

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, ~~{ and } 65-~~
7 ~~129b and 65-129d~~ and K.S.A. 2023 Supp. 65-101, 65-202 and 72-5180
8 and repealing the existing sections; also repealing K.S.A. 65-126, 65-
9 127, 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

1 including educational and other activities designed to increase the
 2 individual's awareness and appropriate use of public and other preventive
 3 health services.

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

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

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

23 Sec. 3. K.S.A. 65-116g is hereby amended to read as follows: 65-
 24 116g. ~~(a) It shall be unlawful for any person who violates to:~~

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

30 ~~(2)(b) violates violate any of the rules or regulations of any an~~
 31 ~~institution while a patient therein;; or~~

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

35 ~~(b) Violation of this section is a class C nonperson misdemeanor.~~

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

37 (a) Whenever any person licensed to practice the healing arts or engaged in
 38 a postgraduate training program approved by the state board of healing
 39 arts, licensed dentist, licensed professional nurse, licensed practical nurse,
 40 administrator of a hospital, licensed adult care home administrator, ~~or,~~
 41 licensed physician assistant, ~~licensed social worker, teacher or school~~
 42 ~~administrator, licensed social worker, teacher or school administrator~~
 43 knows or has information indicating that a person is suffering from or has

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

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

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

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

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

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

41 (4) if a medical emergency exists and the disclosure is to medical
42 personnel qualified to treat infectious or contagious diseases. Any
43 information disclosed pursuant to this paragraph shall be disclosed only to

1 the extent necessary to protect the health or life of a named party; or

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

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

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

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

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

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

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

41 (c) ~~No later than January 1, 2014, The secretary shall develop and~~
42 ~~adopt rules and regulations providing for~~ *make recommendations for*
43 *preventing the introduction and spread of infectious or contagious disease*

1 *within this state and* the protection of individuals who provide medical or
2 nursing services, clinical or forensic laboratory services, emergency
3 medical services and firefighting, law enforcement and correctional
4 services, or who provide any other service, or individuals who receive any
5 such services or are in any other employment where the individual may
6 encounter occupational exposure to blood and other potentially infectious
7 materials.

8 Sec. 7. K.S.A. 65-129b is hereby amended to read as follows: 65-
9 129b. ~~(a)~~ Notwithstanding the provisions of K.S.A. 65-119, 65-122, 65-
10 123, ~~65-126~~ and 65-128, and amendments thereto, and any rules or
11 regulations adopted thereunder, in investigating actual or potential
12 exposures to an infectious or contagious disease that is potentially life-
13 threatening, the local health officer ~~or the secretary~~:

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

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

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

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

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

43 (e) *{If an outbreak of a highly contagious, deadly disease occurs, }*

1 ~~the local health officer shall {may} submit recommendations related to~~
 2 ~~the isolation or quarantine of individuals under this section {infected~~
 3 ~~with such disease} to the board of county commissioners as a proposed~~
 4 ~~order. At the next regularly scheduled meeting of the board or at a~~
 5 ~~special meeting of the board, the board shall review such proposed order~~
 6 ~~and may take any action related to the proposed order that the board~~
 7 ~~determines is necessary. The proposed order shall become effective if~~
 8 ~~approved by The board or, if the board is unable to meet, if approved by~~
 9 ~~the chairperson of the board or the vice chairperson of the board in the~~
 10 ~~chairperson's absence or disability {may take action to isolate or~~
 11 ~~quarantine such infected individuals}.~~

12 Sec. 8.—K.S.A. 65-129d is hereby amended to read as follows: 65-
 13 129d. It shall be unlawful for any ~~A~~ public or private employer to ~~shall not~~
 14 ~~discharge an employee solely because the employee or an immediate~~
 15 ~~family member of the employee is under an order of following an isolation~~
 16 ~~or quarantine recommendation from a local health officer or solely~~
 17 ~~because of such employee's vaccination status. The violation of this~~
 18 ~~section is punishable as a violation of K.S.A. 65-129, and amendments~~
 19 ~~thereto In an action against an employer for a violation of this section, the~~
 20 ~~court shall award a prevailing plaintiff the actual damages such person~~
 21 ~~sustained, costs and reasonable attorney fees.~~

22 Sec. 9{8}. K.S.A. 2023 Supp. 65-202 is hereby amended to read as
 23 follows: 65-202. (a) The local health officer in each county throughout the
 24 state, immediately after such officer's appointment, shall:

- 25 (1) Take the same oath of office prescribed by law for the county
 26 officers, ~~shall~~;
- 27 (2) give bond of \$500 conditioned for the faithful performance of the
 28 officer's duties, ~~shall~~;
- 29 (3) keep an accurate record of all the transactions of such office,
 30 ~~shall~~;
- 31 (4) turn over to the successor in office or to the county or joint board
 32 of health selecting such officer, on the expiration of such officer's term of
 33 office, all records, documents and other articles belonging to the office;
 34 ~~and shall~~
- 35 (5) faithfully account to ~~the~~ board of county commissioners and to the
 36 county and state for all moneys coming into the office. Such officer shall
 37 notify the secretary of health and environment of such officer's
 38 appointment and qualification, and provide the secretary with such
 39 officer's contact information.
- 40 (b) Such officer shall receive and distribute without delay in the
 41 county all forms from the secretary of health and environment to the
 42 rightful persons, all returns from persons licensed to practice medicine and
 43 surgery, assessors and local boards to said secretary, shall keep an accurate

1 record of all of the transactions of such office and shall turn over all
2 records and documents kept by such officer, the successor in office, or to
3 the county or joint board electing such officer, on the expiration of the
4 term of office.

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

9 ~~(e)~~(d) (1) Such officer shall make an investigation of each case of
10 smallpox, diphtheria, typhoid fever, scarlet fever, acute anterior
11 poliomyelitis (infantile paralysis), epidemic cerebro-spinal meningitis and
12 such other acute infectious, contagious or communicable diseases as may
13 be required, and shall use all ~~known~~ *medically necessary and reasonable*
14 measures to prevent the spread of any such infectious, contagious or
15 communicable disease, and shall perform such other duties as this act, the
16 county or joint board, ~~or board of health or the secretary of health and~~
17 ~~environment~~ may require.

18 (2) ~~Any order issued by the local health officer, including Orders~~
19 issued as a result of an executive order of the governor, on behalf of a
20 county regarding the remediation of any infectious disease may be
21 reviewed, amended or revoked by the board of county commissioners of
22 any county affected by such order in the manner provided by K.S.A. 65-
23 201(b), and amendments thereto.

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

28 (f) *For* any failure or neglect of the local health officer to perform any
29 of the duties prescribed in this act, the officer may be removed from office
30 by the county board of health. In addition to removal from office, for any
31 failure or neglect to perform any of the duties prescribed by this act, the
32 local health officer shall be deemed guilty of a misdemeanor and, upon
33 conviction, be fined not less \$10 nor more than \$100 for each ~~and every~~
34 offense.

35 Sec. ~~409~~. K.S.A. 2023 Supp. 72-5180 is hereby amended to read as
36 follows: 72-5180. (a) Commencing in the 2021-2022 school year, except
37 as otherwise provided in this section, no school district shall provide or
38 offer to any student enrolled in the district more than a total of 40 school
39 term hours of remote learning unless:

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

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

5 (b) The board of education of a school district may temporarily
6 suspend the remote learning limitation provided in subsection (a) on an
7 individual student basis for any student who cannot reasonably attend
8 school in person due to an illness, medical condition, injury or any other
9 extraordinary circumstance that would necessitate remote learning to allow
10 the student to continue to receive an education during the existence of such
11 circumstance. The board of education of the school district shall notify the
12 state board of any individual exemptions provided pursuant to this
13 subsection and the reason for such exemption.

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

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

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

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

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

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

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

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

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

5 (B) the clerk or superintendent of each school district shall certify
6 under oath to the state board a report showing the remote enrollment of the
7 school district determined pursuant to this subsection by the grades
8 maintained in the schools of the school district. The state board shall
9 examine such reports upon receipt, and if the state board finds any errors
10 in any such report, the state board shall consult with the school district
11 officer furnishing the report and make any necessary corrections in the
12 report; and

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

16 (3) A school district that offers remote learning and is determined to
17 have remotely enrolled students pursuant to this section shall receive
18 remote enrollment state aid. The state board shall determine the amount of
19 remote enrollment state aid a school district is to receive by multiplying
20 the remote enrollment of the school district by \$5,000. No remote
21 enrollment state aid shall be provided for any student who participates in
22 remote learning on a part-time basis during the school day.

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

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

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

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

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

36 (g) As used in this section, "disaster" means a state of disaster
37 emergency declared by proclamation of the governor pursuant to K.S.A.
38 48-924, and amendments thereto, closure of schools by order issued by a
39 county or joint board of health, a local health officer pursuant to K.S.A.
40 65-119, and amendments thereto, ~~or the secretary of health and~~
41 ~~environment pursuant to K.S.A. 65-126, and amendments thereto,~~ or
42 occurrence of widespread or severe damage, injury or loss of life or
43 property resulting from any natural or manmade cause, including, but not

1 limited to, fire, flood, earthquake, tornado, wind, storm, an epidemic, air
2 contamination, blight, drought, infestation or explosion.

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

5 ~~(i) This section shall take effect and be in force from and after July 1,~~
6 ~~2021.~~

7 Sec. ~~10~~**10**. K.S.A. 65-116g, 65-118, 65-119, 65-126, 65-127, 65-
8 128, 65-129, 65-129b; **and** 65-129c ~~and 65-129d~~ and K.S.A. 2023 Supp.
9 65-101, 65-202 and 72-5180 are hereby repealed.

10 Sec. ~~11~~**11**. This act shall take effect and be in force from and after
11 its publication in the statute book.