

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 391

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 391, as amended, would enact the Constitutional Right to Health Freedom Act (Act). The Act would permit the Secretary of Health and Environment (Secretary) to designate a list of infectious or contagious diseases but would remove the Secretary's authority to enact rules and regulations regarding infectious or contagious diseases. The Act would only permit the Secretary to recommend ways to prevent the spread and dissemination of diseases for both the general public and for those who may professionally encounter a disease. The Act would also amend statutory duties and the authority of the Secretary, local health entities and local health officers (LHOs) concerning infectious or contagious diseases.

Constitutional Right to Health Freedom Act

The bill would enact the Constitutional Right to Health Freedom Act (Act).

*Secretary of Health and Environment Legal Authority
(Section 2)*

The Act would allow the Secretary to recommend ways to prevent the introduction and spread of infectious and contagious diseases and would remove the authority of the Secretary to take related actions. The bill would also allow the Secretary to adopt the policies necessary to carry out such

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

recommendations and would remove authority to adopt related rules and regulations. References to Secretary's authority regarding orders would be removed throughout the bill and replaced with a references to make recommendations.

[*Note:* Current law permits the Secretary to adopt rules and regulations necessary for public health and includes the authority to apply to the District Court for an injunction to compel compliance with such rules and regulations, while also directing the District Court to issue such injunction after cause is shown in a hearing.]

The bill would also specify that recommendations or adopted policies may not conflict with any other law or otherwise expand the Secretary's authority.

Tuberculosis (Section 3)

The bill would make technical changes to current law related to tuberculosis and remove the criminal penalty for violation of the section.

*County or Joint Board of Health or Local Health Officer
(Sections 5, 7, and 9)*

The bill would amend law as it relates to the duties and powers of the county or joint boards of health, and LHOs to remove their ability to require either isolation or quarantine of an infected individual.

The bill would remove the authority of a county or joint board of health or a LHO to prohibit public gatherings when necessary for the control of any infectious or contagious disease, but would allow the entity or LHO to provide a recommendation against public gatherings during an outbreak.

The bill would also allow a LHO to recommend treatment, isolation, or quarantine, but would remove the ability of a LHO to:

- Issue an order requiring an individual the LHO believes to have been exposed to an infectious or contagious disease to seek evaluation and treatment;
- Remain in isolation or quarantine; or require an adult, an emancipated minor, or minor with a guardian to go into isolation or quarantine until no longer contagious; or
- Request an order for a sheriff, deputy sheriff, or law enforcement officer to assist in the execution or enforcement of any such order by the LHO.

The bill would add a provision requiring a LHO to submit recommendations related to the isolation or quarantine of individuals to the Board of County Commissioners (Board) as a proposed order. At the next regularly scheduled meeting or a special meeting of the Board, the Board would be required to review the proposed order and take any necessary action. The proposed order of the LHO would become an order of the Board if approved. If the Board is unable to meet, the chairperson of the Board or the vice chairperson of the Board in the chairperson's absence or disability could approve the order.

The bill would also make technical amendments to the LHO appointment and clarify that the LHO could only use medically necessary and reasonable measures to prevent the spread of infectious, contagious, or communicable diseases.

*Report of Infectious or Contagious Diseases by the Secretary
(Section 6)*

The bill would permit the Secretary to designate a list of infectious or contagious diseases.

The bill would retain the Secretary's ability to provide testing regarding the disease and would amend current law to require the Secretary specifically make recommendations for preventing the introduction and spread of infectious or contagious diseases within Kansas and for the protection of individuals who provide medical or nursing services, clinical or forensic laboratory services, emergency medical services and firefighting, law enforcement and correctional services, or who provide any other service, or individuals who receive any such services or are in any other employment where the individual may encounter occupational exposure to blood and other potentially infectious materials. Authority to adopt rules and regulations and issue orders to prevent the spread and dissemination of such diseases would be revoked by the bill.

Public or Private Employers (Section 8)

A public or private employer would be prohibited from discharging an employee when the employee is following the LHO recommendation to isolate or quarantine or due to their vaccination status. Conforming amendments would be made to remove provisions relating to isolation or quarantine orders.

The bill would also permit a civil action to be filed against an employer by an employee who has been discharged due to following a LHO isolation or quarantine recommendation or due to their vaccination status. A prevailing plaintiff would be allowed to recover actual damages sustained, costs, and reasonable attorney fees.

Remote Learning (Section 10)

Under continuing law, a school board may permit up to 40 school term hours of remote learning for students due to a disaster. The bill would amend the definition of "disaster" to remove orders issued by the Secretary, in conformance with the other provisions of the bill.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of Senator Steffen.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on February 15, 2024, Senator Steffen, two attorneys, one medical professional, and seven private citizens provided **proponent** testimony stating generally their personal experiences with various entities. The proponents noted the limitations they felt during the COVID-19 pandemic and, due to those experiences, why the change to a constitutional model of public health is needed.

Written-only proponent testimony was received from an attorney, a representative of We the People Kansas, and fifteen private citizens.

Representatives of Kansas Action for Children, Kansas Association of Local Health Departments, Kansas Chamber, and the Kansas Department of Health and Environment (KDHE) provided **opponent** testimony stating generally that the bill would remove the Secretary and LHO's authority to act regarding infectious and contagious diseases, which would put everyone at risk. They noted the work of public health is all-encompassing, arduous, and necessary for everyday life to continue and includes ensuring that hospitals are practicing good infection control; children can play, learn, grow, and stay healthy; employers are keeping employees safe; and spread of new or old diseases is limited. It was also noted, that enactment of the bill would undo hundreds of years of public health work.

The Senate Committee amended the bill to do the following:

- Remove the criminal penalty regarding a violation of the tuberculosis related statutes;

- Reinstatement reporting the infectious or contagious disease requirements for licensed social workers, teachers, and school administrators;
- Require the Secretary to designate a list of infectious or contagious diseases;
- Permit the Secretary to provide testing for infectious or contagious diseases; and
- Allow a Board to adopt an order regarding isolation or quarantine based upon a LHO recommendation to the Board.

Fiscal Information

According to the fiscal note prepared by the Budget on the bill, as introduced, KDHE indicates enactment of the bill could increase expenditures due to an excess number of cases of infectious or contagious diseases as the bill would remove or limit the authority of the Secretary, as well as limit the authority of LHOs, to control the spread of infectious or contagious diseases.

KDHE states that the cost estimate for one measles outbreak would be approximately \$7.1 million for the increased costs related to public health investigations. The estimate is based on the agency's review of available data as well as internal analysis of the 2018 measles outbreak in Johnson County. KDHE notes that elimination of isolation, quarantine, and other measures to control the spread of infectious and contagious diseases, would have a compounding effect with case counts increasing each year.

KDHE notes that during a 2018/2019 measles outbreak of 72 cases in Clark County, Washington, the public health response to the outbreak cost approximately \$2.3 million. The investigators estimated that, if no isolation or quarantine measures had been implemented, the outbreak would have

resulted in an additional 1,296 cases and 72,198 contacts thus increasing the cost of the public health response to over \$120.0 million. Measles is a vaccine preventable disease for which cases are isolated and close contacts who are not immune to the disease because of prior infection or vaccination are quarantined.

KDHE reports that between 2001 and 2018, for 11 outbreaks, the median cost for a measles outbreak in the United States is estimated to be \$152,308 per outbreak, \$32,805 per case, and \$223 per contact. In 2018, Kansas experienced a large measles outbreak resulting in 22 cases and 198 contacts. Using the same methodology cited above, if no isolation or quarantine measures had been implemented there would have been 396 cases and 3,564 contacts increasing the cost to public health from an estimated \$419,584 to \$7.6 million, an excess expenditure of over \$7.1 million. The agency notes this is just one example of the increased cost of a single outbreak of measles. KDHE investigates between 32 to 108 outbreaks per year caused by diseases that are reportable in Kansas or that have isolation and quarantine regulations. The agency states that excess cost to KDHE and to counties would likely be much higher than this estimate.

The Office of Judicial Administration states enactment of the bill would not have a significant fiscal effect on expenditures of or revenues to the Judicial Branch. The Kansas State Department of Education reports the bill would not have a fiscal effect on the agency. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties was unable to estimate a fiscal effect for counties.

Public Health; health; healthcare; Constitutional Right to Health Freedom Act; Secretary of Health and Environment; quarantine; isolation; local health officers; infectious or contagious diseases