

**SENATE BILL No. 391**

By Committee on Public Health and Welfare

1-24

1 AN ACT concerning public health; relating to infectious or contagious  
2 diseases; changing the authority of the secretary of health and  
3 environment and local health officers; naming the constitutional right to  
4 health freedom act; revoking the authority of the secretary to order  
5 individuals to isolate or quarantine and impose penalties for violations  
6 thereof; amending K.S.A. 65-116g, 65-118, 65-119, 65-128, 65-129b  
7 and 65-129d and K.S.A. 2023 Supp. 65-101, 65-202 and 72-5180 and  
8 repealing the existing sections; also repealing K.S.A. 65-126, 65-127,  
9 65-129 and 65-129c.

10  
11 *Be it enacted by the Legislature of the State of Kansas:*

12 New Section 1. The amendments made to K.S.A. 65-101, 65-202, 65-  
13 116g, 65-118, 65-119, 65-128, 65-129b and 65-129d by this act shall be  
14 known as the constitutional right to health freedom act.

15 Sec. 2. K.S.A. 2023 Supp. 65-101 is hereby amended to read as  
16 follows: 65-101. (a) The secretary of health and environment shall exercise  
17 general supervision of the health of the people of the state and may:

18 (1) Where authorized by any other statute, require reports from  
19 appropriate persons relating to the health of the people of the state so a  
20 determination of the causes of sickness and death among the people of the  
21 state may be made through the use of these reports and other records;

22 (2) investigate the causes of disease, including especially, epidemics  
23 and endemics, the causes of mortality and effects of locality, employments,  
24 conditions, food, water supply, habits and other circumstances affecting  
25 the health of the people of this state and the causes of sickness and death;

26 (3) advise other offices and agencies of government concerning  
27 location, drainage, water supply, disposal of excreta and heating and  
28 ventilation of public buildings;

29 (4) make sanitary inspection and survey of such places and localities  
30 as the secretary deems advisable;

31 (5) ~~take action~~ *recommend ways* to prevent the introduction of  
32 infectious or contagious disease into this state and to prevent the spread of  
33 infectious or contagious disease within this state; *and*

34 (6) provide public health outreach services to the people of the state  
35 including educational and other activities designed to increase the  
36 individual's awareness and appropriate use of public and other preventive

1 health services.

2 (b) The secretary of health and environment may adopt ~~rules and~~  
3 ~~regulations~~ *policies* necessary to carry out the provisions of subsection (a).  
4 ~~In addition to other remedies provided by law, the secretary is authorized~~  
5 ~~to apply to the district court, and such court shall have jurisdiction upon a~~  
6 ~~hearing and for cause shown to grant a temporary or permanent injunction~~  
7 ~~to compel compliance with such rules and regulations.~~

8 (c) *The secretary of health and environment shall not carry out the*  
9 *provisions of subsection (a) or (b) in a manner that conflicts with any*  
10 *other statute or otherwise expands the authority of the secretary.*

11 (d) In the event of a state of disaster emergency declared by the  
12 governor pursuant to K.S.A. 48-924, and amendments thereto, or a state of  
13 local disaster emergency declared pursuant to K.S.A. 48-932, and  
14 amendments thereto, the legislature may revoke an order issued by the  
15 secretary to take action related to such disaster emergency as provided in  
16 this subsection. Such order may be revoked at any time by concurrent  
17 resolution of the legislature or, when the legislature is not in session or is  
18 adjourned during session for three or more days, such order may be  
19 revoked by the legislative coordinating council with the affirmative vote of  
20 five members thereof.

21 Sec. 3. K.S.A. 65-116g is hereby amended to read as follows: 65-  
22 116g. (a) *It shall be unlawful for any person who violates to:*

23 (1) *Violate any provision of this act, K.S.A. 65-116a through K.S.A.*  
24 *65-116m, and amendments thereto, relating to tuberculosis or any*  
25 *associated rules or regulations of the secretary of health and environment*  
26 *for the enforcement of this act, or K.S.A. 65-116a through K.S.A. 65-116m,*  
27 *and amendments thereto;*

28 (2) ~~violates~~ *violate any of the rules or regulations of any an*  
29 *institution while a patient therein;* or

30 (3) ~~conducts himself in a engage in~~ *disorderly manner, shall be guilty*  
31 *of conduct, as described in K.S.A. 21-6203, and amendments thereto.*

32 (b) *Violation of this section is a class C nonperson misdemeanor.*

33 Sec. 4. K.S.A. 65-118 is hereby amended to read as follows: 65-118.

34 (a) Whenever any person licensed to practice the healing arts or engaged in  
35 a postgraduate training program approved by the state board of healing  
36 arts, licensed dentist, licensed professional nurse, licensed practical nurse,  
37 administrator of a hospital, licensed adult care home administrator, or  
38 licensed physician assistant, ~~licensed social worker, teacher or school~~  
39 ~~administrator~~ knows or has information indicating that a person is  
40 suffering from or has died from a reportable infectious or contagious  
41 disease as defined in rules and regulations, such knowledge or information  
42 shall be reported immediately to the county or joint board of health or the  
43 local health officer, together with the name and address of the person who

1 has or is suspected of having the infectious or contagious disease, or the  
2 name and former address of the deceased individual who had or was  
3 suspected of having such a disease. In the case of a licensed hospital or  
4 adult care home, the administrator may designate an individual to receive  
5 and make such reports. The secretary of health and environment shall,  
6 through rules and regulations, make provision for the consolidation of  
7 reports required to be made under this section when the person required to  
8 make the report is working in a licensed hospital or adult care home.  
9 Laboratories certified under the federal clinical laboratories improvement  
10 act pursuant to ~~42-code of federal regulations~~, *C.F.R. part 493* shall report  
11 the results of microbiologic cultures, examinations; *and* immunologic  
12 essays for the presence of antigens and antibodies and any other laboratory  
13 tests which are indicative of the presence of a reportable infectious or  
14 contagious disease to the department of health and environment. The  
15 director of the division of public health may use information from death  
16 certificates for disease investigation purposes.

17 (b) Any person who is an individual member of a class of persons  
18 designated under subsection (a) of this section and who reports the  
19 information required to be reported under such subsection in good faith  
20 and without malice to a county or joint board of health, a local health  
21 officer or the department of health and environment shall have immunity  
22 from any liability, civil or criminal, that might otherwise be incurred or  
23 imposed in an action resulting from such report. Any such person shall  
24 have the same immunity with respect to participation in any judicial  
25 proceeding resulting from such report.

26 (c) Information required to be reported under subsection (a) ~~of this~~  
27 ~~section~~ shall be confidential and shall not be disclosed or made public,  
28 upon subpoena or otherwise, beyond the requirements of subsection (a) ~~of~~  
29 ~~this section~~ or ~~subsection (a) of K.S.A. 65-119(a)~~, and amendments  
30 thereto, except such information may be disclosed:

31 (1) If no person can be identified in the information to be disclosed  
32 and the disclosure is for statistical purposes;

33 (2) if all persons who are identifiable in the information to be  
34 disclosed consent in writing to its disclosure;

35 (3) if the disclosure is necessary, and only to the extent necessary, to  
36 protect the public health;

37 (4) if a medical emergency exists and the disclosure is to medical  
38 personnel qualified to treat infectious or contagious diseases. Any  
39 information disclosed pursuant to this paragraph shall be disclosed only to  
40 the extent necessary to protect the health or life of a named party; or

41 (5) if the information to be disclosed is required in a court proceeding  
42 involving child abuse and the information is disclosed in camera.

43 Sec. 5. K.S.A. 65-119 is hereby amended to read as follows: 65-119.

1 (a) Any county or joint board of health or local health officer having  
2 knowledge of any infectious or contagious disease, or of a death from such  
3 disease, within their jurisdiction, shall immediately exercise and maintain  
4 a supervision over such case or cases during their continuance, seeing that  
5 all such cases are properly cared for and that the provisions of this act ~~as~~  
6 *pertaining to isolation, restriction of communication, quarantine and*  
7 *disinfection are duly enforced. The county or joint board of health or local*  
8 *health officer shall communicate without delay all information ~~as~~*  
9 *pertaining to existing conditions to the secretary of health and*  
10 *environment. The local health officer shall confer personally, if*  
11 *practicable, otherwise by letter, with the person in attendance upon the*  
12 *case, as to its future management and control. The county or joint board of*  
13 *health or local health officer ~~is hereby empowered and authorized to~~*  
14 *prohibit may recommend against public gatherings when necessary for the*  
15 *control of any and all infectious or contagious disease.*

16 (b) Any disclosure or communication of information relating to  
17 infectious or contagious diseases required to be disclosed or  
18 communicated under subsection (a) ~~of this section~~ shall be confidential  
19 and shall not be disclosed or made public beyond the requirements of  
20 subsection (a) ~~of this section~~ or subsection (a) of K.S.A. 65-118(a), and  
21 *amendments thereto*, except as otherwise permitted by subsection (e) of  
22 K.S.A. 65-118(c), and *amendments thereto*.

23 Sec. 6. K.S.A. 65-128 is hereby amended to read as follows: 65-128.

24 (a) For the protection of the public health and for the control of infectious  
25 or contagious diseases, the secretary of health and environment ~~by rules~~  
26 ~~and regulations shall designate~~ *submit a report of such diseases as that*  
27 *are infectious or contagious in their nature to the speaker of the house of*  
28 *representatives and the president of the senate.*

29 (b) The secretary of health and environment is authorized to ~~issue~~  
30 ~~such orders and adopt rules and regulations as may be medically necessary~~  
31 ~~and reasonable~~ *recommend ways* to prevent the spread and dissemination  
32 of diseases injurious to the public health, ~~including, but not limited to,~~  
33 ~~providing for the testing for such diseases and may recommend~~ the  
34 isolation and quarantine of persons afflicted with or exposed to such  
35 diseases.

36 (c) ~~No later than January 1, 2014, The secretary shall develop and~~  
37 ~~adopt rules and regulations providing for~~ *make recommendations for*  
38 *preventing the introduction and spread of infectious or contagious disease*  
39 *within this state and the protection of individuals who provide medical or*  
40 *nursing services, clinical or forensic laboratory services, emergency*  
41 *medical services and firefighting, law enforcement and correctional*  
42 *services, or who provide any other service, or individuals who receive any*  
43 *such services or are in any other employment where the individual may*

1 encounter occupational exposure to blood and other potentially infectious  
2 materials.

3 Sec. 7. K.S.A. 65-129b is hereby amended to read as follows: 65-  
4 129b. ~~(a)~~ Notwithstanding the provisions of K.S.A. 65-119, 65-122, 65-  
5 123, ~~65-126~~ and 65-128, and amendments thereto, and any rules or  
6 regulations adopted thereunder, in investigating actual or potential  
7 exposures to an infectious or contagious disease that is potentially life-  
8 threatening, the local health officer ~~or the secretary~~:

9 ~~(1)~~ ~~(A)~~(a) May ~~issue an order requiring~~ *recommend* an individual  
10 ~~who whom~~ the local health officer ~~or the secretary~~ has reason to believe  
11 has been exposed to an infectious or contagious disease to seek appropriate  
12 and necessary evaluation and treatment;

13 ~~(B)~~(b) when the local health officer ~~or the secretary~~ determines that it  
14 is medically necessary and reasonable to prevent or reduce the spread of  
15 the disease or outbreak believed to have been caused by the exposure to an  
16 infectious or contagious disease, may ~~order~~ *recommend* an individual or  
17 group of individuals to go to and remain in places of isolation or  
18 quarantine until the local health officer ~~or the secretary~~ determines that the  
19 individual no longer poses a substantial risk of transmitting the disease or  
20 condition to the public;

21 ~~(C)~~(c) if a competent individual ~~of who is~~ 18 years of age or older or  
22 an emancipated minor refuses ~~vaccination~~, medical examination, treatment  
23 or testing under this section, may ~~require~~ *recommend* the individual to go  
24 to and remain in a place of isolation or quarantine until the local health  
25 officer ~~or the secretary~~ determines that the individual no longer poses a  
26 substantial risk of transmitting the disease or condition to the public; and

27 ~~(D)~~(d) if, on behalf of a minor child or ward, a parent or guardian  
28 refuses ~~vaccination~~, medical examination, treatment or testing under this  
29 section, may ~~require~~ *recommend* the minor child or ward to go to and  
30 remain in a place of isolation or quarantine and ~~must~~ *shall* allow the parent  
31 or guardian to accompany the minor child or ward until the local health  
32 officer ~~or the secretary~~ determines that the minor child or ward no longer  
33 poses a substantial risk of transmitting the disease or condition to the  
34 public; and

35 ~~(2)~~ may order any sheriff, deputy sheriff or other law enforcement  
36 officer of the state or any subdivision to assist in the execution or  
37 enforcement of any order issued under this section.

38 Sec. 8. K.S.A. 65-129d is hereby amended to read as follows: 65-  
39 129d. ~~It shall be unlawful for any A~~ public or private employer ~~to~~ *shall not*  
40 discharge an employee solely because the employee or an immediate  
41 family member of the employee is ~~under an order of~~ *following an* isolation  
42 or quarantine *recommendation from a local health officer or solely*  
43 *because of such employee's vaccination status.* ~~The violation of this~~

1 ~~section is punishable as a violation of K.S.A. 65-129, and amendments~~  
 2 ~~thereto~~ *In an action against an employer for a violation of this section, the*  
 3 *court shall award a prevailing plaintiff the actual damages such person*  
 4 *sustained, costs and reasonable attorney fees.*

5 Sec. 9. K.S.A. 2023 Supp. 65-202 is hereby amended to read as  
 6 follows: 65-202. (a) The local health officer in each county throughout the  
 7 state, immediately after such officer's appointment, shall:

8 (1) Take the same oath of office prescribed by law for the county  
 9 officers, ~~shall~~;

10 (2) give bond of \$500 conditioned for the faithful performance of the  
 11 officer's duties, ~~shall~~;

12 (3) keep an accurate record of all the transactions of such office,  
 13 ~~shall~~;

14 (4) turn over to the successor in office or to the county or joint board  
 15 of health selecting such officer, on the expiration of such officer's term of  
 16 office, all records, documents and other articles belonging to the office;  
 17 and ~~shall~~

18 (5) faithfully account to *the* board of county commissioners and to the  
 19 county and state for all moneys coming into the office. Such officer shall  
 20 notify the secretary of health and environment of such officer's  
 21 appointment and qualification, and provide the secretary with such  
 22 officer's contact information.

23 (b) Such officer shall receive and distribute without delay in the  
 24 county all forms from the secretary of health and environment to the  
 25 rightful persons, all returns from persons licensed to practice medicine and  
 26 surgery, assessors and local boards to said secretary, shall keep an accurate  
 27 record of all of the transactions of such office and shall turn over all  
 28 records and documents kept by such officer, the successor in office, or to  
 29 the county or joint board electing such officer, on the expiration of the  
 30 term of office.

31 (c) The local health officer shall upon the opening of the fall term of  
 32 school, make a sanitary inspection of each school building and grounds,  
 33 and shall make such additional inspections as are necessary to protect the  
 34 public health of the students of the school.

35 ~~(e)~~(d) (1) Such officer shall make an investigation of each case of  
 36 smallpox, diphtheria, typhoid fever, scarlet fever, acute anterior  
 37 poliomyelitis (infantile paralysis), epidemic cerebro-spinal meningitis and  
 38 such other acute infectious, contagious or communicable diseases as may  
 39 be required, and shall use all ~~known~~ *medically necessary and reasonable*  
 40 *measures to prevent the spread of any such infectious, contagious or*  
 41 *communicable disease, and shall perform such other duties as this act, the*  
 42 *county or joint board, or board of health or the secretary of health and*  
 43 *environment may require.*

1       (2) ~~Any order issued by the local health officer, including Orders~~  
2 issued as a result of an executive order of the governor, on behalf of a  
3 county regarding the remediation of any infectious disease may be  
4 reviewed, amended or revoked by the board of county commissioners of  
5 any county affected by such order in the manner provided by K.S.A. 65-  
6 201(b), and amendments thereto.

7       (e) Such officer shall receive compensation as set by the board and,  
8 with the approval of the board of health, may employ a skilled professional  
9 nurse and other additional personnel whenever deemed necessary for the  
10 protection of the public health.

11       (f) *For* any failure or neglect of the local health officer to perform any  
12 of the duties prescribed in this act, the officer may be removed from office  
13 by the county board of health. In addition to removal from office; for any  
14 failure or neglect to perform any of the duties prescribed by this act, the  
15 local health officer shall be deemed guilty of a misdemeanor and, upon  
16 conviction, be fined not less \$10 nor more than \$100 for each ~~and every~~  
17 offense.

18       Sec. 10. K.S.A. 2023 Supp. 72-5180 is hereby amended to read as  
19 follows: 72-5180. (a) Commencing in the 2021-2022 school year, except  
20 as otherwise provided in this section, no school district shall provide or  
21 offer to any student enrolled in the district more than a total of 40 school  
22 term hours of remote learning unless:

23       (1) The board of education of the school district has authorized a  
24 student to temporarily attend school through remote learning in excess of  
25 the 40-hour limitation pursuant to a temporary individual exemption  
26 granted pursuant to subsection (b); or

27       (2) due to a disaster, the state board of education has authorized the  
28 school district to conduct remote learning in excess of the 40-hour  
29 limitation pursuant to subsection (c) or has waived the limitations provided  
30 in subsection (d).

31       (b) The board of education of a school district may temporarily  
32 suspend the remote learning limitation provided in subsection (a) on an  
33 individual student basis for any student who cannot reasonably attend  
34 school in person due to an illness, medical condition, injury or any other  
35 extraordinary circumstance that would necessitate remote learning to allow  
36 the student to continue to receive an education during the existence of such  
37 circumstance. The board of education of the school district shall notify the  
38 state board of any individual exemptions provided pursuant to this  
39 subsection and the reason for such exemption.

40       (c) The state board of education may authorize a school district to  
41 exceed the 40-hour remote learning limitation upon application by the  
42 school district. The application may be granted by the state board of  
43 education upon:

1 (1) Certification by a school district that, due to a disaster, conditions  
2 resulting from widespread or severe property damage caused by the  
3 disaster or other conditions restricting the operation of public schools will  
4 exist in the school district for an inordinate period of time; and

5 (2) a determination by the state board that the school district cannot  
6 reasonably adjust its schedule to comply with the requirements of this  
7 section unless remote learning is conducted for a period of time not to  
8 exceed 240 school term hours, unless such limitation is waived by the state  
9 board pursuant to subsection (d).

10 (d) The state board of education may waive the requirements of law  
11 relating to the remote learning limitations pursuant to subsection (c) in any  
12 school year upon application for such waiver by a school district. The  
13 waiver may be granted by the state board of education upon:

14 (1) Certification by a board of education that, due to a disaster,  
15 conditions resulting from widespread or severe property damage caused by  
16 the disaster or other conditions restricting the operation of public schools  
17 will exist in the school district for an inordinate period of time; and

18 (2) a determination by the state board that the school district cannot  
19 reasonably adjust its schedule to comply with such requirements of law  
20 and that remote learning beyond the limitations provided in subsection (c)  
21 is necessary to allow the school district to continue to provide education to  
22 students during such conditions.

23 (e) (1) Any student who attends a school of a school district through  
24 remote learning in excess of the remote learning limitations provided  
25 pursuant to this section shall be deemed a remote learning student and  
26 shall be counted as a remotely enrolled student for state aid purposes.

27 (2) On or before June 30 of each school year:

28 (A) A school district that offers remote learning during the school  
29 year shall determine the remote enrollment of the district based on the  
30 number of students remotely enrolled in accordance with this section;

31 (B) the clerk or superintendent of each school district shall certify  
32 under oath to the state board a report showing the remote enrollment of the  
33 school district determined pursuant to this subsection by the grades  
34 maintained in the schools of the school district. The state board shall  
35 examine such reports upon receipt, and if the state board finds any errors  
36 in any such report, the state board shall consult with the school district  
37 officer furnishing the report and make any necessary corrections in the  
38 report; and

39 (C) the state board shall determine the number of students who were  
40 included in the remote enrollment of each school district and recompute  
41 the enrollment of the school district as required pursuant to this subsection.

42 (3) A school district that offers remote learning and is determined to  
43 have remotely enrolled students pursuant to this section shall receive



1 remote enrollment state aid. The state board shall determine the amount of  
2 remote enrollment state aid a school district is to receive by multiplying  
3 the remote enrollment of the school district by \$5,000. No remote  
4 enrollment state aid shall be provided for any student who participates in  
5 remote learning on a part-time basis during the school day.

6 (4) The state board shall notify each school district of the amount of  
7 remote enrollment state aid the district shall receive pursuant to this  
8 section and, pursuant to K.S.A. 72-5136, and amendments thereto, shall:

9 (A) Require the district to remit any such amount of overpayment  
10 made to the district in the current school year; or

11 (B) deduct the excess amounts paid to the district from future  
12 payments made to the school district.

13 (5) If a student is included in the remote enrollment of a district  
14 pursuant to this subsection, such student shall not be included in the  
15 adjusted enrollment of the district in the current school year.

16 (f) Each school district that determines remote enrollment pursuant to  
17 this section shall submit any documentation or information required by the  
18 state board.

19 (g) As used in this section, "disaster" means a state of disaster  
20 emergency declared by proclamation of the governor pursuant to K.S.A.  
21 48-924, and amendments thereto, closure of schools by order issued by a  
22 county or joint board of health, a local health officer pursuant to K.S.A.  
23 65-119, and amendments thereto, ~~or the secretary of health and~~  
24 ~~environment pursuant to K.S.A. 65-126, and amendments thereto;~~ or  
25 occurrence of widespread or severe damage, injury or loss of life or  
26 property resulting from any natural or manmade cause, including, but not  
27 limited to, fire, flood, earthquake, tornado, wind, storm, an epidemic, air  
28 contamination, blight, drought, infestation or explosion.

29 (h) This section shall be a part of and supplemental to the Kansas  
30 school equity and enhancement act.

31 ~~(i) This section shall take effect and be in force from and after July 1,~~  
32 ~~2021.~~

33 Sec. 11. K.S.A. 65-116g, 65-118, 65-119, 65-126, 65-127, 65-128,  
34 65-129, 65-129b, 65-129c and 65-129d and K.S.A. 2023 Supp. 65-101,  
35 65-202 and 72-5180 are hereby repealed.

36 Sec. 12. This act shall take effect and be in force from and after its  
37 publication in the statute book.