

SENATE BILL No. 409

By Committee on Judiciary

1-27

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

8
9 *Be it enacted by the Legislature of the State of Kansas:*

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

12 (a) Restrict the manner of any worship service or activity in any way
13 in this state;

14 (b) suspend, regulate or prohibit the conduct of any worship service
15 or activity in this state, regardless of whether the worship service or
16 activity is conducted inside a building, inside a temporary structure or
17 outdoors; or

18 (c) limit the number of participants of any worship service or activity
19 in this state, other than by enforcing limitations on the number of persons
20 in a building imposed by fire codes.

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

31 (b) Under the provisions of this act and for the implementation of this
32 act, the governor may issue executive orders to exercise the powers
33 conferred by subsection (c) that have the force and effect of law during the
34 period of a state of disaster emergency declared under K.S.A. 48-924(b),
35 and amendments thereto, or as provided in K.S.A. 2021 Supp. 48-924b,
36 and amendments thereto. The chairperson of the legislative coordinating

1 council shall call a meeting of the council to occur within 24 hours of the
2 issuance of an executive order issued pursuant to this section for the
3 purposes of reviewing such order. Such executive orders shall be null and
4 void after the period of a state of disaster emergency has ended. Such
5 executive orders may be revoked at any time by concurrent resolution of
6 the legislature or, when the legislature is not in session or is adjourned
7 during session for three or more days, such orders may be revoked by the
8 legislative coordinating council with the affirmative vote of five members
9 thereof.

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

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

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

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

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

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

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

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

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

41 (9) make provision for the availability and use of temporary
42 emergency housing;

43 (10) require and direct the cooperation and assistance of state and

1 local governmental agencies and officials; and

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

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

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

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

21 (2) *restrict the manner of any worship service or activity in any way*
22 *in this state;*

23 (3) *suspend, regulate or prohibit the conduct of any worship service*
24 *or activity in this state, regardless of whether the worship service or*
25 *activity is conducted inside a building, inside a temporary structure or*
26 *outdoors; or*

27 (4) *limit the number of participants of any worship service or activity*
28 *in this state, other than by enforcing limitations on the number of persons*
29 *in a building imposed by fire codes.*

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

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

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

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

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

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

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

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

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

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

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

1 be reviewed, amended or revoked by the board of county commissioners
2 or the governing body of the city, respectively, at a meeting of such
3 governing body.

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

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

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

28 (e) *A governmental entity or public official shall not have the power
29 under the provisions of the Kansas emergency management act or any
30 other law to:*

31 (1) *Restrict the manner of any worship service or activity in any way
32 in this state;*

33 (2) *suspend, regulate or prohibit the conduct of any worship service
34 or activity in this state, regardless of whether the worship service or
35 activity is conducted inside a building, inside a temporary structure or
36 outdoors; or*

37 (3) *limit the number of participants of any worship service or activity
38 in this state, other than by enforcing limitations on the number of persons
39 in a building imposed by fire codes.*

40 ~~(e)~~(f) (1) Any party aggrieved by an action taken by a local unit of
41 government pursuant to this section that has the effect of substantially
42 burdening or inhibiting the gathering or movement of individuals or the
43 operation of any religious, civic, business or commercial activity, whether

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

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

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

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

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

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

31 (3) advise other offices and agencies of government concerning
32 location, drainage, water supply, disposal of excreta and heating and
33 ventilation of public buildings;

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

36 (5) take action to prevent the introduction of infectious or contagious
37 disease into this state and to prevent the spread of infectious or contagious
38 disease within this state;

39 (6) provide public health outreach services to the people of the state
40 including educational and other activities designed to increase the
41 individual's awareness and appropriate use of public and other preventive
42 health services.

43 (b) The secretary of health and environment may adopt rules and

1 regulations necessary to carry out the provisions of subsection (a). In
2 addition to other remedies provided by law, the secretary is authorized to
3 apply to the district court, and such court shall have jurisdiction upon a
4 hearing and for cause shown to grant a temporary or permanent injunction
5 to compel compliance with such rules and regulations.

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

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

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

38 (2) *Except as provided in section 1, and amendments thereto*, if a
39 local health officer determines it is necessary to issue ~~an order~~ a
40 *recommendation* mandating the wearing of face masks, limiting the size of
41 gatherings of individuals, curtailing the operation of business, *or*
42 controlling the movement of the population of the county ~~or limiting~~
43 ~~religious gatherings~~, the local health officer shall propose such ~~an order~~ a

1 *recommendation* to the board of county commissioners. At the next
2 regularly scheduled meeting of the board or at a special meeting of the
3 board, the board shall review such ~~proposed order~~ *recommendation* and
4 may take any action related to the ~~proposed order~~ *recommendation* the
5 board determines is necessary. The ~~order~~ *recommendation* shall become
6 effective if approved by the board or, if the board is unable to meet, if
7 approved by the chairperson of the board or the vice chairperson of the
8 board in the chairperson's absence or disability.

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

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

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

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

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

1 and state for all moneys coming into the office. Such officer shall notify
2 the secretary of health and environment of such officer's appointment and
3 qualification, and provide the secretary with such officer's contact
4 information.

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

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

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

26 (2) ~~Any order recommendation~~ issued by the local health officer,
27 including ~~orders recommendations~~ issued as a result of an executive order
28 of the governor, on behalf of a county regarding the remediation of any
29 infectious, *contagious or communicable* disease may be reviewed,
30 ~~amended or revoked~~ by the board of county commissioners of any county
31 affected by such ~~order recommendation~~ in the manner provided by K.S.A.
32 65-201(b), and amendments thereto.

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

37 (d) For any failure or neglect of the local health officer to perform
38 any of the duties prescribed in this act, the officer may be removed from
39 office by the county board of health. In addition to removal from office,
40 for any failure or neglect to perform any of the duties prescribed by this
41 act, the local health officer shall be deemed guilty of ~~a~~ *an unclassified*
42 misdemeanor and, upon conviction, be fined not less \$10 nor more than
43 \$100 for each and every offense.

1 Sec. 7. K.S.A. 2021 Supp. 48-925, 48-932, 65-101, 65-201 and 65-
2 202 are hereby repealed.

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