ~~(e) Notwithstanding any provision of this section to the contrary and~~
16 ~~pursuant to the governor's state of disaster emergency proclamation issued~~
17 ~~on May 26, 2020, the governor shall not have the power or authority to~~
18 ~~restrict businesses from operating or to restrict the movement or gathering~~
19 ~~of individuals. The provisions of this subsection shall expire on September~~
20 ~~15, 2020.~~

21 ~~(f) 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 ~~alter or modify any provisions of the election laws of the state including,~~
24 ~~but not limited to, the method by which elections are conducted or the~~
25 ~~timing of such elections.~~

strike (to move)

26 ~~(g)(f) (1)~~ The governor shall exercise the powers conferred by
27 subsection (c) by issuance of *executive* orders under subsection (b) *and*
28 *section 1, and amendments thereto.* Each *executive* order issued pursuant
29 to the authority granted by subsection (b) shall specify the provision or
30 provisions of subsection (c) by specific reference to each paragraph of
31 subsection (c) that confers the power ~~under which the order was issued to~~
32 *issue such order.* The adjutant general, subject to the direction of the
33 governor, shall administer such orders.

34 (2) *After the initial 15-day state of disaster emergency, if the state of*
35 *disaster emergency is extended pursuant to K.S.A. 48-924(b)(2), and*
36 *amendments thereto, or section 2, and amendments thereto, and the*
37 *governor determines it is necessary to exercise the powers conferred by*
38 *subsection (c) through the issuance of an executive order, the governor*
39 *shall make specific application to the speaker of the house of*
40 *representatives and the president of the senate when the legislature is in*
41 *session, and to the legislative coordinating council pursuant to section 2,*
42 *and amendments thereto, when the legislature is not in session or is*
43 *adjourned during session for three or more days. When the legislature is*

1 in session, authorization of the use of the powers conferred by subsection
2 (c) by the governor shall be through concurrent resolution of the
3 legislature. When the legislature is not in session, authorization of the use
4 of the powers conferred by subsection (c) by the governor shall be as
5 provided in section 2, and amendments thereto.

6 (g) Prior to issuing an executive order pursuant to this section, the
7 governor shall submit the proposed executive order to the attorney
8 general. The attorney general shall review the proposed executive order
9 for legality and provide an opinion on the legality of such executive order
10 to the governor and the legislative coordinating council within 24 hours of
11 receipt of such proposed executive order unless the circumstances
12 attendant upon the disaster prevent such review.

13 (h) (1) The board of county commissioners of any county may issue
14 an order relating to the public health of humans that is not related to the
15 food supply that includes provisions that are less stringent than the
16 provisions of an executive order effective statewide issued by the
17 governor. Any board of county commissioners issuing such an order must
18 make the following findings and include such findings in the order:

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

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

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

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

28 (i) (1) Any party aggrieved by an executive order issued pursuant to
29 this section may file an action in the district court of the county where
30 such party resides or in the district court of Shawnee county, Kansas,
31 within 30 days after the issuance of such executive order. Notwithstanding
32 any order issued pursuant to K.S.A. 2020 Supp. 20-172(a), and
33 amendments thereto, the court shall conduct a hearing within 72 hours
34 after receipt of a petition in any such action. Except as provided in
35 paragraph (2), the court shall grant the request for relief unless the court
36 finds the executive order is necessary to achieve an important interest
37 related to the state of disaster emergency and is substantially related to
38 such interest.

39 (2) If an executive order has the effect of substantially burdening or
40 inhibiting the gathering or movement of individuals or the operation of
41 any religious, civic, business or commercial activity, whether for-profit or
42 not-for-profit, the court shall grant the request for relief unless the court
43 finds that the executive order is narrowly tailored to respond to the state of

strike

1 *disaster emergency and uses the least restrictive means to achieve that*
2 *purpose.*

3 Sec. 6. K.S.A. 2020 Supp. 48-925b is hereby amended to read as
4 follows: 48-925b. Notwithstanding any other provision of law to the
5 contrary, no executive order issued by the governor pursuant to K.S.A. 48-
6 925, and amendments thereto, that has the effect of closing public ~~or~~
7 ~~private~~ school attendance centers in this state shall be effective unless and
8 until such order has been affirmed by the state board of education by
9 adoption of a resolution by a majority of the members of the state board.
10 Prior to issuing any such executive order, the governor shall submit such
11 proposed executive order to the state board of education. Upon receipt of
12 such proposed executive order, the state board shall meet as soon as
13 reasonably possible to review such proposed order and, if a majority of the
14 members of the state board determines such order is in the best interests of
15 the students in this state, to adopt a resolution affirming such proposed
16 executive order. *An executive order issued pursuant to K.S.A. 48-925, and*
17 *amendments thereto, and affirmed by the state board pursuant to this*
18 *section shall only affect the operations of schools under the jurisdiction of*
19 *the state board of education.*

20 New Sec. 7. The provisions of this act are severable. If any portion of
21 the act is declared unconstitutional or invalid, or the application of any
22 portion of the act to any person or circumstance is held unconstitutional or
23 invalid, the invalidity shall not affect other portions of the act that can be
24 given effect without the invalid portion or application, and the
25 applicability of such other portions of the act to any person or
26 circumstance shall remain valid and enforceable.

27 Sec. 8. K.S.A. 46-1202 ~~and K.S.A. 2019 Supp. 48-925~~, as amended
28 by section 4 of 2021 Senate Bill No. 14, and 48-925, as amended by
29 section 5 of 2021 Senate Bill No. 14, and K.S.A. 2020 Supp. 48-924, as
30 amended by section 2 of 2021 Senate Bill No. 14, and 48-925b are hereby
31 repealed.

32 Sec. 9. This act shall take effect and be in force from and after its
33 publication in the Kansas register.

and 48-923