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COMPARISON OF HOUSE BILL 2054 AND NEW COVID-19 RESPONSE PLAN PROPOSAL

This memorandum provides a brief comparison of House Bill 2054 and a new COVID-19 Response Plan Proposal being discussed for the 2020 Special Session. A companion memorandum (“SUMMARY OF HOUSE BILL 2054 – ENACTING THE GOVERNMENTAL RESPONSE TO THE 2020 COVID-19 PANDEMIC IN KANSAS”) provides more details on House Bill 2054.

House Bill 2054	COVID-19 Response Plan Proposal	Differences from HB 2054
<p><u>Appropriations – coronavirus relief funds management and oversight by the Legislative Budget Committee and the Legislative Coordinating Council</u></p> <p>Section 1. FY 2020 appropriates the coronavirus relief fund of the legislative coordinating council; also transfers all moneys in the coronavirus relief fund – federal fund of the governor's department to the coronavirus relief fund (This is the current \$1.2 billion from the federal CARES act currently in the state treasury)</p> <p>Sec. 2. FY 2021, same as Section 1</p> <p>Sec. 3. Appropriates any additional federal grant moneys under the federal CARES act to the coronavirus relief fund of the legislative coordinating council</p> <p>Sec. 4. Federal grants applied for and received by state agencies that concern federal moneys for</p>	<p><u>Appropriations – coronavirus relief funds management and oversight by the State Finance Council</u></p> <p>Section 1. FY 2020 appropriates the coronavirus relief fund – federal fund of the governor’s department as a no limit fund; all disbursements and expenditures from such fund require State Finance Council (SFC) approval (This is the current \$1.2 billion from the federal CARES act currently in the state treasury)</p> <p>Sec. 2. FY 2021, same as Section 1</p> <p>Sec. 3. Appropriates any additional federal grant moneys under the federal CARES act to the coronavirus relief fund – federal fund of the governor’s department; all disbursements and expenditures from such fund require SFC approval</p> <p>Sec. 4. Federal grants applied for and received by</p>	<p><u>Appropriations – coronavirus relief funds</u></p> <p>1) Funds remain in the coronavirus relief fund – federal fund of the governor’s department</p> <p>2) Disbursements and expenditures from such fund and any other state agency fund with federal moneys for coronavirus relief require State Finance Council (SFC) approval</p>

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<p>coronavirus relief shall not be spent without LCC approval</p>	<p>state agencies that concern federal moneys for coronavirus relief shall not be disbursed or expended without SFC approval, this includes all funds created by executive directive No. 20-517, or any other executive directive or order</p>	
<p><u>State of disaster emergency declarations and Kansas emergency management act</u></p> <p>New Sec. 5. Ratifies and continues the state of disaster emergency declared by the governor from March 12, 2020, through May 31, 2020; requires state finance council for any new state of disaster emergency related to the COVID-19 health emergency during 2020 and for any order of closure or cessation of any business or commercial activity during 2020</p> <p>New Sec. 6. Limitations on closure or cessation of any business or commercial activity</p> <p>Sec. 29. K.S.A. 48-924 – State of disaster emergency declarations; extension of emergency described in Section 5 (see above) by the Legislature or by the state finance council when the Legislature is not in session, subject to limitations</p> <p>Sec. 30. K.S.A. 2019 Supp. 48-925 – Limitations and restrictions on powers of the governor and executive officers;</p> <p>Authorizing counties to adopt orders relating to public health that are less stringent than statewide executive orders; board of county commissioners issuing such an order must make a finding based upon advice from the local health officer or other local health officials that the scope of the provisions in the governor's executive order are</p>	<p><u>State of disaster emergency declarations and Kansas emergency management act</u></p> <p>New Sec. 5. Ratifies, continues and extends the state of disaster emergency declared by the governor pursuant to K.S.A. 48-924 by proclamation on March 12, 2020, through September 15, 2020. The section also requires the Governor to receive approval from the State Finance Council for any new state of disaster emergency related to the COVID-19 health emergency during 2020.</p> <p>New Sec. 6. Provides limitations on closure or cessation of any business or commercial activity. On or after September 15, 2020, during any state of disaster emergency declared pursuant to K.S.A. 48-924, the governor may not order the closure or cessation of any business or commercial activity, whether for-profit or not-for-profit, for more than 15 days. At least 24 hours prior to the issuance of any such order, the governor shall call a meeting of the state finance council for the purpose of consulting with the council regarding the conditions necessitating the issuance of such order. After an initial order or orders providing for the closure or cessation of business or commercial activity have resulted in 15 days of such closures or cessation of business or commercial activity, the governor may not order the closure or cessation of business or</p>	<p><u>State of disaster emergency declarations and Kansas emergency management act</u></p> <p>1) Ratification of the state of disaster emergency declared by the governor pursuant to K.S.A. 48-924 by proclamation on May 26, 2020, and extension of the state of disaster emergency until September 15, 2020.</p> <p>2) With regard to emergency orders issued by the Governor related to any closure or cessation of business or commercial activity, the Governor is limited to 15 days of such closure prior to September 15, 2020, and the Governor must call a meeting of the state finance council for consultation regarding the conditions necessitating the issuance of such closure order. After September 15, 2020, the Governor may not order any such closure unless the Governor calls a meeting of the state finance council and such closure order is approved by six legislative members of the council.</p> <p>3) The Governor shall not have the power or authority to restrict businesses from operating or to restrict the movement or gathering of individuals and the Governor shall not have the power or authority to order the modification or alteration of any method or timing of any provision of election law.</p> <p>4) Violations of the emergency management act</p>

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<p>not necessary to protect the public health and safety of the county</p> <p>Sec. 31. K.S.A. 48-932 – State of local disaster emergency must be approved by the board of county commissioners or the governing body of the city, respectively, at the next meeting of such governing body</p> <p>Sec. 32. K.S.A. 48-939 – Violations of the emergency management act or any lawful order or proclamation issued under authority of the act are subject to a civil penalty; enforced by the attorney general or the county or district attorney in the county in which the violation took place; attorney general or any county or district attorney may seek injunction or restraining order</p>	<p>commercial activity, except upon specific application by the governor to the state finance council and an affirmative vote of at least six legislative members of the council, the governor may order such closure or cessation of business and commercial activity for specified periods not to exceed 30 days each. Any order issued that violates or exceeds such restrictions shall be null and void. This section expires on January 26, 2021.</p> <p>Sections 32 through 35 amend the Kansas emergency management act. Section 32 amends K.S.A. 48-924 to provide that the state of disaster emergency described in Section 5 (see above) will terminate on September 15, 2020, except that when the Legislature is not in session, the Governor may apply to the State Finance Council for an extension for specified periods not to exceed 30 days each. No such extension shall continue past January 26, 2021.</p> <p>Section 33 amends K.S.A. 2019 Supp. 48-925 regarding limitations and restrictions on the powers of the Governor and executive officers. The amendments clarify that the Governor may issue orders to exercise the powers conferred by this section and provide that, within 24 hours of the issuance of any order, the Governor shall call a meeting of the State Finance Council for the purposes of reviewing such order. The amendments also clarify that all orders are null and void after the period of a state of disaster emergency has ended. New subsection (d) specifies that the Governor shall not have the power or authority to temporarily or permanently seize, or authorize seizure of, any ammunition or</p>	<p>require an intentional act to subject the person to liability.</p> <p>5) Specific findings required for counties to adopt orders relating to public health that are less stringent than statewide executive orders</p>
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to suspend or limit the sale, dispensing or transportation of firearms or ammunition pursuant to this section or any other executive authority. New subsection (e) provides that the governor shall not have the power or authority to restrict business form operating or to restrict the movement or gathering of individuals as expressed in the governor's state of disaster emergency proclamation issued on May 26, 2020. New subsection (f) provides that the governor shall not have the power or authority to order the modification or alteration of any method or timing of any election provision of law.

New subsection (g) authorizes counties to adopt orders relating to public health that are less stringent than statewide executive orders; board of county commissioners issuing such an order must make the following findings and include such findings in the order: (1) The board has consulted with the local health officer or other local health officials regarding the governor's executive order; (2) following such consultation, implementation of the full scope of the of provisions in the governor's executive order are not necessary to protect the public health and safety of the county; and (3) all other relevant findings to support the board's decision.

Section 34 amends K.S.A. 48-932 – State of local disaster emergency *may be reviewed, amended or revoked* by the board of county commissioners or the governing body of the city, respectively, at a meeting of such governing body

Section 35 amends K.S.A. 48-939 concerning violations of the emergency management act or

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	<p>any lawful order or proclamation issued under authority of the act. The bill changes the penalty for a violation from a class A misdemeanor to a civil penalty not to exceed \$2,500 per violation. New subsection (b) provides that intentional violations shall be enforced through a civil action brought by the Attorney General or the county or district attorney in the county in which the violation took place. Finally, new subsection (c) provides that the Attorney General or any county or district attorney may seek an injunction or a restraining order against a person who has violated, is violating or is otherwise likely to violate this act.</p>	
<p><u>County boards of health and local health officers</u></p> <p>Sec. 22. K.S.A. 2019 Supp. 19-101a – Counties may not exempt from or effect changes in K.S.A. 65-201 and 65-202 (see Sec. 33 and 34 below)</p> <p>Sec. 33. K.S.A. 65-201 – Any order issued by the county health officer must be approved by the board of county commissioners of the county affected by such order at the next meeting of the board; any such approval shall include an expiration date set by the board and may be revoked at an earlier date by a majority vote of the board</p> <p>Sec. 34. K.S.A. 65-202 – Any order issued by the county health officer regarding the remediation of any infectious disease must be approved by the board of county commissioners of any county affected by such order in the manner provided by K.S.A. 65-201</p>	<p><u>County boards of health and local health officers</u></p> <p>Sec. 25. K.S.A. 2019 Supp. 19-101a – Same</p> <p>Sec. 36. K.S.A. 65-201 – Any order issued by the county health officer <i>may be reviewed, amended or revoked</i> by the board of county commissioners of the county affected by such order at a meeting of the board; any such approval shall include an expiration date set by the board and may be <i>amended or</i> revoked at an earlier date by a majority vote of the board</p> <p>Sec. 37. K.S.A. 65-202 – Any order issued by the county health officer regarding remediation of any infectious disease <i>may be reviewed, amended or revoked</i> by the board of county commissioners of any county affected by such order in the manner provided by K.S.A. 65-201</p>	<p><u>County boards of health and local health officers</u></p> <p>1) Orders may be reviewed, amended or revoked by the board of county commissioners at a meeting, not required at the next meeting</p> <p>2) Orders may be amended or revoked at an earlier date by the board, not just revoked</p>

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<p><u>School closures</u></p> <p>N/A</p>	<p><u>School closures</u></p> <p>New Section 7 requires the Governor to obtain the State Board of Education’s approval in order to close schools in Kansas by executive order.</p> <p>No executive order issued by the governor pursuant to K.S.A. 48-925 that has the effect of closing public or private school attendance centers in this state shall be effective unless and until such order has been affirmed by the state board of education by adoption of a resolution by a majority of the members of the state board.</p> <p>Prior to issuing any such executive order, the governor shall submit such proposed executive order to the state board of education.</p> <p>Upon receipt of such proposed executive order, the state board shall meet as soon as reasonably possible to review such proposed order and, if a majority of the members of the state board determines such order is in the best interests of the students in this state, to adopt a resolution affirming such proposed executive order.</p>	<p><u>School closures</u></p> <p>New provision</p>
<p><u>COVID-19 response and reopening for business liability protection act</u></p> <p>New Sec. 7. Name</p> <p>New Sec. 8. Definitions</p> <p>New Sec. 9. Healthcare provider immunity</p> <p>New Sec. 10. Business liability limitations for COVID-19 claim</p> <p>New Sec. 11. Business liability limitations for qualified products</p> <p>New Sec. 12. Sections 7-13 do not: create,</p>	<p><u>COVID-19 response and reopening for business liability protection act</u></p> <p>New Sections 8 through 15</p> <p>New Sec. 8. Name</p> <p>New Sec. 9. Definitions</p> <p>New Sec. 10. Healthcare provider immunity – exclude nursing homes</p> <p>Except as provided further, a healthcare provider is immune from civil liability for damages, administrative fines or penalties for acts,</p>	<p><u>COVID-19 response and reopening for business liability protection act</u></p> <ol style="list-style-type: none"> 1) Separate section for adult care homes and a specific affirmative defense 2) Definition of public health directives only includes mandatory directives 3) Several other language changes

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recognize or ratify a claim or cause of action; eliminate a required element of any claim; affect workers' compensation law; or affect any other immunity or limitation of liability

New Sec. 13. Sections 10-12 apply retroactively to any cause of action accruing on or after March 12, 2020

omissions, healthcare decisions or the rendering of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a direct response to any state of disaster emergency declared pursuant to K.S.A. 48-924 related to the COVID-19 public health emergency. The provisions of this section shall apply to any claims for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring during any state of disaster emergency declared pursuant to K.S.A. 48-924 related to the COVID-19 public health emergency. The provisions of this section shall not apply to civil liability when it is established that the act, omission or healthcare decision constituted gross negligence or willful, wanton or reckless conduct. The provisions of this section shall not apply to healthcare services not related to COVID-19 that have not been altered, delayed or withheld as a direct response to the COVID-19 public health emergency.

New Sec. 11. Business liability immunity for COVID-19 claim

Notwithstanding any other provision of law, a person, or an agent of such person, conducting business in this state shall be immune from liability in a civil action for a COVID-19 claim if such person was acting pursuant to and in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.

New Sec. 12. Business liability immunity for qualified products

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A person who designs, manufactures, labels, sells, distributes, provides or donates a qualified product in response to the COVID-19 public health emergency shall be immune from liability in a civil action alleging a product liability claim arising out of such qualified product if: (a) The product was manufactured, labeled, sold, distributed, provided or donated at the specific request of or in response to a written order or other directive finding a public need for a qualified product issued by the governor, the adjutant general or the division of emergency management; and (b) the damages are not occasioned by willful, wanton or reckless disregard of a known, substantial and unnecessary risk that the product would cause serious injury to others.

New Sec. 13. Nursing home immunity

An adult care facility shall have an affirmative defense to liability in a civil action for damages, administrative fines or penalties for claims arising from exposure to COVID-19 if such facility: (1) (A) Was caused, by the facility's compliance with a statute or rule and regulation, to reaccept a resident who had been removed from the facility for treatment of COVID-19; or (B) treats a resident who has tested positive for COVID-19 in such facility in compliance with a statute, rule and regulation or a medical directive from a person licensed, registered, permitted, certified or otherwise authorized to practice a profession by the state board of healing arts; and (2) is acting pursuant to and in substantial compliance with public health directives. As used in this section, "public health directives" means any of the

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	<p>following that is required by law to be followed related to public health and COVID-19: (A) State statutes, rules and regulations or executive orders or proclamations issued by the governor pursuant to K.S.A. 48-925, and amendments thereto; or (B) federal statutes, rules and regulations and guidance from federal agencies, including the centers for disease control and prevention and the occupational safety and health administration of the United States department of labor.</p> <p>New Sec. 14. COVID-19 response and reopening for business liability protection act does not: create, recognize or ratify a claim or cause of action; eliminate a required element of any claim; affect workers' compensation law; or affect any other immunity or limitation of liability</p> <p>New Sec. 15. Business liability sections apply retroactively to any cause of action accruing on or after March 12, 2020</p>	
<p><u>COVID-19 contact tracing privacy act</u> N/A</p>	<p><u>COVID-19 contact tracing privacy act</u></p> <p>New Section 16 creates the COVID-19 contact tracing privacy act.</p> <p>Subsection (b) gives the purpose of the act: “to protect the privacy of persons whose information is collected through contact tracing and the confidentiality of contact data while authorizing the secretary and local health officers to establish and operate systems of contact tracing during the COVID-19 pandemic to impede the spread of the disease.”</p> <p>Subsection (c) prohibits the state and any municipality, officer or official or agent thereof, from contact tracing except that when the</p>	<p><u>COVID-19 contact tracing privacy act</u> New provision</p>

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secretary of health and environment or a local health officer determines contact tracing is necessary to perform a public health duty assigned by statute to such official, the secretary or local health officer may conduct or authorize contact tracing as provided by this section.

Subsection (d) provides that, subject to the availability of appropriations, the secretary or local health officer may employ, contract for or engage contact tracers. Such persons acting as contact tracers under authority of this subsection shall meet the qualifications and training prescribed by rules and regulations of the secretary. Before collecting any contact data, each person acting as a contact tracer shall execute, under oath, on a form prescribed by rules and regulations of the secretary.

Subsection (e) provides that a contact tracer shall not disclose the identity of an infected person to a contact. Only contact data specifically authorized by the secretary pursuant to rules and regulations may be collected as part of contact tracing.

Subsection (f) provides that participation in contact tracing shall be voluntary, and no contact or infected person shall be compelled to participate in, nor be prohibited from participating in, contact tracing. Any contact or infected person who in good faith discloses to a contact tracer information requested by such contact tracer under authority of this subsection shall be immune from civil, criminal and administrative liability for such disclosure. No criminal, civil or administrative liability shall arise against a contact or infected person solely

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	<p>due to such person's failure to cooperate in contact tracing conducted pursuant to this subsection.</p> <p>Subsection (g) provides that contact tracing shall not be conducted through the use of any service or means that uses cellphone location data to identify or track, directly or indirectly, the movement of persons.</p> <p>Subsection (h) provides that no third party shall be required to collect or maintain data regarding infected persons or contacts for the purpose of contact tracing. Except as provided further, no contact tracer shall obtain contact data related to an infected person or contact from any third party. Contact data voluntarily collected or maintained by a third party may be obtained by a contact tracer only under certain circumstances.</p> <p>Subsection (i) provides that a person may bring a civil action to enjoin violations of this act; knowing violation of this act is a class C misdemeanor; contact data shall be deemed personal information within the meaning of K.S.A. 50-6,139b (enforceable under the Kansas consumer protection act).</p> <p>Subsection (j) requires the secretary to promulgate rules and regulations.</p> <p>Subsection (k) provides definitions.</p> <p>Subsection (l) provides that the section expires on May 1, 2021.</p>	
<p><u>Employment security law (unemployment)</u> Sec. 24. K.S.A. 2019 Supp. 44-702 – Employment security law policy statement</p>	<p><u>Employment security law (unemployment)</u> Sec. 27. K.S.A. 2019 Supp. 44-702 – Same</p>	<p><u>Employment security law (unemployment)</u> No differences</p>

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<p>Sec. 25. K.S.A. 2019 Supp. 44-705 – Eligibility for benefits; waiver of the work search requirement and the waiting week requirement</p> <p>Sec. 26. K.S.A. 2019 Supp. 44-709 – Employer obligations, notifications</p> <p>Sec. 27. K.S.A. 2019 Supp. 44-710 – Employer contribution rate freeze, charging of benefit payments to accounts of contributing employers, and federal reimbursement to reimbursing employers</p> <p>Sec. 28. K.S.A. 2019 Supp. 44-757 – Shared work plan eligibility</p>	<p>Sec. 28. K.S.A. 2019 Supp. 44-705 – Same</p> <p>Sec. 29. K.S.A. 2019 Supp. 44-709 – Same</p> <p>Sec. 30. K.S.A. 2019 Supp. 44-710 – Same</p> <p>Sec. 31. K.S.A. 2019 Supp. 44-757 – Same</p>	
<p><u>Health and healthcare</u></p> <p>New Sec. 17. Telemedicine – authorizing the expanded use of telemedicine in response to the COVID-19 public health emergency and imposing requirements related thereto</p> <p>New Sec. 19. State board of healing arts, temporary emergency licenses – providing for temporary suspension of certain healthcare professional licensing and practice requirements</p> <p>New Sec. 20. Certain healthcare service providers may provide services without direction and supervision normally required</p> <p>New Sec. 18. Hospital admissions, utilization of non-hospital space, and medical care facility staff – suspending certain requirements related to medical care facilities and expiring such provisions</p> <p>Sec. 35. K.S.A. 65-468 – Critical access hospitals restrictions suspended</p>	<p><u>Health and healthcare</u></p> <p>New Sec. 20. Telemedicine – Same</p> <p>New Sec. 21. State board of healing arts, temporary emergency licenses – Same</p> <p>New Sec. 22. Certain healthcare service providers may provide services without direction and supervision normally required – Same</p> <p>New Sec. 23. Hospitals – Same</p> <p>Sec. 38. K.S.A. 65-468 – Same</p>	<p><u>Health and healthcare</u></p> <p>No differences</p>

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<p><u>Adult care homes</u></p> <p>New Sec. 16. Adult care homes – imposing requirements on the Kansas department for aging and disability services related to providing personal protective equipment and ensuring infection prevention and control practices and recommendations are adopted and made available publicly; promptly, and in no case later than 30 days following the effective date of this act, make or cause to be made infection control inspections</p>	<p><u>Adult care homes</u></p> <p>New Sec. 19. Adult care homes – Same; promptly, and in no case later than <i>90 days</i> following the effective date of this act, make or cause to be made infection control inspections</p>	<p><u>Adult care homes</u></p> <p>Same, but 90 days for inspections</p>
<p><u>Alcoholic liquor</u></p> <p>Sec. 23. K.S.A. 2019 Supp. 41-2653 – Curbside alcohol, authorizing the temporary sale of alcoholic liquor for consumption off of certain licensed premises</p>	<p><u>Alcoholic liquor</u></p> <p>Sec. 26. K.S.A. 2019 Supp. 41-2653 – Same</p>	<p><u>Alcoholic liquor</u></p> <p>No differences</p>
<p><u>Courts</u></p> <p>Sec. 21. Section 1 of 2020 House Substitute for Senate Bill No. 102 – Authorized use of two-way electronic audio-visual communication by courts to secure the health and safety of court users, staff and judicial officer</p>	<p><u>Courts</u></p> <p>Sec. 24. Section 1 of 2020 House Substitute for Senate Bill No. 102 – Same</p>	<p><u>Courts</u></p> <p>No differences</p>
<p><u>First responders</u></p> <p>New Sec. 15. First responders – requiring county health officers to share certain information with first responder agencies and 911 call centers</p>	<p><u>First responders</u></p> <p>New Sec. 18. First responders – Same</p>	<p><u>First responders</u></p> <p>No differences</p>
<p><u>Notarial acts</u></p> <p>New Sec. 14. Notarial acts – validating certain notarial acts performed while the requirements that a person must appear before a notary public are suspended</p>	<p><u>Notarial acts</u></p> <p>New Sec. 17. Notarial acts – Same</p>	<p><u>Notarial acts</u></p> <p>No differences</p>

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<u>Severability</u> New Sec. 36. Providing for severability of this act	<u>Severability</u> New Sec. 39. Same	<u>Severability</u> No differences
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