

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2390**

As Recommended by Senate Committee on
Public Health and Welfare

Brief*

Senate Sub. for HB 2390 would require the Secretary of Health and Environment (Secretary) to study overdose deaths and maintain confidentiality of the records used by the Secretary in the study. The bill would restrict the duties and authority of the Secretary and local health officers regarding infectious and contagious diseases.

The bill would amend statutes relating to tuberculosis, remove the reporting requirement for teachers and school administrators regarding knowledge or suspicion of an infectious or contagious disease, remove the requirement for enforcement of isolation and quarantine orders by law enforcement officers, provide employment protection for employees who isolate or quarantine, and address orders for school closure during a disaster.

Study of Overdose Deaths and Confidentiality of Records

Definitions

The bill would define these terms:

- “Data” would mean all facts, information, records of interviews, written reports, statements, notes, or

*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>

memorandums secured in connection with an authorized medical research study;

- “Overdose” would mean injury to the body that happens when one or more drugs are taken in excessive amounts. “Overdose” would include fatal and nonfatal injuries; and
- “Secretary” would mean the Secretary of Health and Environment.

Duties of the Secretary of Health and Environment

Under the bill, the Secretary would be required to:

- Identify drug overdose deaths;
- Review autopsy reports, death certificates, medical records, and other relevant data;
- Review interactions with the health care system, behavioral health system, social services, educational institutions, children and family services, the criminal justice system, and any other system with which the decedent had contact prior to a drug overdose death;
- Contact family members and other affected or involved persons to collect additional relevant data;
- Make determinations regarding the preventability of drug overdose death cases and develop recommendations to prevent such deaths, including recommendations for changes to statutes, rules and regulations, policies, and procedures; and
- Disseminate findings and recommendations to the Governor, the Legislature, health care providers

and facilities, behavioral health professionals, law enforcement, and the general public.

Access to Information

The bill would give the Secretary access to identifiable data sources and records:

- Law enforcement reports directly related to events leading up to a drug overdose death and information leading to the conclusion that the death may have been a drug overdose death;
 - The law enforcement agency would be permitted to redact names and other personally identifiable information or exclude information that would reveal an ongoing investigation of drug violations or any criminal history information prohibited by law to be released;
- Autopsy records and coroner's investigative records regarding a drug overdose death in Kansas;
- Medical records or emergency medical services records regarding an overdose death or prior overdose by a decedent;
- A decedent's controlled substance dispensation records from the prescription monitoring program (K-TRACS) established by the Prescription Monitoring Program Act; and
- Records, data, and reports from other any other applicable entity that has provided services to the decedent.

Subpoena Power and Confidentiality of Subpoenaed Records

The bill would permit the Secretary to apply to the district court, and the district court may issue, a subpoena to compel the production of any relevant data or information requested by the Secretary. Data or information received by the Secretary as a result of a subpoena would be confidential and privileged and not subject to disclosure.

The bill would state the provisions providing for confidentiality of subpoenaed records would expire on July 1, 2028, unless the Legislature acts to continue the provisions, pursuant to exceptions to disclosure under the Kansas Open Records Act (KORA), prior to July 1, 2028.

Confidentiality of Records Obtained through Proceedings and Activities of the Secretary

With regard to the study of overdose deaths, the following would be confidential and not subject to KORA, the Kansas Open Meetings Act, subpoena, discovery, or introduction into evidence in a civil or criminal proceeding:

- All proceedings and activities of the Secretary or representatives and any opinions formed by these individuals as a result of such proceedings and activities; 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 the Kansas Department of Health and Environment (KDHE).

The bill would not limit or otherwise restrict the right to discover or use in any civil or criminal proceeding any document or record that is available and entirely independent of proceedings and activities of the Secretary or representatives of the Secretary.

The Secretary or representatives of the Secretary would not be permitted to be questioned in any civil or criminal proceeding regarding the information presented or opinions formed as a result of an investigation. The bill would not prevent the Secretary or representatives of the Secretary from testifying to information obtained independent of the proceedings and activities or through subpoenas or that is public information.

The bill would state the provisions providing for confidentiality of records pertaining to proceedings or activities of the Secretary or representatives of the Secretary would expire on July 1, 2028, unless the Legislature acts to renew such provisions. The Legislature would be required to review these provisions pursuant to exceptions to disclosure under KORA, prior to July 1, 2028.

Restrictions on the Authority of the Secretary and Local Health Officers

General Authority of the Secretary of Health and Environment

The bill would amend the statute establishing the general powers and functions of the Secretary to specifically state that the Secretary is prohibited from carrying out such powers and functions if those powers conflict with any other statute or expand their authority.

Statutory Provisions Related to Tuberculosis

The bill would amend the statutes related to infectious and contagious diseases to make it unlawful for any person to violate any provisions relating to tuberculosis, or any associated rules or regulations made by the Secretary. Any such violation would be a class C nonperson misdemeanor. The bill would clarify the statutes included in this provision.

Teacher and School Administrator Reporting

The bill would remove the requirement for a teacher or school administrator to report to local health officials a person who has or is suspected of having an infectious or contagious disease.

Authority of the County, Joint Board of Health, or Local Health Officer

The bill would remove the authority of the county or joint board of health or local health officer to prohibit public gatherings when necessary for the control of infectious or contagious disease.

Authority of Secretary and Local Health Officer Regarding Infectious or Contagious Diseases

The bill would remove the authority of the Secretary to designate infectious or contagious diseases. The Secretary would be required to submit a report of infectious or contagious diseases to the Speaker of the House of Representatives and the President of the Senate.

The bill would authorize the Secretary to recommend to the public and educate them in ways to prevent the spread of diseases. The bill would remove the authority of the Secretary to provide for the testing for infectious or contagious diseases and the isolation and quarantine of persons afflicted with such diseases and to issue medically necessary orders and rules and regulations to prevent the spread of disease to the public.

The bill would authorize the Secretary to make recommendations for preventing the spread and introduction and spread of infectious or contagious diseases. The bill would remove the Secretary's authority to develop and adopt rules and regulations for the protection of individuals who provide medical and nursing services, clinical or forensic laboratory services, emergency medical services, firefighting,

law enforcement and correctional services, or other services or persons who receive the services provided or are employed in other services where the individual or person may encounter occupational exposure to blood or other infectious material.

The bill would remove the authority of either the local health officer or Secretary to issue an order to an individual who may have been exposed to an infectious or contagious disease to seek evaluation and treatment. It would authorize the local health officer to recommend the individual seek appropriate and necessary evaluation and treatment.

The bill would remove the authority of either the local health officer or Secretary to issue an order to a person or group of people who may have been exposed to an infectious or contagious disease to go into and remain in isolation or quarantine. It would authorize the local health officer to recommend the person or group of people to go into isolation or quarantine.

The bill would remove the authority of either the local health officer or Secretary to issue an order to an individual who may have been exposed to an infectious or contagious disease and has refused medical examination, treatment, or testing to go to isolation or quarantine. It would authorize the local health officer to recommend the individual to go into isolation or quarantine. The bill would remove refusal to be vaccinated as a reason to recommend isolation or quarantine.

The bill would remove the authority of either the local health officer or Secretary to issue an order on behalf of a minor child or a ward, who may have been exposed to an infectious or contagious disease and whose parent or guardian has refused medical examination, treatment, or testing for such child or ward to go to isolation or quarantine. It would authorize the local health officer to recommend that the minor child or ward go into isolation or quarantine. The bill would remove refusal to be vaccinated as a reason to recommend isolation or quarantine.

Enforcement by Law Enforcement Officers

The bill would remove the requirement that any sheriff, deputy sheriff, or other law enforcement officer assist in the execution or enforcement of any orders regarding compliance with the orders of the local health officer or Secretary pertaining to infectious or contagious diseases.

Employment Protections

The bill would prohibit public or private employers from discharging an employee who was solely for following an isolation or quarantine recommendation from a local health officer. If an employer was found in violation of such prohibition in an action against the employer, the prevailing plaintiff would be awarded actual damages the person sustained, costs, and reasonable attorney fees.

Local Health Officer Authority

The bill would amend the authority of a local health officer regarding investigations of cases of infectious, contagious, or communicable diseases to require the use of medically necessary and reasonable measures. The bill would also remove the requirement that a local health officer perform other duties that may be required by the Secretary. The bill would also remove language pertaining to orders issued by a local health officer regarding the remediation of any infectious disease.

Orders for School Closure

The bill would amend the provisions regarding school closure to remove an order issued by the Secretary as a basis for a “disaster.”

Background

HB 2390 was introduced by the House Committee on Health and Human Services at the request of Representative Clifford on behalf of the KDHE. The substitute bill created by the Senate Committee on Public Health and Welfare removes and modifies portions of HB 2390 and also contains the language of SB 6, as recommended by the Senate Committee on Public Health and Welfare, which was introduced by Senator Steffen.

[*Note:* As introduced, HB 2390 would have created the Kansas Overdose Fatality Review Board Act and established the Kansas Overdose Fatality Review Board. The bill also would have amended law regarding materials used to test for presence of certain substances.]

HB 2390 (Overdose Deaths Study)

House Committee on Health and Human Services

In the House Committee hearing, **proponent** testimony was provided by the State Health Officer; representatives of the Association of Community Mental Health Centers of Kansas; BrightHouse, Inc., Kansas Hospital Association; Kansas Recovery Network, Safe Streets Wichita, and Wyandotte County Public Health Department; and four private citizens. Proponents generally stated the Board and legalization of drug testing materials would help reduce the number of drug overdose deaths in the state, which have been increasing.

Written-only proponent testimony was provided by Representative Probst; representatives of DCCCA, Johnson County Mental Health Center, Kansas Academy of Family Physicians, Kansas Association of Local Health Departments, Mental Health and Substance Abuse Coalition, Mirror, Inc.,

Pawnee County Health Department, and Saline County Health Department; and four private citizens.

No other testimony was provided.

The House Committee amended the bill to:

- Add to the Kansas Overdose Fatality Review Board (Board) a member from the Board of Nursing;
- Add to the Board a member appointed by the Secretary from a list of up to three nominees submitted by the Kansas Hospital Association;
- Specify that the findings and recommendations of the Board should be submitted to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare or any successor committees annually, by the first day of Legislative Session in January;
- Specify that any person who knowingly discloses any information or record made or kept confidential pursuant to the Act would be guilty of a class A nonperson misdemeanor.

House Committee of the Whole

The House Committee of the Whole amended the bill to include materials used to test for flunitrazepam, also known as Rohypnol, to the list of materials that would be excluded from the definition of “drug paraphernalia.”

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on March 9, 2023, **proponent** testimony was provided by Representative Clifford, representatives of the Association of Community

Mental Health Centers of Kansas; Centrus Health, LLC; Kansas Department for Aging and Disability Services; KDHE; Reno County Health Department; and Unified Government of Wyandotte County Public Health Department who generally stated the bill would create an oversight board that would have a data-driven approach and, by permitting various drug strips, would implement a harm reduction strategy for those who may come into contact with various drugs by choice, by circumstance, or by unrequested actions by others.

Written-only proponent testimony was provided by representatives of BrightHouse, DCCA, Kansas Association of Local Health Departments, Kansas Academy of Family Physicians, Kansas Hospital Association, Kansas National Education Association, Sedgwick County Health Department, and the Wichita Police Department, and a pharmacist, a physician, and two private citizens.

Opponent testimony was provided by a private citizen who generally objected to the creation of the Board.

The Senate Committee recommended a substitute bill incorporating the following amendments to:

- Remove definitions for “department”, “drug”, “institutional review board”, “overdose fatality review”, “substance use disorder”, and “substance use disorder treatment provider”;
- Remove the provisions that would have established the Board and duties of the Board;
- Remove the requirement to disseminate findings an recommendations of the Secretary to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare or successor committees, Kansas Prescription Drug and Opioid Advisory Committee, local policymakers, or other stakeholders;

- Permit law enforcement agencies to submit redacted reports as to names and other personally identifiable information of individuals as well as allowing the exclusion of information in ongoing investigations or prohibited release of criminal history information;
- Remove the provisions that would require certain persons to provide the Secretary with reasonable access to all relevant medical records associated with a drug overdose death case under review by the Secretary;
- Amend the language regarding the collection of data by the Secretary;
- Remove the requirement that reports of aggregate non-individually identifiable data be compiled and distributed;
- Remove the ability of the Secretary to receive data acquired in connection with medical research studies conducted for the purpose of reducing morbidity or mortality from drug overdose;
- Remove language prohibiting an employee of the Secretary from interviewing any patient or a relative of a patient unless otherwise permitted to do so in statute.
- Remove reference to publication of the findings by the Secretary;
- Removed the penalty for violating confidentiality;
- Remove the drug paraphernalia exceptions for any materials used or intended for use to test a substance for the presence of fentanyl, a fentanyl analog, ketamine, flunitrazepam, or gamma

hydroxybutyric acid from the definition of “drug paraphernalia”;

- Remove the provisions regarding emergency opioid antagonists to require, rather than authorize, a pharmacist furnishing an emergency opioid antagonist to provide consultation to the person to whom the emergency opioid antagonist is furnished; and
- Inserted the contents pertaining to infectious and contagious diseases and the authority of state and local health officers (SB 6, as recommended by the Senate Committee).

SB 6 (Infectious and Contagious Diseases, Authority and Reporting)

The bill was introduced by Senator Steffen.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on February 13, 2023, **proponent** testimony was provided by Senator Steffen who stated the objective of the bill was to remove the ability of the Secretary of Health and Environment and local county officers to restrict individuals freedom of movement and shift their role to one of making recommendations and educating the public. Proponent testimony was provided by four physicians, two precinct committeewomen, and four private citizens, generally stating public health emergency decisions need to be made by elected officials, and public health policies implemented during the COVID-19 pandemic were unproven and ineffective. A representative of the Johnson County Sheriff's Office provided proponent testimony in support of the removal of statutory language requiring law enforcement officers to enforce quarantine orders. The representative stated these orders were unconstitutional

because there was no probable cause to take the individual into custody, and law enforcement officers are not equipped in cases of serious health emergencies.

Written-only proponent testimony was received from Representative Jacobs and 24 private citizens.

Opponent testimony was provided by representatives of the Kansas Association of Local Health Departments, the Kansas Chapter of the American Academy of Pediatrics, and the Kansas Department of Health and Environment. The opponents highlighted the concern that they would be unable to act in cases of public health concern such as a meningitis or an Ebola outbreak because the notification system is to state offices who then coordinate with the local health officials. Local health officials stated the mission of public health is to ensure the public has the freedom to move around in an environment free from disease.

Written-only opponent testimony was provided by representatives of nine local or county health departments, the Kansas Academy of Family Physicians, the Kansas Association of Counties, the Kansas Health Foundation, the Kansas Hospital Association, the Kansas Medical Society, the Kansas Public Health Association, the Kansas State Nurses Association, Oral Health Kansas, and one private citizen.

Written-only neutral testimony was received from a representative of Community Care Network of Kansas.

Fiscal Information

HB 2390

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDHE estimates the bill would require up to 3.5 new FTE positions and increase expenditures by \$300,000, all from the State General Fund

(SGF), in FY 2024. The estimate is based on the agency's experience with the Kansas Maternal Mortality Review Committee that has a similar structure and function. The necessary positions would include a coordinator to convene stakeholders, community organizations, and pertinent state agencies to develop a comprehensive and systemic response to overdose fatalities, and to perform administrative tasks; part time epidemiologist and vital statistics staff to perform duties as required within the bill; and up to two abstractor and record custodians to collect, analyze, abstract, and report data from various sources. There also would be costs related to data sharing agreements, data requests, mileage and per diem reimbursements, and fees associated with accessing decedent records. The agency notes there would be system-wide health care and public safety cost savings related to prevention of chronic disease and harm reduction, although the total costs cannot be estimated. The agency would monitor and apply for pertinent federal funding opportunities to reduce the SGF costs.

The Kansas Board of Pharmacy reports that enactment of the bill would result in costs associated with appointing a member to the Board, providing K-TRACS data to the review board, and any other stakeholder response, which are anticipated to be handled within existing resources.

The BSRB notes that while there are no costs for the agency associated with the bill, there would be costs associated with compensation and reimbursement of Board members in FY 2024, and beyond, for the State.

The Office of Judicial Administration reports enactment of the bill would have a negligible fiscal effect on expenditures and revenue for the Judicial Branch.

According to the Department of Corrections, Kansas Bureau of Investigation, Kansas Department for Aging and Disability Services, the Kansas Board of Emergency Medical Services, Kansas State Board of Healing Arts, and Kansas Department for Children and Families, enactment of the bill

would not result in a fiscal effect on the operations of any of the respective agencies. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

SB 6

According to the fiscal note on the bill prepared by the Division of the Budget, KDHE states enactment of the bill could increase costs related to public health investigations and response due to a potential increase in cases and contacts of infectious diseases. The agency is unable to estimate a fiscal effect but stated this could include increased costs for local governments and insurance companies, including the state Medicaid program.

The Kansas State Department of Education reported that enactment of the bill would not result in a fiscal effect for school districts or the agency.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

The Kansas Association of Counties stated the bill could affect counties and local health departments, but a fiscal effect could not be estimated.

Drugs; drug overdose; Kansas Department for Health and Environment; public health; isolation; quarantine; local health officer; infectious or contagious disease