

Senate Substitute for HOUSE BILL No. 2416

By Committee on Judiciary

3-11

1 AN ACT concerning public health; requiring compensation for the use,
2 restriction on use, damage, loss or destruction of property as a result of
3 certain governmental actions; authorizing reimbursement of property
4 taxes levied upon businesses shut down or restricted as a result of
5 certain governmental actions related to contagious or infectious
6 disease; amending K.S.A. 2021 Supp. 79-1614 and repealing the
7 existing section.
8

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

10 New Section 1. (a) Each person within this state shall act and manage
11 the affairs of such person and such person's property in any way that
12 reasonably will assist and not detract from the ability of the state and the
13 public successfully to prevent and respond to contagious or infectious
14 disease. This obligation includes appropriate personal service and
15 appropriate use of property in response to a governmental action. This
16 section neither increases nor decreases these obligations but recognizes
17 their existence under the constitution and statutes and the common law of
18 this state. Compensation for services or for the taking, use or restriction on
19 use of property shall be only to the extent that obligations recognized in
20 this subsection are exceeded in a particular case and only to the extent that
21 the claimant may not be deemed to have volunteered services or property
22 without compensation.

23 (b) Personal services shall not be compensated by the state or any
24 subdivision or agency thereof under this section except pursuant to statute
25 enacted or ordinance duly adopted therefor.

26 (c) Compensation for property shall be provided only if the property
27 was commandeered, restricted for use or otherwise used pursuant to a
28 governmental action and the destruction, use or restriction on use of such
29 property was ordered by a public official pursuant to such governmental
30 action.

31 (d) Any person claiming compensation for the use, restriction on use,
32 damage, loss or destruction of property under this section as a result of a
33 governmental action shall file a claim therefor in the district court in the
34 same manner as any other civil action. The court shall determine the
35 validity of such claim in the same manner and under the same procedures
36 prescribed for condemnation actions pursuant to K.S.A. 26-501 et seq.,

1 and amendments thereto. Unless the amount of compensation on account
 2 of property damaged, lost or destroyed is agreed upon by the claimant and
 3 the governmental entity, the amount of compensation shall be calculated in
 4 the same manner as compensation due for a taking of property pursuant to
 5 the condemnation law of this state.

6 (e) Any award of compensation for the commandeering, use or
 7 restriction on use of the property by the governmental entity shall:

8 (1) Be paid by the governmental entity ordering the commandeering,
 9 use or restriction on use of the property at issue;

10 (2) be limited to the actual cost of such use or restriction on use as
 11 determined by the board of appraisers; and

12 (3) not include loss of present or future profits, opportunity cost or
 13 other extraordinary damages.

14 (f) As used in this section:

15 (1) "Governmental action" means an order, resolution or ordinance
 16 related to a contagious or infectious disease issued or adopted by the state,
 17 county, city or other political subdivision of the state, including, but not
 18 limited to, an order, resolution or ordinance issued or adopted pursuant to a
 19 declared state of disaster emergency under K.S.A. 48-924, and
 20 amendments thereto, or a declared state of local disaster emergency under
 21 K.S.A. 48-932, and amendments thereto, that mandates the wearing of face
 22 masks, limits the size of gatherings of individuals, restricts the operation of
 23 business, controls the movement of persons or limits religious gatherings;

24 (2) "private property" means the same as defined in K.S.A. 77-703,
 25 and amendments thereto, and any other personal or business property used
 26 or restricted for use by a governmental entity pursuant to a governmental
 27 action;

28 (3) "restriction on use" or "restricted for use" means:

29 (A) Any taking as defined in K.S.A. 77-703, and amendments
 30 thereto;

31 (B) any restriction, limitation on access to or operation of private
 32 property;

33 (C) exertion of control over any private property for any amount of
 34 time pursuant to a governmental action; or

35 (D) substantially burdening the operation of any religious, civic,
 36 business or commercial entity, whether for-profit or not-for-profit.

37 (g) This section shall only apply to a governmental action taken on or
 38 after the effective date of this act.

39 Sec. 2. K.S.A. 2021 Supp. 79-1614 is hereby amended to read as
 40 follows: 79-1614. (a) (1) The owner of any building listed and assessed for
 41 property taxation purposes as real property that maintains a business on the
 42 property that was shut down or restricted *because of any action taken by*
 43 the state, county, city or other political subdivision of the state pursuant to

1 an executive order issued by the governor pursuant to K.S.A. 48-925, and
2 amendments thereto, or any action taken by a county, city or other political
3 subdivision of the state related to a state of disaster emergency declared
4 pursuant to K.S.A. 48-924, and amendments thereto, or a state of local
5 disaster emergency declared pursuant to K.S.A. 48-932, and amendments
6 thereto, *or any action taken by a county, city or other political subdivision*
7 *of the state related to a contagious or infectious disease pursuant to*
8 *chapter 65 of the Kansas Statutes Annotated, and amendments thereto,*
9 may make application to the board of county commissioners of the county
10 in which such property is located for the reimbursement of the property
11 taxes levied upon such property during the shutdown or restriction.

12 (2) The county treasurer shall reimburse from the county general fund
13 any owner who makes an application or operator that joins in an
14 application that is determined to be valid for the period of time that the
15 shutdown or restriction remained in effect. For ordered shutdowns, the
16 reimbursement shall be calculated as a $\frac{1}{365}$ amount of the total ad valorem
17 real property taxes levied by the state, county and all other taxing
18 subdivisions due for the property for the year multiplied by the number of
19 calendar days the ordered shutdown was in effect. For ordered restrictions,
20 the reimbursement shall be calculated as a $\frac{1}{365}$ amount of the total ad
21 valorem real property taxes levied by the state, county and all other taxing
22 subdivisions due for the property for the year multiplied by the percentage
23 of the ordered restrictions and further multiplied by the number of calendar
24 days the ordered restriction was in effect.

25 (b) If the owner is the operator of the business on the property that
26 was shut down or restricted, the owner shall be entitled to 100% of such
27 reimbursement amount. If the owner is not the operator of such business
28 that was shut down or restricted from conducting operations:

29 (1) The owner shall disclose and attest to the identity of the operator
30 of such business on the application form;

31 (2) the owner shall be entitled to 50% of such reimbursement amount;

32 (3) the operator of such business shall be entitled to 50% of such
33 reimbursement amount if such operator joins in the owner's application;
34 and

35 (4) such operator that joins in the owner's application may elect to
36 assign such operator's share of the reimbursement amount to the owner to
37 be credited against any delinquent rent due to the owner.

38 (c) If the state, a city or other political subdivision of the state was the
39 governmental entity that shut down or restricted the business resulting in a
40 reimbursement to an owner or operator pursuant to this section, such
41 governmental entity that shut down or restricted the business shall
42 reimburse the county for the cost of such reimbursement.

43 (d) For purposes of this section, "restriction" or "restricted" means

1 any occupancy limitation, limitation on periods of operation or the
2 exertion by any governmental entity of other significant control on
3 business resources or functionality.

4 ~~(e) The provisions of this section shall be applicable on and after~~
5 ~~January 1, 2022.~~

6 Sec. 3. K.S.A. 2021 Supp. 79-1614 is hereby repealed.

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