

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE  
BILL NO. 273**

As Recommended by Senate Committee on  
Judiciary

**Brief\***

Sub. for SB 273 would create and amend law related to public health disaster emergencies, as follows.

***Public Health Disaster Emergencies (New Section 1)***

The bill would create a new section in the Kansas Emergency Act (KEMA) related to public health disasters.

The bill would state the Governor would be responsible for meeting the dangers to the state and people presented by public health disasters, and that the governor's primary responsibilities during a public health disaster would be to provide guidance to the public and to industry, direct state emergency operations, and to seek and distribute funding and assistance to those responding to the disaster.

The Governor, upon finding that a public health disaster has occurred or that occurrence or the threat thereof is imminent, could issue a proclamation declaring a state of public health disaster emergency (SPHD emergency).

The SPHD emergency declaration would continue until the Governor finds that the threat or danger of a public health disaster has passed or the public health disaster has been dealt with to the extent that emergency conditions no longer exist. Upon making such findings, the Governor would be

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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>

required to terminate the SPHD emergency by proclamation, and, except as provided below, no SPHD emergency could continue for longer than 15 days unless ratified by concurrent resolution of the Legislature.

When the Legislature is not in session or is adjourned during session for three or more days, and upon specific application by the Governor to the Joint Committee on Emergency Management (JCEM) established by section 2 of the bill, a SPHD emergency could be extended for specified periods not to exceed 30 days each, by an affirmative vote of a majority of the JCEM.

At any time, the Legislature, by concurrent resolution, could require the Governor to terminate a SPHD emergency. Upon such action by the Legislature, the Governor would be required to issue a proclamation terminating the SPHD emergency.

The Governor could not issue a proclamation declaring a SPHD emergency for the same or similar public health disaster if:

- The Legislature did not ratify and continue the original SPHD emergency declaration;
- The JCEM did not continue or extend the original SPHD emergency declaration; or
- The Legislature by concurrent resolution required the Governor to terminate the original SPHD emergency declaration.

The bill would state a public health disaster is considered the same or similar if such disaster is based on the same or similar infectious or contagious disease or outbreak named in the original SPHD emergency declaration. A public health disaster would not be the same or similar if such disaster is based on a:

- New or more virulent strain of the disease named in the original SPHD emergency declaration;
- Subsequent outbreak of the disease named in the original SPHD emergency declaration; or
- New mode or means of transmission of such disease not identified in the original SPHD emergency declaration.

*Nature of Disaster; Dissemination of Proclamation*

The bill would require any proclamation declaring or terminating a SPHD emergency issued under this section to indicate the nature of the public health disaster, the area or areas of the state threatened or affected by the disaster, and the conditions that have brought about, or that make possible the termination of, the SPHD emergency. When indicating the nature of the public health disaster, the proclamation must include, but is not limited to, the name of the disease and any known means of transmission for such disease. Each such proclamation must be disseminated promptly in a manner that brings its contents to the attention of the general public and, unless circumstances related to the disaster prevent it, each such proclamation would have to be filed promptly with the Division of Emergency Management, the Office of the Secretary of State, the Chief Justice of the Supreme Court, and each city clerk, county clerk, and school board in the area or areas of the state to which such proclamation applies.

*Succession in the Event of Governor's Absence from the State or Disability; Effect on Disaster Response Plans*

Order of succession of authority in the event of the absence or constitutional disability of the Governor and activation of state, local, and interjurisdictional response plans would be provided in the same manner as in other disasters covered by KEMA.

### *Executive Orders*

During a period of SPHD emergency declared under this section, in addition to any other power conferred to the Governor by law, the Governor could issue executive orders to:

- Modify the provisions of any order, policy or rule and regulation of any state agency prescribing the procedures for conduct of state business if strict compliance with the provisions of such order or rule and regulation would prevent or delay the necessary action in coping with the disaster;
- Utilize all available resources of the state government and of each political subdivision as reasonably necessary to cope with the disaster;
- Transfer the supervision, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities;
- Subject to any applicable requirements for compensation, commandeer or utilize any private property if the Governor finds such action necessary to cope with the disaster; and
- Facilitate the cooperation and assistance of state and local governmental agencies and officials.

Each executive order issued would be required to specify which provision listed above confers the power for the executive order, or for executive orders issued pursuant to other legal authority, to specify the source of such authority.

Further, each executive order issued that modifies the provisions of any order, policy or rule and regulation would be required to specify the order, policy or rule and regulation being modified, consistent with the statutory section or

sections implemented or interpreted by such order, policy or rule and regulation, as well as the authority pursuant to which such order, policy or rule and regulation was adopted.

If an executive order affects more than one county, such order would have to be narrowly tailored to conditions in individual counties or provide specific reasons such order is not narrowly tailored to such conditions.

The Adjutant General would administer executive orders at the direction of the Governor.

*Review of Executive Orders—Attorney General and Joint Committee on Emergency Management*

Prior to issuing an executive order under this section, the Governor would be required to submit the proposed executive order to the Attorney General (AG) for review. The AG would be required to consider whether the proposed executive order is consistent with all statutory and constitutional restrictions, meets the requirements of this section, identifies a specific and valid source of legal authority for the proposed actions and, if such order affects more than one county, whether such order is narrowly tailored to conditions in individual counties or provides specific reasons such order is not narrowly tailored to such conditions. The AG would be required to provide an opinion to the Governor within 24 hours of receipt of the proposed executive order. The opinion would be published on the AG's website and be a required attachment to the proposed executive order.

Concurrent with the submission to the AG, the Governor would be required to submit the proposed executive order to the chairperson and vice-chairperson of the JCEM, established by section 2 of the bill. Not less than 24 hours after receipt of the proposed executive order, or at any time after the AG provides an opinion if the AG completes review if less than 24 hours, the chairperson of the JCEM would be required to call a meeting to review such order. The Governor

could only issue the proposed executive order if approved by an affirmative vote of a majority of the JCEM; the proposed order would not be issued and would be null and void if such order fails to receive an affirmative vote of a majority of the JCEM.

Additionally, executive orders issued under this section would be null and void after the period of a SPHD emergency declared under this section has ended and could be revoked at any time by concurrent resolution of the Legislature.

### *Local Orders*

When the Governor issues an executive order affecting more than one county, the Board of County Commissioners of any county could issue an order relating to public health that includes provisions that are less stringent than the provisions of the Governor's executive order, which would operate in lieu of the Governor's executive order. Any Board of County Commissioners issuing such an order would be required to make the following findings and include such findings in the order:

- The Board has consulted with the local health officer or other local health officials regarding the Governor's executive order;
- Following such consultation, the Board has determined implementation of the full scope of the provisions in the Governor's executive order is not necessary to protect the public health and safety of the county; and
- All other relevant findings to support the Board's decision.

***Joint Committee on Emergency Management (New Section 2)***

The bill would establish a Joint Committee on Emergency Management (JCEM) consisting of five members of the Senate and five members of the House of Representatives. Such members shall be as follows:

- The President of the Senate;
- The Vice President of the Senate;
- The Majority Leader of the Senate;
- The Minority Leader of the Senate;
- One member of the Senate appointed by the President of the Senate;
- The Speaker of the House of Representatives;
- The Speaker *pro tem* of the House of Representatives;
- The Majority Leader of the House of Representatives;
- The Minority Leader of the House of Representatives; and
- One member of the House of Representatives appointed by the Speaker of the House of Representatives.

The bill would further require each congressional district of Kansas be represented by at least one member who is a resident of the district, to the greatest extent possible.

Chairpersons and vice-chairpersons of the JCEM would be designated by the President of the Senate and the Speaker of the House of Representatives. Leadership roles

would alternate on a yearly basis, as follows: in odd numbered years, the chairperson would be a Senate member and vice-chairperson would be a House member, and in even numbered years, the chairperson would be a House member and vice-chairperson would be a Senate member. The vice-chairperson would exercise all of the powers of the chairperson in the absence of the chairperson.

The JCEM could meet at any time on call of the chairperson, and members would receive compensation, travel expenses, and subsistence expenses or allowances when attending meetings. Meetings could be conducted by electronic audio-visual communication when the chairperson determines it is necessary. A quorum of the JCEM would be six members, with all actions required to be taken by a majority of the members. The JCEM could introduce such legislation as it deems necessary in performing its functions, and staff from the Office of Revisor of Statutes, the Legislative Research Department, the Division of Post Audit, and the Division of Legislative Administrative Services would provide assistance as requested by the JCEM.

In addition to other powers prescribed by law or the Legislative Coordinating Council, the JCEM would have the authority to perform an inquiry, study, or investigation for the Legislature pursuant to a statute regarding the authority of legislative committees' power to investigate by compulsory process, and to require reports and testimony from the Governor or the Governor's designee, the Director of the Budget, the Adjutant General, the State Board of Education, the Secretary of Health and Environment, and any other state or local official with information relevant to emergency management or the powers and duties of the JCEM.

***Authority of Cities and City Health Officers During Public Health Emergency (New Section 3)***

The bill would state the governing body of a city could use only accepted scientific means as justification to issue an

order to prevent the spread of an infectious, contagious or communicable disease. “Accepted scientific” would be defined by the bill to mean methods of control employed and intended to remediate infectious, contagious, or communicable disease that are acknowledged as effective by high-quality scientific data that includes systematic reviews of completed, high-quality, randomized controlled trials. [Note: The term “accepted scientific” is used in other sections of this bill, and would have the same meaning throughout.] Any such order, including orders issued as a result of an executive order of the Governor, on behalf of a city regarding the remediation of any such disease must include justification of the accepted scientific means used for such remediation.

The governing body of a city could 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, 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
- Burdens or inhibits the operation of any religious gathering or activity.

The governing body could issue non-binding guidance and information for the conduct of gatherings or activities described above. Any person aggrieved by an order issued could request a hearing in a district court in accordance with section 4 of the bill.

The bill would require any recommendation issued by a city health officer appointed by the governing body of a city, including recommendations issued as a result of an executive order of the Governor, be reviewed by the governing body of the city affected by such recommendation at a meeting of the

governing body. If an order is subsequently issued by the governing body, such order must include an expiration date set by the governing body and may be amended or revoked at an earlier date by a majority vote of the governing body.

Any meeting of city government discussing such order, including any hearing by the governing body of a city under would be required to be open to the public and could be conducted by electronic audio-visual communication when necessary to secure the health and safety of the public and city government officials and employees.

Upon request by a person aggrieved by an order issued by the governing body of a city, the governing body of the city would be required to conduct a hearing within 72 hours after receipt of such request for the purposes of reviewing, amending or revoking such order. Any person aggrieved by a decision of the governing body of a city could request a hearing in a district court in accordance with section 4 of the bill.

The bill would specify any order issued under this section must be provided to the Secretary of Health and Environment, and that nothing in this section could be construed to require the governing body of a city to appoint a city health officer or to change the powers, duties, and functions of any such city health officer, except as provided by this section.

***Grievance Process for Orders Issued by Governmental Entities; Request for Hearings (New Section 4)***

*Venue*

The bill would provide a person aggrieved by an order issued, action taken, or policy issued by various governmental entities under provisions in the bill could request a hearing in the following venues:

- For an order issued by the governing body of a city, in the district court of the county where such city is located or in which the person resides;
- For an order issued by a Board of County Commissioners, in the district court of the county where the order was issued or in which the person resides;
- For an action taken or an order issued by the Secretary of Health and Environment, in the district court of the county in which the person resides or in the district court of Shawnee County; and
- For an action taken, an order issued, or a policy adopted by the local school board or governing body of a community college or technical college, in the district court of the county where such school district or college is located or in which the person resides.

A request for hearing under this section would be made through an action under the Kansas Code of Civil Procedure, and such request would not stay or enjoin the contested action, order, or policy.

### *Hearings*

Upon receipt of a request for a hearing under this section, the district court would be required to schedule a hearing and give notice of such hearing to the aggrieved party within 72 hours after receipt of the request, and the hearing would be required to occur within 10 days. The district court could not extend the time for a hearing under any circumstances. The Chief Justice of the Kansas Supreme Court could 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 it is necessary.

### *Relief*

The bill would require the district court to 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. In making such findings, the court must consider whether the contested action, order, or policy of the governmental entity considered the means of transmission of the disease, the communicability of the disease and, to the extent possible, the degree of public exposure to the disease. Relief under this section could not include any compensation of any kind.

### ***Local School Board Actions During Public Health Disaster Emergencies (New Section 5)***

The bill would create a section of law providing that in the the event of a SPHD emergency declared by the Governor, only the local school board would have the authority to take any action, issue any order, or adopt any policy that affects the operation of any school or attendance center of the school district, including, but not limited to, any action, order, or policy that:

- Closes or has the effect of closing any school or attendance center of such school district;
- Authorizes or requires any form of attendance other than full-time, in-person attendance at a school in the school district, including, but not limited to, hybrid or remote learning; or
- Mandates any action by any students or employees of a school district while on school district property.

During any such SPHD emergency, the State Board of Education (SBE), the Governor, the Department of Health and Environment, a local health officer, a city health officer, or any other state or local unit of government may provide guidance, consultation or other assistance to the school board but shall not take any action that affects the operation of any school or attendance center of the school district.

Prior to taking any action, issuing any order, or adopting any policy in response to a SPHD emergency, a school board would be required to receive and consider any relevant accepted scientific or health data and make evidence-informed decisions. The board would be required to document the scientific justification it relied upon in determining whether to take such action, and to include in the minutes or other documentation of the action, such data, evidence, means, or justification for such action taken to prevent the introduction or spread of infectious or contagious disease.

Any meeting or hearing of a school board discussing an action taken, order issued, or policy adopted would be open to the public and could be conducted by electronic audio-visual communication when necessary to secure the health and safety of the public, the board, and employees.

*Grievance Process for Actions Taken by School Boards;  
Request for Hearing*

The bill would provide that an employee, a student, or the parent or guardian of a student aggrieved by an action taken by a school district under the above provisions or by an action of any employee of a school district violating any such action, could request a hearing by such board to contest the action, and such request would not stay or enjoin the action, order or policy.

Upon receipt of a request for a hearing, the school board would be required to conduct a hearing within 72 hours

of receiving such request for the purposes of reviewing, amending or revoking such action, order, or policy. The board could extend the time for a hearing if extraordinary circumstances exist that justify the extension. In making an extension, the board would be required to consider the rights of the aggrieved party, the protection of the public health, the severity of the emergency, and the availability, if necessary, of any witnesses and evidence. If, after the hearing, the employee, student, or parent or guardian of a student is aggrieved by the board's decision, such person could request a hearing in district court pursuant to section 4 of the bill.

*Mitigation Reports—State Board of Education*

In any school year in which there is a SPHD emergency declared by the Governor, each local school board would be required to provide to the SBE information regarding any action taken, orders issued, or policies adopted to mitigate such emergency and its impact on the operation of any school of the school district, in a manner determined by the SBE, each time such action is taken. The bill would require the SBE to compile this information at least once every two weeks during the school year, and to publish a year-to-date compilation on SBE's website.

***Community College and Technical College Closure (New Section 6)***

The bill would create a section of law, in substantially similar form to Section 5, governing actions taken by the governing body of a community college or technical college during a public health disaster emergency, with the following adjustments:

- Some of the entities and officials who could offer guidance, consultation, or other assistance would be changed;

- Parents would not be included in those who could request a hearing; and
- With respect to mitigation reports described in the previous section, such reports under this section would be required to be provided to the Senate and House Committees on Education and would require each college publish a year-to-date compilation of information required by the bill at least once a month.

### ***Oversight of Federal Funds (New Section 7)***

The bill would create a new section of law requiring authorization by the JCEM for expenditures of or obligations incurred against federal funds received by the State for a state of disaster emergency declared under KEMA not previously appropriated by the Legislature. Such requests could be approved by a majority of JCEM members, which would be characterized as a legislative delegation, but expenditures could also be approved while the Legislature is in session. Upon receipt of JCEM approval, the requesting state agency would be authorized to expend all approved moneys lawfully credited and available in such fund or funds during the fiscal year or years so approved.

### ***Amendments to the Kansas Emergency Management Act (Sections 8-12)***

#### ***Definitions (Section 8)***

The bill would amend the definition of “disaster” to remove the reference to epidemics, clarify contagious or infectious disease under this definition is one that is foodborne, and does not include a public health disaster. In addition, the bill would add a definition of “public health disaster” to mean the occurrence or imminent threat of widespread or severe injury or loss of life resulting from any

infectious or contagious disease that is human-to-human transmissible, including a disease that is transmissible through a medium or originates in a non-human source and becomes human-to-human transmissible, but not including foodborne illness.

*Limitations on Effect of Act (Section 9)*

The bill would add references to SPHD emergencies throughout the statute, remove a reference to the Governor's exercise of certain other powers, and would state, notwithstanding any provision of law to the contrary, the Governor would not have the power or authority to temporarily or permanently:

- Alter or modify the Kansas Criminal Code or the Kansas Code of Criminal Procedure;
- Take any action that imposes limitations on gatherings or other activities of a religious nature;
- Limit or otherwise restrict the sale, purchase, transfer, ownership, storage, carrying or transporting of firearms or ammunition, or any component or combination thereof, including any components or combination thereof 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;
- 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;
- 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

- During a SPHD emergency declared under section 1:
  - 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;
  - Deem any business or commercial activity non-essential;
  - 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
  - Restrict the ability of a facility licensed under Chapter 65 of the *Kansas Statutes Annotated* to provide health care services. Any restrictions would be determined solely by the health care facility or health care provider.

The bill would require the Governor perform and exercise all functions, powers and duties in conformity with the *Kansas Constitution* and *Bill of Rights*.

*Responsibilities of Governor During State of Disaster Emergencies (Section 10)*

The bill would replace references to the State Finance Council with references to the JCEM in provisions governing continuation, extension, and termination of state of disaster emergencies, and would make amendments to reflect and utilize the procedures created by the bill in the new sections. This section would also remove outdated provisions that extended the COVID-19 emergency until September 15, 2020, and allowed for extension by the State Finance Council until March 31, 2021.

*Powers of Governor During State of Disaster Emergency  
(Section 11)*

The bill would amend this section to replace the Governor's power to suspend the provisions of any regulatory statutes, orders, rules or regulations with the power to modify any state agency's order, policy, or rule and regulation if strict compliance would prevent or delay necessary action, and remove a reference to such suspension later in the section. [Note: Under current law, such suspension could take place if strict compliance would prevent, hinder, or delay necessary action]. The bill also would move other limitations found in this section regarding the seizure of ammunition and firearms and altering of election laws to the section governing limitations of the effect of act. An expired provision regarding the Governor's power to restrict business operations or the movement of individuals would also be removed.

This section also would be amended to replace references to orders with executive orders, and would require that such executive orders specify its source of legal authority. The bill would remove a provision stating the Governor's orders would have the force and effect of law. The bill would state each executive order that modifies the provisions of any order, policy or rule and regulation must specify the order, policy, rule and regulation being modified. In addition, the bill would state if executive order affects more than one county, such order must be narrowly tailored to conditions in individual counties or provide specific reasons such order is not narrowly tailored to such conditions. Finally, the bill would remove provisions regarding orders issued by Board of County Commissioners in this section.

*Use of Property and Compensation During State of Disaster  
Emergencies (Section 12)*

The bill would add a declared state of public health emergency to those types of emergencies during which a person may be required to use or restrict the use of such

person's property and add that nothing in the section authorizes compensation for intangible losses.

*Violations (Section 13)*

The bill would amend this section to state except as provided elsewhere in the section, a person who intentionally violates any provision, rule and regulation adopted by the Adjutant General, or lawful executive order or proclamation issued under KEMA, pursuant to a state of disaster emergency or local state of disaster emergency, would be guilty of a class A nonperson misdemeanor.

The bill would be amended to apply continuing civil penalties only to violations during SPHD emergencies. The bill would specify nothing in this section would prohibit an action from being brought in each county in which a violation took place even if each action arises out of the same occurrence.

*Conforming and Technical Amendments*

The bill would make conforming and technical amendments throughout these sections of KEMA to ensure consistency in statutory phrasing.

***Kansas Intrastate Emergency Mutual Aid Act (Section 14)***

The bill would amend the definition of "emergency responder" in the Kansas Intrastate Emergency Mutual Aid Act to include 911 dispatch centers.

### ***Amendments to Public Health Statutes (Sections 15-19)***

#### ***General Supervision of Health by the Secretary of Health and Environment; Justification for Orders; Public Health Order Registry (Section 15)***

The bill would amend a statute governing the Secretary of Health and Environment's (Secretary) authority to issue an order to take action to prevent the introduction and spread of infectious or contagious disease within the state to require the Secretary include in such order:

- The justification of the accepted scientific means and reasons used for the action to prevent such introduction or spread of infectious or contagious disease; and
- If such an order affects more than one county, a justification of how the order is narrowly tailored to conditions in individual counties or specific reasons the order is not narrowly tailored to such conditions.

For any order issued to take such action affecting more than one county, the Secretary would be required to submit such proposed order to the AG and JCEM as provided by section 1 of the bill. The Secretary could not issue an order to take 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, unless the 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
- Burdens or inhibits the operation of any religious gathering or activity.

The Secretary could issue non-binding guidance and information for the conduct of gatherings or activities described above.

The bill would provide that any person aggrieved by an order issued to take such action could request a hearing in district court as provided by section 4 of the bill.

Further, the Legislature could require the Secretary to terminate any order issued to take action by concurrent resolution at any time. Finally, the Secretary would be required to maintain a public registry on the Kansas Department of Health and Environment's website of all orders issued by the governing body of a city or county, with updated information compiled at least once every two weeks.

*Authority of Local Health Board and Officers (Section 16)*

The bill would amend a statute governing the general supervision power of local boards of health to specify no board or local health officer could prohibit any school district, attendance center, nonpublic school, community college, or technical college from operating. This section also would be amended to remove the power of local health officers to prohibit public gatherings when necessary to control infectious or contagious disease.

*Quarantine of City, Township, or County (Section 17)*

The bill would amend a statute granting the Secretary authority to quarantine any area to prevent the spread of disease to specify such authority to quarantine would not apply to any school district, attendance center, nonpublic school, community college or technical college within such area during a SPHD emergency. This statute also would be amended to reflect changes in local health officers' authority elsewhere in the bill.

*Local Boards of Health Orders; Grievance Process; Request for Hearing*

The bill would amend this section to replace local health officers' power to issue orders with the power to issue recommendations, and would require any such recommendations be reviewed by the board of county commissioners. [Note: Under current law, local health boards have discretion to review, amend or revoke such orders]. Any meeting of county government discussing such order, including any hearing by a board of county commissioners under paragraph (2), would be open to the public and could be conducted by electronic audio-visual communication when necessary to secure the health and safety of the public and county government officials and employees. Upon request by a person aggrieved by an order issued by the Board of County Commissioners, the board would be required to conduct a hearing within 72 hours after receipt of such request for the purposes of reviewing, amending, or revoking such order. If a person is aggrieved by the board's decision, such person could request a hearing in district court as provided by section 4 of the bill.

A Board of County Commissioners could 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, unless the order includes justification of the accepted scientific reasons for such order and how such order accomplishes remediation of such infectious or contagious disease;
- Burdens or inhibits the operation of any religious gathering or activity; or
- Has the effect of limiting travel between counties, except that the authority to issue an order requiring

an individual or group of individuals to go to and remain in places of isolation or quarantine would not be limited.

A local health officer could issue non-binding guidance and information for the conduct of gatherings or activities described above. Any order issued must be provided to the Secretary.

*Powers and Duties of Local Health Officers (Section 19)*

The bill would amend the section of law governing the powers and duties of local health officers to replace the power of such officers to issue orders with the power to issue recommendations, replace a reference to “all known measures” with “only accepted scientific means,” and repeat, in substantially similar form as the previous section, provisions regarding the limits on recommendations or guidance issued by such officers.

***Severability Clause (New Section 20)***

The bill would state the provisions of this act are severable, and that if any portion of the act or application to any person or circumstance is held unconstitutional or invalid, the invalidity would not affect other portions of the act that can be given effect without the invalid portion or application, and the applicability of such other portions of the act to any person or circumstance would remain valid and enforceable.

***Repeal of Additional Statutes***

The bill would repeal a version of the KEMA statute regarding the powers of the Governor during a state of disaster emergency that would go into effect on March 31, 2021, and a KEMA section prohibiting closure of schools without the approval of the State Board of Education.

### ***Effective Date***

The bill would be in effect upon publication in the *Kansas Register*.

### **Background**

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Petersen.

### ***Senate Committee on Judiciary***

In the Senate Committee hearing on February 24, 2021, a representative of the Kansas Association of Counties provided neutral testimony on the bill, stating concerns related to the reduction of authority of local health officers to respond to public health emergencies within a school district. No other testimony was provided.

In the Senate Committee hearing on February 25, 2021, representatives of the Kansas Association of Community College Trustees and the Kansas Chamber, an attorney, and Senator Steffen testified as **proponents** of the bill, each offering recommendations to improve the bill. Written-only **proponent** testimony was provided by the Attorney General and a representative of the Kansas Policy Institute & Kansas Justice Institute. Neutral testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association, requesting amendments regarding penalties for KEMA violations. Written-only neutral testimony was provided by representatives of the Kansas Association of Local Health Departments and the Kansas Association of School Boards. The Secretary of Health and Environment and a representative of the Governor's Office testified as **opponents** of the bill, expressing concerns about the comprehensive changes to law proposed by the bill without sufficient time for review and its potential effect on the current

state of disaster emergency related to the COVID-19 pandemic.

On February 25, 2021, the Senate Committee adopted amendments to:

- Replace the power of local and city health officers to issue orders with the power to make recommendations;
- Allow meetings of the JCEM to be conducted by electronic audio-visual communication;
- Grant the JCEM oversight authority regarding expenditures of federal funds related to state disaster declarations, to allow staff of the Division of Legislative Post Audit to assist the JCEM, and to require reports and testimony from the Director of the Budget, as requested by the JCEM;
- Clarify the district court's responsibilities regarding hearings under Section 4 of the bill;
- Clarify that requests for hearings under Section 4 of the bill shall be made through an action brought under Chapter 60 of the *Kansas Statutes Annotated*;
- Make a violation of any provision, rule or regulation, or executive order issued pursuant to KEMA a class A nonperson misdemeanor;
- Add a definition of "accepted scientific";
- Grant investigative power to the JCEM;
- Add references to attendance centers and clarifying provisions affecting schools do not include nonpublic schools;

- Apply provisions of the bill regarding closure and grievances to governing bodies of community colleges and technical colleges;
- Broaden the limitation on the Governor's power to seize or restrict use and sale of ammunition and firearms;
- Add a limitation to the Governor's power regarding a health care facility's ability to provide services;
- Clarify timing in the provision governing JCEM and AG review of executive orders;
- Clarify orders issued under public health statutes amended by the bill must be "narrowly tailored"; and
- Clarify a limitation on the Governor's powers related to business closure and mandatory immunizations.

The Senate Committee recommended a substitute bill reflecting these amendments.

### **Fiscal Information**

No fiscal note was available when the Senate Committee took action on the substitute bill.

Kansas Emergency Management Act; public health disaster; duties of Secretary of Health and Environment; local health officers; city health officers; local school boards; state of disaster declaration; executive orders