

***UPDATED***  
**SESSION OF 2018**

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2600**

As Recommended by Senate Committee on  
Public Health and Welfare

**Brief\***

Senate Sub. for HB 2600 would amend the Nuclear Energy Development and Radiation Control Act (Act) and provide for the study and investigation of maternal deaths by the Secretary of Health and Environment (Secretary).

***Nuclear Energy Development and Radiation Control Act***

The bill would require the assessment of an additional fee up to 50.0 percent of the maximum annual licensing fee for each noncontiguous site where radioactive material is stored or used under the same license, per category. "Noncontiguous site" would mean a location more than one mile away from the main safety office where licensure records are maintained.

***Study and Investigation of Maternal Deaths***

The bill would provide for the study and investigation of maternal deaths by the Secretary; define "maternal death"; provide for access to records related to maternal death and address the confidentiality of those records; and establish a July 1, 2023, expiration date for provisions addressing confidentiality of the records, unless the provisions are reenacted by the Legislature prior to their expiration. The Legislature would be required to review the confidentiality

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\*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>

provisions prior to the expiration date established in the bill. Additionally, the bill would require reports of aggregate non-individually identifiable data to be compiled on a routine basis for distribution to further study the causes and problems associated with maternal death.

***Definition of “Maternal Death”***

“Maternal death” would mean the death of any woman from any cause while pregnant or within one calendar year of the end of any pregnancy, regardless of the duration of the pregnancy or the site of the end of the pregnancy.

***Access to Records by the Secretary***

The bill would require the Secretary to have access to all law enforcement investigative information regarding a maternal death in Kansas, any autopsy records and coroner’s investigative records relating to the death, any medical records of the mother, and any records of the Kansas Department for Children and Families or any other state social service agency that has provided services to the mother.

The bill would authorize the Secretary to apply to the district court for, and the court may issue, a subpoena to compel the production of any books, records, or papers relevant to the cause of any maternal death being investigated by the Secretary. Any books, records, or papers received by the Secretary through a subpoena would be confidential and privileged information and would not be subject to disclosure.

The provisions related to the confidentiality of the records received by the Secretary pursuant to a subpoena would expire on July 1, 2023, unless reenacted by the Legislature. The Legislature would be required to review these confidentiality provisions prior to the expiration date.

### ***Duties of the Secretary***

The bill would require the Secretary to identify maternal death cases; review medical records and other relevant data; contact family members and other affected or involved persons to collect additional relevant data; consult with relevant experts to evaluate the records and data collected; make determinations regarding the preventability of maternal deaths; develop recommendations and actionable strategies to prevent maternal deaths; and disseminate findings and recommendations to the Legislature, healthcare providers, healthcare facilities, and the general public.

### ***Access to Medical Records***

The bill would require the following to provide reasonable access to all relevant medical records associated with a maternal death case under review by the Secretary:

- Healthcare providers licensed pursuant to Chapters 65 and 74 of the Kansas statutes [Note: Examples of licensed health care providers include advanced practice registered nurse, practical nurse, and professional nurse; dentist and dental hygienist; optometrist; pharmacist; podiatrist; individual licensed to practice medicine and surgery, osteopathic medicine and surgery, or chiropractic; physician assistant; physical therapist; mental health technician; occupational therapist and occupational therapy assistant; respiratory therapist; professional counselor and clinical professional counselor; licensed dietitian; baccalaureate social worker, master social worker, and specialist clinical social worker; marriage and family therapist and clinical marriage and family therapist; speech-language pathologist and audiologist; addiction counselor, master's addiction counselor, and clinical addiction counselor; naturopathic doctor; radiologic technologist;

behavior analyst and assistant behavior analyst; licensed acupuncturist; psychologist and master's level psychologist; and individual with licensure to practice fitting and dispensing of hearing instruments.];

- Medical care facilities licensed pursuant to Article 4 of Chapter 65 of the Kansas statutes (hospital, ambulatory surgical center, or recuperation center);
- Maternity centers licensed pursuant to Article 5 of Chapter 65 of the Kansas statutes; and
- Pharmacies licensed pursuant to Article 16 of Chapter 65 of the Kansas statutes.

When making good faith efforts to provide access to medical records as required under the bill, these providers would be exempt from liability for civil damages and would not be subject to criminal or disciplinary administrative action.

Information, records, reports, statements, notes, memoranda, or other data collected would be privileged and confidential and would not be admissible as evidence in any court action or before another tribunal, board, agency, or person. Exhibition of this information or disclosure of the contents in any manner by any officer or representative of the Kansas Department of Health and Environment (KDHE) or any other person would be prohibited, except when necessary to further the investigation of the related case. Anyone participating in the investigation would be prohibited from disclosing the information obtained. The confidentiality provisions related to these records would expire on July 1, 2023, unless reenacted by the Legislature. The bill would require the Legislature to review the confidentiality provisions prior to their expiration.

### ***Confidentiality of Records Resulting from KDHE Review***

The following would be confidential records and would not be subject to the Kansas Open Records Act or Kansas Open Meetings Act, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding:

- Proceedings, activities, and the resulting opinions of the Secretary or the Secretary's representatives; and
- Records obtained, created, or maintained, including records of interviews, written reports, and statements procured by the Secretary or any other person, agency, or organization acting jointly or under contract with KDHE in connection with investigating maternal death.

The bill would specify the right to discover or use in any civil or criminal proceeding any document or record that is available and entirely independent of the proceedings and activities of the Secretary or the Secretary's representatives would not be limited or otherwise restricted.

The bill would prohibit the Secretary or the Secretary's representatives from being questioned in a civil or criminal proceeding regarding the information presented in or opinions formed as a result of an investigation. The Secretary or the Secretary's representatives would be allowed to testify to information that is public or obtained independently of investigations, activities, and proceedings by the Secretary or the Secretary's representatives or any other person, agency, or organization acting jointly or under contract with KDHE in connection with investigating maternal death.

The provisions regarding the confidentiality of this information would expire on July 1, 2023, unless reenacted by the Legislature prior to their expiration.

### ***Compilation and Distribution of Aggregate Reports***

In an effort to further study the causes and problems associated with maternal death, the bill would require reports of aggregate non-individually identifiable data to be compiled on a routine basis for distribution to healthcare providers, medical care facilities, and other persons necessary to reduce the maternal death rate.

### **Background**

Senate Sub. for HB 2600 contains the contents of HB 2600, as amended by the Senate Committee on Public Health and Welfare, and the contents of HB 2573, as amended by the House Committee on Health and Human Services.

### ***HB 2600 (Nuclear Energy Development and Radiation Control Act)***

The bill was introduced by the House Committee on Health and Human Services at the request of KDHE. In the House Committee hearing, a representative of KDHE testified in support of the bill, stating the actual fees are set in regulation (KAR 28-35-147a) and are currently near the statutory maximum. The representative indicated KDHE does not plan to raise the fees in regulation at this time, but a future increase in regulatory fees may be needed to maintain the Radiation Control Program at KDHE. The representative stated a need to address fees for licenses involving radioactive materials at multiple sites because the current license fee structure does not support the increased costs associated with writing and inspecting these types of licenses. No neutral or opponent testimony was provided.

The House Committee amended the title of the bill to correct the name of the Act.

In the Senate Committee on Public Health and Welfare hearing, a representative from KDHE provided proponent testimony. No other testimony was provided.

The Senate Committee amended the bill to remove the annual licensing fee increases and to insert the contents of HB 2573, as amended by the House Committee. The Senate Committee inserted the contents of both bills into a substitute bill.

According to the fiscal note prepared by the Division of the Budget on HB 2600, as introduced, KDHE states enactment of the bill would increase fee revenue by \$85,015 for FY 2020 and beyond. Although the bill states the changes would become effective upon publication in the statute book, upon enactment, the agency states it would need to amend regulations. The fiscal note states fees would become effective in FY 2020. The bill would also increase the maximum fees allowed to be charged for licenses by 35.0 percent; however, the agency states it currently has no plans to increase fees other than establishing the multiple site fee. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

#### ***HB 2573 (Study and Investigation of Maternal Deaths)***

The bill was introduced by the House Committee on Health and Human Services at the request of the Kansas Section of the American Congress of Obstetricians and Gynecologists (ACOG). In the House Committee hearing, an obstetrician and gynecologist, a resident in obstetrics and gynecology, and representatives of ACOG and the Kansas Midwives Alliance testified in support of the bill. The proponents generally stated maternal deaths in the United States are increasing, and an estimated half of these deaths could be prevented. The proponents stated a maternal mortality review committee would provide a systematic, confidential, statewide approach to analyze the potential causes of maternal death and identify areas where change

could be implemented to reverse the upward trend, while providing legal protections for the review committee members. Written-only testimony in support of the bill was provided by representatives of ACOG, Kansas Affiliate of the American College of Nurse-Midwives, KDHE, Kansas Medical Society, and March of Dimes.

No opponent or neutral testimony was provided.

The House Committee amended the bill to clarify the nature of the documents or records related to maternal death available for discovery or use in a civil or criminal proceeding.

In the Senate Committee on Public Health and Welfare hearing, an obstetrician gynecologist and representatives of ACOG and the March for Moms provided proponent testimony. Written-only proponent testimony was provided by representatives of ACOG, Kansas Affiliate of the American College of Nurse-Midwives, KDHE, Kansas Medical Society, March of Dimes, and Wyandotte County Fetal and Infant Mortality Review Board. No other testimony was provided.

The Senate Committee inserted the contents of HB 2573, as amended by the House Committee, into Senate Sub. for HB 2600.

According to the fiscal note prepared by the Division of the Budget on HB 2573, as introduced, KDHE states, if the bill is enacted, existing federal maternal and child health funding would be allocated for the initiative. KDHE notes program staff within KDHE would provide support for logistics related to planning and executing meetings and disseminating reports within existing budget resources.