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**COMPARISON OF SENATE BILL 273 AND HOUSE BILL 2416 – CONCERNING GOVERNMENTAL RESPONSE TO CERTAIN EMERGENCIES; RELATING TO THE KANSAS EMERGENCY MANAGEMENT ACT**

This memorandum provides a brief comparison of current law, Substitute for Senate Bill 273, as amended by Senate Committee of the Whole, and House Bill 2416, as amended by House Committee of the Whole.

<b>Current Law</b>	<b>Substitute for Senate Bill 273</b>	<b>House Bill 2416</b>
<p><u>Types of disasters under KEMA</u></p> <p><u>K.S.A. 48-904</u> "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or manmade cause, including, but not limited to, fire, flood, earthquake, wind, storm, epidemics, contagious or infectious disease, air contamination, blight, drought, infestation, explosion, riot, terrorism or hostile military or paramilitary action.</p>	<p><u>Types of disasters under KEMA</u></p> <p><u>Sec. 8. 48-904</u> (page 14) Creates a distinction between a “disaster” resulting from foodborne contagious or infectious disease and a “public health disaster” resulting from any infectious or contagious disease that is human-to-human transmissible, but not including foodborne illness.</p> <p><u>New Section 1</u> (page 1) Governor may issue a proclamation declaring a state of public health disaster emergency.</p>	<p><u>Types of disasters under KEMA</u></p> <p>N/A – current law</p>
<p><u>Declaration, extension, and termination of a state of disaster emergency</u></p> <p><u>K.S.A. 2020 Supp. 48-924, as amended by section 2 of 2021 Senate Bill No. 14</u> Subsection (b)(5) provides that the state of disaster emergency related to the COVID-19 health emergency may only be extended past September 15, 2020, if the Governor applies to</p>	<p><u>Declaration, extension, and termination of a state of disaster emergency</u></p> <p><u>Sec. 10. 48-924</u> (page 16) Duties related to extension of an emergency that are conferred on the state finance council are given to the joint committee on emergency management established by Section 2.</p>	<p><u>Declaration, extension, and termination of a state of disaster emergency</u></p> <p><u>Sec. 4. 48-924</u> (page 5) An initial declaration may last for up to 30 days. If the legislature is in session, the governor shall make application to the speaker and the senate to extend and to request use of powers granted in</p>

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<p>the State Finance Council for an extension for specified periods not to exceed 30 days each while the Legislature is not in session, and no such extension shall continue past March 31, 2021.</p>	<p><u>New Section 1</u> (page 1)          An initial declaration of a state of public health disaster emergency may not continue for longer than 15 days unless ratified by concurrent resolution of the legislature. When the legislature is not in session, upon specific application by the governor to the joint committee on emergency management established by section 2 and an affirmative vote of a majority of the joint committee, emergency may be extended for specified periods not to exceed 30 days each.</p>	<p><u>Sec. 5 48-925</u> (page 7)          The legislature may take action through concurrent resolution to ratify the declaration and authorize use of such powers. If the legislature is not in session, the governor shall make application to the legislative coordinating council. The council may extend such disaster for a time period specified by the council and may authorize the use of powers granted in K.S.A. 48-925.</p>
<p><u>Limitations on KEMA powers</u></p> <p><u>K.S.A. 48-923</u>          Nothing in KEMA shall interfere with labor disputes, interfere with dissemination of the news, affect the armed forces or limit the governor’s authority to declare martial law</p> <p><u>K.S.A. 2019 Supp. 48-925, as amended by section 4 of 2021 Senate Bill No. 14</u>          Governor may issue orders pursuant to this section, but within 24 hours of the issuance of any such order, shall call a meeting of the State Finance Council to review such order.          Governor shall not have the power or authority to temporarily or permanently seize, or authorize seizure of, any ammunition or to suspend or limit the sale, dispensing or transportation of firearms or ammunition.          Governor shall not have the power or authority to alter or modify any provisions of the election laws of the state, including method or timing. Counties may adopt orders relating to public health that are less stringent than statewide executive orders.</p>	<p><u>Limitations on KEMA powers</u></p> <p><u>New Section 1</u> (page 1)          Governor may issue executive orders to exercise the powers conferred during a state of public health disaster emergency. Attorney General review of proposed EO within 24 hours of receipt. Joint committee on emergency management review of proposed EO not less than 24 hours after receipt, or at any time after AG provides an opinion on such order if completed in less than 24 hours. Counties may issue an order relating to public health that includes provisions that are less stringent than the provisions of an EO issued by the governor under this section that affects more than one county.</p> <p><u>Sec. 9. 48-923</u> (page 15)          Governor shall not have the power or authority to temporarily or permanently: (1) Alter or modify the Kansas criminal code or the Kansas code of criminal procedure; (2) take any action that imposes limitations on gatherings or other activities of a religious nature; (3) limit or otherwise restrict the sale, purchase, transfer,</p>	<p><u>Limitations on KEMA powers</u></p> <p><u>New Section 1</u> (page 1)          Executive order not expressly authorized by K.S.A. 48-925(c)(1) though (10) requires application to LCC. The AG is required to review the proposed order within 24 hours. The chair of the LCC shall call a meeting within 24 hours. The proposed order may be approved by the LCC on affirmative vote of 5 members. If the LCC does not approve of the order, they may amend the proposed order and submit it to the governor for possible issuance, request the governor bring a new proposed order or deny the order and take no further action.</p> <p><u>New Sec. 2</u> (page 3)          The LCC shall meet to extend a disaster declaration, authorize use of K.S.A. 48-925 powers and authorize Section 1 orders when the legislature is not in session.</p> <p><u>Sec. 3 46-1202</u> (page 4)          The LCC is authorized to carry out duties prescribed in KEMA.</p>

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K.S.A. 2020 Supp. 48-925a, as amended by section 6 of 2021 Senate Bill No. 14

During any state of disaster emergency related to the COVID-19 public health emergency declared pursuant to K.S.A. 48-924, the governor may not issue an order that substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit. Expires on March 31, 2021.

ownership, storage, carrying or transporting of firearms or ammunition, or any component or combination thereof, including those used in the manufacture of firearms or ammunition, or seize or authorize the seizure of any firearms or ammunition, or any component or combination thereof, except as otherwise permitted by state or federal law; (4) 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; (5) take any action that gives preferential treatment for elective abortion over any other elective medical procedure or for an abortion provider over any other business or commercial activity; or (6) during a state of public health disaster emergency: (A) Take any action that substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit; (B) deem any business or commercial activity non-essential; (C) direct or permit any public official of the state or any municipality to mandate immunizations related to the disease named in such public health disaster emergency declaration; or (D) restrict the ability of a facility licensed under chapter 65 to provide healthcare services. Any restrictions shall be determined solely by the healthcare facility or healthcare provider.

Sec. 11. 48-925 (page 19)

Governor may issue executive orders to exercise the powers conferred by subsection (c) during the period of a state of disaster emergency declared under K.S.A. 48-924(b); current power in subsection (c)(1) is changed; powers conferred in

Sec. 5 48-925 (page 7)

After the initial 30-day disaster, the governor shall make application to the legislature (if in session) or the LCC (if not in session) to obtain authorization to use the powers in K.S.A. 48-925. The AG is required to review the proposed order within 24 hours.

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	<p>current subsections (c)(2) through (c)(10) remain unchanged; removes the power conferred in current subsection (c)(11); other restrictions in current law moved to K.S.A. 48-923 (Section 7); each executive order required to meet same requirements outlined in Section 1 concerning reference to legal authority and other content; current subsection (h) regarding county orders that are less stringent than executive orders moved to Section 1.</p>	
<p><u>Legislative oversight</u></p> <p><u>K.S.A. 2020 Supp. 48-924, as amended by section 2 of 2021 Senate Bill No. 14</u>        State of disaster emergency shall only last 15 days unless ratified by concurrent resolution of the legislature. The legislature may require the governor to terminate a state of disaster emergency at any time.</p> <p><u>K.S.A. 2019 Supp. 48-925, as amended by section 4 of 2021 Senate Bill No. 14</u>        Subsection (b) provides that an executive order issued by the governor may be revoked at any time by concurrent resolution of the legislature.</p>	<p><u>Legislative oversight</u></p> <p><u>New Sec. 2 (page 6)</u>        Joint committee on emergency management consisting of 6 members of the Senate and 6 members of the House. Members shall represent each state board of education member district established under K.S.A. 4-526; to meet the requirements of such representation, the appointing authorities shall confer on their individual appointments.</p> <p><u>Sec. 15. 65-101 (page 23)</u>        The legislature may require the secretary of health and environment to terminate an order issued under (a)(5) at any time.</p>	<p><u>Legislative oversight</u></p> <p><u>New Sec. 1 (page 1)</u>        Executive orders issued under the section must be approved by the legislative coordinating council by an affirmative vote of five members.</p> <p><u>New Sec. 2 (page 3)</u>        The LCC shall meet to extend a disaster declaration, authorize use of K.S.A. 48-925 powers and authorize Section 1 orders when the legislature is not in session.</p> <p><u>Sec. 4. 48-924 (page 5)</u>        Extension of a disaster declaration shall be by concurrent resolution of the legislature (when in session) or by the LCC (when not in session).</p> <p><u>Sec 5. 48-925 (page 7)</u>        After the initial 30-day disaster, the governor shall make application to the legislature (if in session) or the LCC (if not in session) to obtain authorization to use the powers in K.S.A. 48-925.</p>

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<p><u>Compensation under KEMA</u></p> <p><u>K.S.A. 48-933</u>          Compensation for the use, damage, loss or destruction of property under KEMA.</p>	<p><u>Compensation under KEMA</u></p> <p><u>Sec. 12. 48-933</u> (page 21)          Adds a reference to a declared state of public health disaster emergency under Section 1.          Adds that nothing in this section authorizes compensation for intangible losses.</p>	<p><u>Compensation under KEMA</u></p> <p><u>N/A – current law</u></p>
<p><u>Penalties for violations of KEMA or orders issued under KEMA</u></p> <p><u>K.S.A. 2020 Supp. 48-939</u>          A person who intentionally violates the act may incur a civil penalty not to exceed \$2,500. Violations enforced through an action brought under chapter 60 by attorney general or county or district attorney who may seek an injunction.</p>	<p><u>Penalties for violations of KEMA or orders issued under KEMA</u></p> <p><u>Sec. 13. 48-939</u> (page 22)          Intentional violations during a state of disaster emergency under K.S.A. 48-924 or a state of local disaster emergency under K.S.A. 48-932 is a class A nonperson misdemeanor.          Intentional violations during a state of public health disaster emergency under section 1 remain punishable by a civil penalty not to exceed \$2,500 per violation, enforced through an action brought under chapter 60.</p>	<p><u>Penalties for violations of KEMA or orders issued under KEMA</u></p> <p><u>N/A – current law</u></p>
<p><u>Definition of "emergency responder"</u></p> <p><u>K.S.A. 2020 Supp. 48-949</u>          Kansas intrastate emergency mutual aid act provides a definition of “emergency responder”</p>	<p><u>Definition of "emergency responder"</u></p> <p><u>Sec. 14. 48-949</u> (page 23)          Adds “911 dispatch center personnel”</p>	<p><u>Definition of "emergency responder"</u></p> <p>Same (page 11)</p>
<p><u>Federal funds</u></p> <p>Current appropriations provisions</p>	<p><u>Federal funds</u></p> <p><u>New Sec. 7</u> (page 13)          No expenditure shall be made from and no obligation shall be incurred against any federal grant or other federal receipt received by the state of Kansas for a state of disaster emergency declared pursuant to the Kansas emergency management act that has not been previously</p>	<p><u>Federal funds</u></p> <p><u>N/A – current law</u></p>

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	<p>appropriated or reappropriated by an appropriation act of the legislature, until the joint committee on emergency management has authorized the requesting state agency to make expenditures therefrom.</p>	
<p><u>Secretary of health and environment – orders</u></p> <p><u>K.S.A. 65-101</u>          Secretary of health and environment shall exercise general supervision of the health of the people of the state and prescribing certain powers and duties; subsection (a)(5) authorizes the secretary to issue orders to take action to prevent the introduction of infectious or contagious disease into this state and to prevent the spread of infectious or contagious disease within this state.</p>	<p><u>Secretary of health and environment – orders</u></p> <p><u>Sec. 15. 65-101</u> (page 24)          For any order issued to take action described in subsection (a)(5) that affects more than one county, the secretary shall submit such proposed order to the attorney general for review as provided by section 1(f)(2) and submit such proposed order to the joint committee on emergency management for review as provided by section 1(f)(3). The secretary shall not issue an order that (1) Substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit, unless such order includes justification of the accepted scientific reasons for such order and how such order is narrowly tailored to accomplish remediation of such infectious or contagious disease; or (2) burdens or inhibits the operation of any religious gathering or activity. Any person aggrieved by an order may request a hearing to occur within 72 hours, then may request a hearing in a district court. At any time, the legislature, by concurrent resolution, may require the secretary to terminate an order issued to take action described in subsection (a)(5).</p>	<p><u>Secretary of health and environment orders</u></p> <p>N/A – current law</p>

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<p><u>Health officer orders</u></p> <p><u>K.S.A. 65-119</u> Duties and powers of local health officers related to infectious or contagious disease; county or joint board of health or local health officer may prohibit public gatherings when necessary for the control of any and all infectious or contagious disease.</p> <p><u>K.S.A. 65-126</u> Secretary of health and environment may quarantine certain areas.</p> <p><u>K.S.A. 2020 Supp. 65-201</u> Board of county commissioners of each county shall act as the county board of health for the county and each county board shall appoint a person licensed to practice medicine and surgery who shall serve as the local health officer.</p> <p><u>K.S.A. 2020 Supp. 65-202</u> Powers and duties of the local health officer in each county.</p>	<p><u>Health officer orders</u> Health officers may only make recommendations, only governing body may issue orders.</p> <p><u>New Sec. 3 (page 7)</u> Governing body of a city may use only accepted scientific means as justification to issue an order to prevent the spread of disease. Shall not issue an order that (1) Substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit, unless such order includes justification of the accepted scientific reasons for such order and how such order is narrowly tailored to accomplish remediation of such infectious or contagious disease; or (2) burdens or inhibits the operation of any religious gathering or activity. Any person aggrieved by an order of the governing body may request a hearing to occur within 72 hours, then may request a hearing in a district court.</p> <p><u>Sec. 16. 65-119 (page 25)</u> No board of health or local health officer shall prohibit any school district, attendance center, nonpublic school, community college or technical college from operating pursuant to K.S.A. 65-201 and 65-202.</p> <p><u>Sec. 17. 65-126 (page 26)</u> This section shall not apply to any school district, attendance center, nonpublic school, community college or technical college within any such area during any state of public health disaster emergency declared pursuant to section 1.</p>	<p><u>Health officer orders</u></p> <p>N/A – current law</p>
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	<p><u>Sec. 18. 65-201</u> (page 26)                  Recommendation issued by the local health officer shall be reviewed by the board of county commissioners of the county affected by such recommendation. Board may issue an order. Shall not issue an order that (1) Substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit, unless such order includes justification of the accepted scientific reasons for such order and how such order is narrowly tailored to accomplish remediation of such infectious or contagious disease; (2) burdens or inhibits the operation of any religious gathering or activity; or (3) has the effect of limiting travel between counties. Any person aggrieved by an order of the board may request a hearing to occur within 72 hours, then may request a hearing in a district court.</p> <p><u>Sec. 19. 65-202</u> (page 28)                  Local health officer recommendations and guidance are subject to the same limitations provided in 65-201.</p>	
<p><u>Schools</u></p> <p><u>K.S.A. 2020 Supp. 48-925b</u>                  The governor shall not issue an order that closes public or private schools unless such order has been affirmed by the state board of education by a majority vote.</p>	<p><u>Schools</u></p> <p><u>48-925b is repealed</u></p> <p><u>New Sec. 5</u> (page 10)                  Actions by a board of education of a school district during a state of public health disaster emergency. Only the board of education of a school district shall have the authority to take any action, issue any order or adopt any policy that affects the operation of any school within the</p>	<p><u>Schools</u></p> <p><u>Sec. 6. 48-925b</u> (page 11)                  Orders issued pursuant to this section shall not impact private schools and may only affect the operations of schools under the jurisdiction of the state board of education</p>



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	<p>school district. An employee, a student or the parent or guardian of a student aggrieved by an action taken, order issued, or policy adopted by the board of education of a school district may request a hearing by the board of education to occur within 72 hours, then may request a hearing in a district court.</p>	
<p><u>Community colleges and technical colleges</u></p> <p>N/A</p>	<p><u>Community colleges and technical colleges</u></p> <p><u>New Sec. 6</u> (page 12)          Actions by a governing body of a community college or technical college during a state of public health disaster emergency. Only such governing body shall have the authority to take any action, issue any order or adopt any policy that affects the operation of the community college or technical college governed by such governing body. An employee or a student aggrieved by an action taken, order issued or policy adopted by the governing body of a community college or technical college may request a hearing by such governing body to occur within 72 hours, then may request a hearing in a district court.</p>	<p><u>Community colleges and technical colleges</u></p> <p>N/A</p>
<p><u>Judicial review</u></p> <p>N/A</p> <p><u>K.S.A. 65-129c</u>          Relief from local health officer or secretary of health and environment order for isolation or quarantine.</p>	<p><u>Judicial review</u></p> <p><u>New Sec. 4</u> (page 9)          Procedure for requesting a hearing in district court when a person is aggrieved by an order issued by the governing body of a city as described in section 3, an order issued by a board of county commissioners under K.S.A. 65-201 or 65-202, an action taken or an order issued by the secretary of health and environment under K.S.A. 65-101(a)(5), or an action taken, an order issued</p>	<p><u>Judicial review</u></p> <p><u>New Sec. 1</u> (page 2)          A party aggrieved by an order issued under this section may petition for relief in district court. The court shall hold a hearing within 72 hours and shall grant relief unless the court finds such order is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to achieve that purpose.</p>

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	<p>or a policy adopted by the board of education of a school district as described in section 5 or by the governing body of a community college or technical college as described in section 6. A request for a hearing under this section shall be made through an action brought under chapter 60. District court shall schedule a hearing and give notice of such hearing to the aggrieved party within 72 hours after receipt of the request. Such hearing shall occur within 10 days after receipt of the request and the court shall not extend the time for a hearing under any circumstances. Chief Justice may issue an order to authorize the use of two-way electronic audio-visual communication for such hearing and related court proceedings when the chief justice determines such action is necessary. District court shall grant the request for relief made by the aggrieved party unless by a showing of clear and convincing evidence the contested action, order or policy of the governmental entity was necessary, reasonable, supported by accepted scientific practice and intended to remediate or reduce the spread of the infectious or contagious disease. Relief under this section shall not include any compensation of any kind.</p>	<p><u>Sec. 5 48-925</u> (page 7)  A party aggrieved by an order issued under this section may petition for relief in district court. The court shall hold a hearing within 72 hours and shall grant relief unless the court finds such order is necessary to achieve an important interest related to the state of disaster emergency and is substantially related to that interest, except if the order substantially burdens religion or business, the court shall grant relief unless the order is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to achieve that purpose.</p>
<p><u>Severability</u>  <u>K.S.A. 2020 Supp. 48-967</u>  Severability provision for 2020 Special Session bill.</p>	<p><u>Severability</u>  <u>New Sec. 20</u> (page 29)  The provisions of this act are severable.</p>	<p><u>Severability</u>  <u>New Sec. 9</u> (page 13)  The provisions of this act are severable.</p>