

SENATE BILL No. 437

By Committee on Public Health and Welfare

2-3

1 AN ACT concerning public health; relating to responses to infectious or
2 contagious disease by certain public and private entities; prohibiting
3 certain acts by business entities, governmental entities or public
4 officials based upon a person's vaccination status or possession of an
5 immunity passport; relating to access to services, goods, facilities and
6 opportunities; proceedings under the revised Kansas code for care of
7 children; proceedings related to legal custody, residency and parenting
8 time of a child under the Kansas family law code; access to healthcare
9 services and prohibiting discrimination in rendering healthcare
10 services; modifying the Kansas act against discrimination to define
11 unlawful employment practices related to vaccination status or
12 possession of an immunity passport; limiting powers of the secretary of
13 health and environment and local health officers; amending K.S.A. 38-
14 2269, 44-1002 and 44-1009 and K.S.A. 2021 Supp. 23-3201, 65-101,
15 65-201, 65-202, 65-1120 and 65-2836 and repealing the existing
16 sections.

17

18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. As used in sections 1 through 4, and amendments
20 thereto:

21 (a) "Business entity" means any person or group of persons
22 performing or engaging in any activity, enterprise, profession or
23 occupation for gain, benefit, advantage or livelihood, whether for-profit or
24 not-for-profit. "Business entity" includes, but is not limited to:

25 (1) Self-employed individuals, business entities filing articles of
26 incorporation, partnerships, limited partnerships, limited liability
27 companies, foreign corporations, foreign limited partnerships, foreign
28 limited liability companies authorized to transact business in this state,
29 business trusts and any business entity that registers with the secretary of
30 state; and

31 (2) any business entity that possesses a business license, permit,
32 certificate, approval, registration, charter or similar form of authorization
33 issued by the state, any business entity that is exempt by law from
34 obtaining such a business license and any business entity that is operating
35 unlawfully without such a business license.

36 (b) "Immunity passport" means a document, digital record or

1 software application indicating that a person is immune to a disease, either
2 through vaccination or infection and recovery.

3 (c) "Ticket issuer" means an individual or entity providing tickets to
4 an entertainment event including, but not limited to:

5 (1) The operator of the venue where the entertainment event occurs;

6 (2) the sponsor or promoter of an entertainment event;

7 (3) a sports team participating in an entertainment event or a league
8 whose teams are participating in an entertainment event;

9 (4) a theater company, musical group or similar participant in an
10 entertainment event; or

11 (5) an agent of any individual or entity described in paragraphs (1)
12 through (4).

13 (d) "Vaccination status" means an indication of whether a person has
14 received one or more doses of a vaccine.

15 New Sec. 2. (a) Notwithstanding any provision of law to the contrary,
16 it shall be unlawful for:

17 (1) A business entity to refuse to provide any service, product,
18 admission to a venue or transportation to a person based on such person's
19 vaccination status or whether such person has an immunity passport;

20 (2) a ticket issuer to penalize, discriminate against or deny access to
21 an entertainment event to a ticket holder based on such ticket holder's
22 vaccination status or whether such ticket holder has an immunity passport;

23 (3) a business entity, governmental entity or public official to refuse,
24 withhold from or deny to a person any local or state services, goods,
25 facilities, advantages, privileges, licensing, educational opportunities,
26 healthcare access or employment opportunities based on such person's
27 vaccination status or whether such person has an immunity passport;

28 (4) a governmental entity or public official to require a person to
29 receive a vaccination or an immunity passport;

30 (5) a governmental entity or public official to provide any special
31 privilege, financial benefit or other incentive to a person for receiving a
32 vaccination or an immunity passport;

33 (6) an employer to refuse employment to a person, to bar a person
34 from employment or to discriminate against a person in compensation or
35 in a term, condition or privilege of employment based on such person's
36 vaccination status or whether such person has an immunity passport; or

37 (7) a public accommodation to exclude, limit, segregate, refuse to
38 serve or otherwise discriminate against a person based on such person's
39 vaccination status or whether such person has an immunity passport.

40 (b) (1) Violation of any provision of this section is a severity level 7,
41 nonperson felony.

42 (2) Upon a finding that a business entity or ticket issuer violated this
43 section, the court shall order the suspension of all licenses issued by the

1 state or any political subdivision of the state that are held by the business
2 entity or ticket issuer for at least 30 days, but not more than one year.

3 New Sec. 3. (a) No order shall be issued pursuant to K.S.A. 38-2242,
4 38-2243 or 38-2244, and amendments thereto, if the sole basis for the
5 threat to the child's safety or welfare is related to the vaccination status of
6 the child or an individual who resides with the child.

7 (b) The provisions of this section shall be a part of and supplemental
8 to the revised Kansas code for care of children.

9 New Sec. 4. No medical care facility, as defined in K.S.A. 65-425,
10 and amendments thereto, or person licensed, registered, certified or
11 otherwise authorized to practice a profession by the state board of healing
12 arts or the board of nursing pursuant to chapter 65 of the Kansas Statutes
13 Annotated, and amendments thereto, shall decline to render healthcare
14 services or otherwise discriminate in rendering healthcare services to a
15 person based on such person's vaccination status or whether such person
16 has an immunity passport.

17 New Sec. 5. The provisions of this act are severable. If any portion of
18 the act is declared unconstitutional or invalid, or the application of any
19 portion of the act to any person or circumstance is held unconstitutional or
20 invalid, the invalidity shall not affect other portions of the act that can be
21 given effect without the invalid portion or application, and the
22 applicability of such other portions of the act to any person or
23 circumstance shall remain valid and enforceable.

24 Sec. 6. K.S.A. 2021 Supp. 23-3201 is hereby amended to read as
25 follows: 23-3201. (a) The court shall determine legal custody, residency
26 and parenting time of a child in accordance with the best interests of the
27 child.

28 (b) *The court shall not consider the vaccination status, as defined in*
29 *section 1, and amendments thereto, of any parent or child when*
30 *determining the legal custody, residency or parenting time of a child.*

31 Sec. 7. K.S.A. 38-2269 is hereby amended to read as follows: 38-
32 2269. (a) When the child has been adjudicated to be a child in need of
33 care, the court may terminate parental rights or appoint a permanent
34 custodian when the court finds by clear and convincing evidence that the
35 parent is unfit by reason of conduct or condition which renders the parent
36 unable to care properly for a child and the conduct or condition is unlikely
37 to change in the foreseeable future.

38 (b) In making a determination of unfitness the court shall consider,
39 but is not limited to, the following, if applicable:

40 (1) Emotional illness, mental illness, mental deficiency or physical
41 disability of the parent, of such duration or nature as to render the parent
42 unable to care for the ongoing physical, mental and emotional needs of the
43 child;

1 (2) conduct toward a child of a physically, emotionally or sexually
2 cruel or abusive nature;

3 (3) the use of intoxicating liquors or narcotic or dangerous drugs of
4 such duration or nature as to render the parent unable to care for the
5 ongoing physical, mental or emotional needs of the child;

6 (4) physical, mental or emotional abuse or neglect or sexual abuse of
7 a child;

8 (5) conviction of a felony and imprisonment;

9 (6) unexplained injury or death of another child or stepchild of the
10 parent or any child in the care of the parent at the time of injury or death;

11 (7) failure of reasonable efforts made by appropriate public or private
12 agencies to rehabilitate the family;

13 (8) lack of effort on the part of the parent to adjust the parent's
14 circumstances, conduct or conditions to meet the needs of the child; and

15 (9) whether, as a result of the actions or inactions attributable to the
16 parent and one or more of the factors listed in subsection (c) apply, the
17 child has been in the custody of the secretary and placed with neither
18 parent for 15 of the most recent 22 months beginning 60 days after the
19 date on which a child in the secretary's custody was removed from the
20 child's home.

21 (c) In addition to the foregoing, when a child is not in the physical
22 custody of a parent, the court, shall consider, but is not limited to, the
23 following:

24 (1) Failure to assure care of the child in the parental home when able
25 to do so;

26 (2) failure to maintain regular visitation, contact or communication
27 with the child or with the custodian of the child;

28 (3) failure to carry out a reasonable plan approved by the court
29 directed toward the integration of the child into a parental home; and

30 (4) failure to pay a reasonable portion of the cost of substitute
31 physical care and maintenance based on ability to pay.

32 In making the above determination, the court may disregard incidental
33 visitations, contacts, communications or contributions.

34 (d) A finding of unfitness may be made as provided in this section if
35 the court finds that the parents have abandoned the child, the custody of
36 the child was surrendered pursuant to K.S.A. 38-2282, and amendments
37 thereto, or the child was left under such circumstances that the identity of
38 the parents is unknown and cannot be ascertained, despite diligent
39 searching, and the parents have not come forward to claim the child within
40 three months after the child is found.

41 (e) If a person is convicted of a felony in which sexual intercourse
42 occurred, or if a juvenile is adjudicated a juvenile offender because of an
43 act which, if committed by an adult, would be a felony in which sexual

1 intercourse occurred, and as a result of the sexual intercourse, a child is
2 conceived, a finding of unfitness may be made.

3 (f) The existence of any one of the above factors standing alone may,
4 but does not necessarily, establish grounds for termination of parental
5 rights.

6 (g) *The court shall not consider the vaccination status, as defined in*
7 *section 1, and amendments thereto, of any parent or child when making a*
8 *determination of unfitness.*

9 ~~(g)~~(h) (1) If the court makes a finding of unfitness, the court shall
10 consider whether termination of parental rights as requested in the petition
11 or motion is in the best interests of the child. In making the determination,
12 the court shall give primary consideration to the physical, mental and
13 emotional health of the child. If the physical, mental or emotional needs of
14 the child would best be served by termination of parental rights, the court
15 shall so order. A termination of parental rights under the code shall not
16 terminate the right of a child to inherit from or through a parent. Upon
17 such termination all rights of the parent to such child, including, such
18 parent's right to inherit from or through such child, shall cease.

19 (2) If the court terminates parental rights, the court may authorize
20 adoption pursuant to K.S.A. 38-2270, and amendments thereto,
21 appointment of a permanent custodian pursuant to K.S.A. 38-2272, and
22 amendments thereto, or continued permanency planning.

23 (3) If the court does not terminate parental rights, the court may
24 authorize appointment of a permanent custodian pursuant to K.S.A. 38-
25 2272, and amendments thereto, or continued permanency planning.

26 ~~(h)~~(i) If a parent is convicted of an offense as provided in K.S.A. 38-
27 2271(a)(7), and amendments thereto, or is adjudicated a juvenile offender
28 because of an act which if committed by an adult would be an offense as
29 provided in K.S.A. 38-2271(a)(7), and amendments thereto, and if the
30 victim was the other parent of a child, the court may disregard such
31 convicted or adjudicated parent's opinions or wishes in regard to the
32 placement of such child.

33 ~~(i)~~(j) A record shall be made of the proceedings.

34 ~~(j)~~(k) When adoption, proceedings to appoint a permanent custodian
35 or continued permanency planning has been authorized, the person or
36 agency awarded custody of the child shall within 30 days submit a written
37 plan for permanent placement which shall include measurable objectives
38 and time schedules.

39 Sec. 8. K.S.A. 44-1002 is hereby amended to read as follows: 44-
40 1002. When used in this act:

41 (a) "Person" includes one or more individuals, partnerships,
42 associations, organizations, corporations, legal representatives, trustees,
43 trustees in bankruptcy or receivers.

1 (b) "Employer" includes any person in this state employing four or
2 more persons and any person acting directly or indirectly for an employer,
3 labor organizations, nonsectarian corporations, organizations engaged in
4 social service work and the state of Kansas and all political and municipal
5 subdivisions thereof, but shall not include a nonprofit fraternal or social
6 association or corporation.

7 (c) "Employee" does not include any individual employed by such
8 individual's parents, spouse or child or in the domestic service of any
9 person.

10 (d) "Labor organization" includes any organization which exists for
11 the purpose, in whole or in part, of collective bargaining, of dealing with
12 employers concerning grievances, terms or conditions of employment or
13 of other mutual aid or protection in relation to employment.

14 (e) "Employment agency" includes any person or governmental
15 agency undertaking, with or without compensation, to procure
16 opportunities to work or to procure, recruit, refer or place employees.

17 (f) "Commission" means the Kansas human rights commission
18 created by this act.

19 (g) "Unlawful employment practice" includes only those unlawful
20 practices and acts specified in K.S.A. 44-1009, and amendments thereto,
21 and includes segregate or separate.

22 (h) "Public accommodations" means any person who caters or offers
23 goods, services, facilities and accommodations to the public. Public
24 accommodations include, but are not limited to, any lodging establishment
25 or food service establishment, as defined by K.S.A. 36-501, and
26 amendments thereto; any bar, tavern, barbershop, beauty parlor, theater,
27 skating rink, bowling alley, billiard parlor, amusement park, recreation
28 park, swimming pool, lake, gymnasium, mortuary or cemetery which is
29 open to the public; or any public transportation facility. Public
30 accommodations do not include a religious or nonprofit fraternal or social
31 association or corporation.

32 (i) "Unlawful discriminatory practice" means: (1) Any discrimination
33 against persons, by reason of their race, religion, color, sex, disability,
34 national origin or ancestry:

35 (A) In any place of public accommodations; or

36 (B) in the full and equal use and enjoyment of the services, facilities,
37 privileges and advantages of any institution, department or agency of the
38 state of Kansas or any political subdivision or municipality thereof; and

39 (2) any discrimination against persons in regard to membership in a
40 nonprofit recreational or social association or corporation by reason of
41 race, religion, sex, color, disability, national origin or ancestry if such
42 association or corporation has 100 or more members and: (A) Provides
43 regular meal service; and (B) receives payment for dues, fees, use of

1 space, use of facility, services, meals or beverages, directly or indirectly,
2 from or on behalf of nonmembers.

3 This term shall not apply to a religious or private fraternal and
4 benevolent association or corporation.

5 (j) "Disability" means, with respect to an individual:

6 (1) A physical or mental impairment that substantially limits one or
7 more of the major life activities of such individual;

8 (2) a record of such an impairment; or

9 (3) being regarded as having such an impairment.

10 Disability does not include current, illegal use of a controlled substance
11 as defined in section 102 of the federal controlled substance act (21 U.S.C.
12 § 802), in housing discrimination. In employment and public
13 accommodation discrimination, "disability" does not include an individual
14 who is currently engaging in the illegal use of drugs where possession or
15 distribution of such drugs is unlawful under the controlled substance act
16 (21 U.S.C. § 812), when the covered entity acts on the basis of such use.

17 (k) (1) "Reasonable accommodation" means:

18 (A) Making existing facilities used by employees readily accessible
19 to and usable by individuals with disabilities; and

20 (B) job restructuring; part-time or modified work schedules;
21 reassignment to a vacant position; acquisition or modification of
22 equipment or devices; appropriate adjustment or modifications of
23 examinations, training materials or policies; provision of qualified readers
24 or interpreters; and other similar accommodations for individuals with
25 disabilities.

26 (2) A reasonable accommodation or a reasonable modification to
27 policies, practices or procedures need not be provided to an individual who
28 meets the definition of disability in K.S.A. 44-1002(j)(3), and amendments
29 thereto.

30 (l) "Regarded as having such an impairment" means the absence of a
31 physical or mental impairment but regarding or treating an individual as
32 though such an impairment exists. An individual meets the requirement of
33 "being regarded as having such an impairment" if the individual
34 establishes that such individual has been subjected to an action prohibited
35 under this act because of an actual or perceived physical or mental
36 impairment whether or not the impairment limits or is perceived to limit a
37 major life activity. Subsection (j)(3) shall not apply to impairments that are
38 transitory or minor. A transitory impairment is an impairment with an
39 actual or expected duration of six months or less.

40 (m) "Major life activities" means:

41 (1) Major life activities include, but are not limited to, caring for
42 oneself, performing manual tasks, seeing, hearing, eating, sleeping,
43 walking, standing, lifting, bending, speaking, breathing, learning, reading,

1 concentrating, thinking, communicating, and working.

2 (2) It also includes the operation of a major bodily function,
3 including, but not limited to, functions of the immune system, normal cell
4 growth, digestive, bowel, bladder, neurological, brain, respiratory,
5 circulatory, endocrine and reproductive functions.

6 (n) "Genetic screening or testing" means a laboratory test of a
7 person's genes or chromosomes for abnormalities, defects or deficiencies,
8 including carrier status, that are linked to physical or mental disorders or
9 impairments, or that indicate a susceptibility to illness, disease or other
10 disorders, whether physical or mental, which test is a direct test for
11 abnormalities, defects or deficiencies, and not an indirect manifestation of
12 genetic disorders.

13 (o) "Immunity passport" means a document, digital record or
14 software application indicating that a person is immune to a disease,
15 either through vaccination or infection and recovery.

16 (p) "Vaccination status" means an indication of whether a person has
17 received one or more doses of a vaccine.

18 Sec. 9. K.S.A. 44-1009 is hereby amended to read as follows: 44-
19 1009. (a) It shall be an unlawful employment practice:

20 (1) For an employer, because of the race, religion, color, sex,
21 disability, national origin or ancestry of any person to refuse to hire or
22 employ such person to bar or discharge such person from employment or
23 to otherwise discriminate against such person in compensation or in terms,
24 conditions or privileges of employment; to limit, segregate, separate,
25 classify or make any distinction in regards to employees; or to follow any
26 employment procedure or practice which, in fact, results in discrimination,
27 segregation or separation without a valid business necessity.

28 (2) For a labor organization, because of the race, religion, color, sex,
29 disability, national origin or ancestry of any person, to exclude or to expel
30 from its membership such person or to discriminate in any way against any
31 of its members or against any employer or any person employed by an
32 employer.

33 (3) For any employer, employment agency or labor organization to
34 print or circulate or cause to be printed or circulated any statement,
35 advertisement or publication, or to use any form of application for
36 employment or membership or to make any inquiry in connection with
37 prospective employment or membership, which expresses, directly or
38 indirectly, any limitation, specification or discrimination as to race,
39 religion, color, sex, disability, national origin or ancestry, or any intent to
40 make any such limitation, specification or discrimination, unless based on
41 a bona fide occupational qualification.

42 (4) For any employer, employment agency or labor organization to
43 discharge, expel or otherwise discriminate against any person because such

1 person has opposed any practices or acts forbidden under this act or
2 because such person has filed a complaint, testified or assisted in any
3 proceeding under this act.

4 (5) For an employment agency to refuse to list and properly classify
5 for employment or to refuse to refer any person for employment or
6 otherwise discriminate against any person because of such person's race,
7 religion, color, sex, disability, national origin or ancestry; or to comply
8 with a request from an employer for a referral of applicants for
9 employment if the request expresses, either directly or indirectly, any
10 limitation, specification or discrimination as to race, religion, color, sex,
11 disability, national origin or ancestry.

12 (6) For an employer, labor organization, employment agency, or
13 school which provides, coordinates or controls apprenticeship, on-the-job,
14 or other training or retraining program, to maintain a practice of
15 discrimination, segregation or separation because of race, religion, color,
16 sex, disability, national origin or ancestry, in admission, hiring,
17 assignments, upgrading, transfers, promotion, layoff, dismissal,
18 apprenticeship or other training or retraining program, or in any other
19 terms, conditions or privileges of employment, membership,
20 apprenticeship or training; or to follow any policy or procedure which, in
21 fact, results in such practices without a valid business motive.

22 (7) For any person, whether an employer or an employee or not, to
23 aid, abet, incite, compel or coerce the doing of any of the acts forbidden
24 under this act, or attempt to do so.

25 (8) For an employer, labor organization, employment agency or joint
26 labor-management committee to: (A) Limit, segregate or classify a job
27 applicant or employee in a way that adversely affects the opportunities or
28 status of such applicant or employee because of the disability of such
29 applicant or employee; (B) participate in a contractual or other
30 arrangement or relationship, including a relationship with an employment
31 or referral agency, labor union, an organization providing fringe benefits to
32 an employee or an organization providing training and apprenticeship
33 programs that has the effect of subjecting a qualified applicant or
34 employee with a disability to the discrimination prohibited by this act; (C)
35 utilize standards criteria, or methods of administration that have the effect
36 of discrimination on the basis of disability or that perpetuate the
37 discrimination of others who are subject to common administrative
38 control; (D) exclude or otherwise deny equal jobs or benefits to a qualified
39 individual because of the known disability of an individual with whom the
40 qualified individual is known to have a relationship or association; (E) not
41 make reasonable accommodations to the known physical or mental
42 limitations of an otherwise qualified individual with a disability who is an
43 applicant or employee, unless such employer, labor organization,

1 employment agency or joint labor-management committee can
 2 demonstrate that the accommodation would impose an undue hardship on
 3 the operation of the business thereof; (F) deny employment opportunities
 4 to a job applicant or employee who is an otherwise qualified individual
 5 with a disability, if such denial is based on the need to make reasonable
 6 accommodation to the physical or mental impairments of the employee or
 7 applicant; (G) use qualification standards, employment tests or other
 8 selection criteria that screen out or tend to screen out an individual with a
 9 disability or a class of individuals with disabilities unless the standard, test
 10 or other selection criteria, as used, is shown to be job-related for the
 11 position in question and is consistent with business necessity; or (H) fail to
 12 select and administer tests concerning employment in the most effective
 13 manner to ensure that, when such test is administered to a job applicant or
 14 employee who has a disability that impairs sensory, manual or speaking
 15 skills, the test results accurately reflect the skills, aptitude or whatever
 16 other factor of such applicant or employee that such test purports to
 17 measure, rather than reflecting the impaired sensory, manual or speaking
 18 skills of such employee or applicant—(, except where such skills are the
 19 factors that the test purports to measure).

20 (9) For any employer to:

21 (A) Seek to obtain, to obtain or to use genetic screening or testing
 22 information of an employee or a prospective employee to distinguish
 23 between or discriminate against or restrict any right or benefit otherwise
 24 due or available to an employee or a prospective employee; or

25 (B) subject, directly or indirectly, any employee or prospective
 26 employee to any genetic screening or test.

27 (10) *For any employer to:*

28 (A) *Seek to obtain, to obtain or to use the vaccination status of an*
 29 *employee or prospective employee to distinguish between, discriminate*
 30 *against or restrict any right or benefit otherwise due or available to an*
 31 *employee or a prospective employee; or*

32 (B) *require, directly or indirectly, any employee or prospective*
 33 *employee to receive a vaccination or an immunity passport.*

34 (b) It shall not be an unlawful employment practice to fill vacancies
 35 in such way as to eliminate or reduce imbalance with respect to race,
 36 religion, color, sex, disability, national origin or ancestry.

37 (c) It shall be an unlawful discriminatory practice:

38 (1) For any person, as defined herein being the owner, operator,
 39 lessee, manager, agent or employee of any place of public accommodation
 40 to refuse, deny or make a distinction, directly or indirectly, in offering its
 41 goods, services, facilities, and accommodations to any person as covered
 42 by this act because of race, religion, color, sex, disability, national origin or
 43 ancestry, except where a distinction because of sex is necessary because of

1 the intrinsic nature of such accommodation.

2 (2) For any person, whether or not specifically enjoined from
3 discriminating under any provisions of this act, to aid, abet, incite, compel
4 or coerce the doing of any of the acts forbidden under this act, or to
5 attempt to do so.

6 (3) For any person, to refuse, deny, make a distinction, directly or
7 indirectly, or discriminate in any way against persons because of the race,
8 religion, color, sex, disability, national origin or ancestry of such persons
9 in the full and equal use and enjoyment of the services, facilities,
10 privileges and advantages of any institution, department or agency of the
11 state of Kansas or any political subdivision or municipality thereof.

12 Sec. 10. K.S.A. 2021 Supp. 65-101 is hereby amended to read as
13 follows: 65-101. (a) *Except as provided in section 2, and amendments*
14 *thereto*, the secretary of health and environment shall exercise general
15 supervision of the health of the people of the state and may:

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

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

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

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

29 (5) take action to prevent the introduction of infectious or contagious
30 disease into this state and to prevent the spread of infectious or contagious
31 disease within this state; *and*

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

36 (b) The secretary of health and environment may adopt rules and
37 regulations necessary to carry out the provisions of subsection (a). In
38 addition to other remedies provided by law, the secretary is authorized to
39 apply to the district court, and such court shall have jurisdiction upon a
40 hearing and for cause shown to grant a temporary or permanent injunction
41 to compel compliance with such rules and regulations.

42 (c) In the event of a state of disaster emergency declared by the
43 governor pursuant to K.S.A. 48-924, and amendments thereto, or a state of

1 local disaster emergency declared pursuant to K.S.A. 48-932, and
2 amendments thereto, the legislature may revoke an order issued by the
3 secretary to take action related to such disaster emergency as provided in
4 this subsection. Such order may be revoked at any time by concurrent
5 resolution of the legislature or, when the legislature is not in session or is
6 adjourned during session for three or more days, such order may be
7 revoked by the legislative coordinating council with the affirmative vote of
8 five members thereof.

9 Sec. 11. K.S.A. 2021 Supp. 65-201 is hereby amended to read as
10 follows: 65-201. (a) The board of county commissioners of each county
11 shall act as the county board of health for the county. Each county board
12 shall appoint a person licensed to practice medicine and surgery,
13 preference being given to persons who have training in public health, who
14 shall serve as the local health officer and who shall act in an advisory
15 capacity to the county board of health. The appointing authority of city-
16 county, county or multicounty health units with less than 100,000
17 population may appoint a qualified local health program administrator as
18 the local health officer if a person licensed to practice medicine and
19 surgery or person licensed to practice dentistry is designated as a
20 consultant to direct the administrator on program and related medical and
21 professional matters. The local health officer or local health program
22 administrator shall hold office at the pleasure of the board.

23 (b) (1) Except as provided in paragraph (2), any ~~order~~
24 ~~recommendation~~ issued by the local health officer, including ~~orders~~
25 ~~recommendations~~ issued as a result of an executive order of the governor,
26 may be reviewed, ~~amended or revoked~~ by the board of county
27 commissioners of the county affected by such ~~order~~ *recommendation* at a
28 meeting of the board. ~~Any order reviewed or amended by the board shall~~
29 ~~include an expiration date set by the board and may be amended or~~
30 ~~revoked at an earlier date by a majority vote of the board.~~

31 (2) *Except as provided in section 2, and amendments thereto*, if a
32 local health officer determines it is necessary to issue ~~an order mandating~~
33 *a recommendation concerning* the wearing of face masks, *a*
34 *recommendation* limiting the size of gatherings of individuals, curtailing
35 the operation of business, controlling the movement of the population of
36 the county or limiting religious gatherings, the local health officer shall
37 propose such ~~an order~~ *a recommendation* to the board of county
38 commissioners. At the next regularly scheduled meeting of the board or at
39 a special meeting of the board, the board shall review such ~~proposed order~~
40 *recommendation* and may take any action related to the ~~proposed order~~
41 *recommendation* the board determines is necessary. The ~~order~~
42 *recommendation* shall become effective if approved by the board or, if the
43 board is unable to meet, if approved by the chairperson of the board or the

1 vice chairperson of the board in the chairperson's absence or disability.

2 (c) The board of county commissioners in any county having a
3 population of less than 15,000 may contract with the governing body of
4 any hospital located in such county for the purpose of authorizing such
5 governing body of the hospital to supply services to a county board of
6 health.

7 (d) (1) Any party aggrieved by ~~an order~~ *a recommendation* issued
8 pursuant to subsection (b)(2) may file a civil action in the district court of
9 the county in which the ~~order~~ *recommendation* was issued within 30 days
10 after such ~~order~~ *recommendation* is issued. Notwithstanding any order
11 issued pursuant to K.S.A. 2021 Supp. 20-172(a), and amendments thereto,
12 the court shall conduct a hearing within 72 hours after receipt of a petition
13 in any such action. The court shall grant the request for relief unless the
14 court finds such ~~order~~ *recommendation* is narrowly tailored to the purpose
15 stated in the ~~order~~ *recommendation* and uses the least restrictive means to
16 achieve such purpose. The court shall issue an order on such petition
17 within seven days after the hearing is conducted. If the court does not issue
18 an order on such petition within seven days, the relief requested in the
19 petition shall be granted.

20 (2) Relief under this section shall not include a stay or injunction
21 concerning the contested action that applies beyond the county in which
22 the action was taken.

23 (3) The supreme court may adopt emergency rules of procedure to
24 facilitate the efficient adjudication of any hearing requested under this
25 subsection, including, but not limited to, rules for consolidation of similar
26 hearings.

27 Sec. 12. K.S.A. 2021 Supp. 65-202 is hereby amended to read as
28 follows: 65-202. (a) (1) The local health officer in each county throughout
29 the state, immediately after such officer's appointment, shall take the same
30 oath of office prescribed by law for the county officers, shall give bond of
31 \$500 conditioned for the faithful performance of the officer's duties, shall
32 keep an accurate record of all the transactions of such office, shall turn
33 over to the successor in office or to the county or joint board of health
34 selecting such officer, on the expiration of such officer's term of office, all
35 records, documents and other articles belonging to the office and shall
36 faithfully account to *the* board of county commissioners and to the county
37 and state for all moneys coming into the office. Such officer shall notify
38 the secretary of health and environment of such officer's appointment and
39 qualification, and provide the secretary with such officer's contact
40 information.

41 (2) Such officer shall receive and distribute without delay in the
42 county all forms from the secretary of health and environment to the
43 rightful persons, all returns from persons licensed to practice medicine and

1 surgery, assessors and local boards to said secretary, shall keep an accurate
2 record of all of the transactions of such office and shall turn over all
3 records and documents kept by such officer, the successor in office, or to
4 the county or joint board electing such officer, on the expiration of the
5 term of office.

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

10 ~~(e)~~(b) (1) ~~Such~~ *The local health officer shall make an investigation of*
11 *each case of smallpox, diphtheria, typhoid fever, scarlet fever, acute*
12 *anterior poliomyelitis (infantile paralysis), epidemic cerebro-spinal*
13 *meningitis and such other acute infectious, contagious or communicable*
14 *diseases as may be required, and, except as provided in section 2, and*
15 *amendments thereto, shall: (A) Use all known measures to prevent the*
16 *spread of any such infectious, contagious or communicable disease; and*
17 ~~shall~~ *(B) perform such other duties as this act, the county or joint board,*
18 *board of health or the secretary of health and environment may require.*

19 (2) ~~Any order recommendation~~ issued by the local health officer,
20 including ~~orders recommendations~~ issued as a result of an executive order
21 of the governor, on behalf of a county regarding the remediation of any
22 infectious, *contagious or communicable* disease may be reviewed,
23 ~~amended or revoked~~ by the board of county commissioners of any county
24 affected by such ~~order recommendation~~ in the manner provided by K.S.A.
25 65-201(b), and amendments thereto.

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

30 (d) For any failure or neglect of the local health officer to perform
31 any of the duties prescribed in this act, the officer may be removed from
32 office by the county board of health. In addition to removal from office,
33 for any failure or neglect to perform any of the duties prescribed by this
34 act, the local health officer shall be deemed guilty of a *an unclassified*
35 misdemeanor and, upon conviction, be fined not less \$10 nor more than
36 \$100 for each and every offense.

37 Sec. 13. K.S.A. 2021 Supp. 65-1120 is hereby amended to read as
38 follows: 65-1120. (a) *Grounds for disciplinary actions.* The board may
39 deny, revoke, limit or suspend any license or authorization to practice
40 nursing as a registered professional nurse, as a licensed practical nurse, as
41 an advanced practice registered nurse or as a registered nurse anesthetist
42 that is issued by the board or applied for under this act, or may require the
43 licensee to attend a specific number of hours of continuing education in

1 addition to any hours the licensee may already be required to attend or
2 may publicly or privately censure a licensee or holder of a temporary
3 permit or authorization, if the applicant, licensee or holder of a temporary
4 permit or authorization is found after hearing:

5 (1) To be guilty of fraud or deceit in practicing nursing or in
6 procuring or attempting to procure a license to practice nursing;

7 (2) to have been guilty of a felony or to have been guilty of a
8 misdemeanor involving an illegal drug offense unless the applicant or
9 licensee establishes sufficient rehabilitation to warrant the public trust,
10 except that notwithstanding K.S.A. 74-120, and amendments thereto, no
11 license or authorization to practice nursing as a licensed professional
12 nurse, as a licensed practical nurse, as an advanced practice registered
13 nurse or registered nurse anesthetist shall be granted to a person with a
14 felony conviction for a crime against persons as specified in article 34 of
15 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article
16 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2021 Supp.
17 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto;

18 (3) ~~has to have~~ been convicted or found guilty or has entered into an
19 agreed disposition of a misdemeanor offense related to the practice of
20 nursing as determined on a case-by-case basis;

21 (4) to have committed an act of professional incompetency as defined
22 in subsection (e);

23 (5) to be unable to practice with skill and safety due to current abuse
24 of drugs or alcohol;

25 (6) to be a person who has been adjudged in need of a guardian or
26 conservator, or both, under the act for obtaining a guardian or conservator,
27 or both, and who has not been restored to capacity under that act;

28 (7) to be guilty of unprofessional conduct as defined by rules and
29 regulations of the board;

30 (8) to have willfully or repeatedly violated the provisions of the
31 Kansas nurse practice act or any rules and regulations adopted pursuant to
32 that act, including K.S.A. 65-1114 and 65-1122, and amendments thereto;

33 (9) to have a license to practice nursing as a registered nurse or as a
34 practical nurse denied, revoked, limited or suspended, or to be publicly or
35 privately censured, by a licensing authority of another state, agency of the
36 United States government, territory of the United States or country or to
37 have other disciplinary action taken against the applicant or licensee by a
38 licensing authority of another state, agency of the United States
39 government, territory of the United States or country. A certified copy of
40 the record or order of public or private censure, denial, suspension,
41 limitation, revocation or other disciplinary action of the licensing authority
42 of another state, agency of the United States government, territory of the
43 United States or country shall constitute prima facie evidence of such a

1 fact for purposes of this paragraph~~(9)~~~~;~~~~or~~

2 (10) to have assisted suicide in violation of K.S.A. 21-3406, prior to
3 its repeal, or K.S.A. 2021 Supp. 21-5407, and amendments thereto, as
4 established by any of the following:

5 (A) A copy of the record of criminal conviction or plea of guilty for a
6 felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2021
7 Supp. 21-5407, and amendments thereto;

8 (B) a copy of the record of a judgment of contempt of court for
9 violating an injunction issued under K.S.A. 2021 Supp. 60-4404, and
10 amendments thereto; *or*

11 (C) a copy of the record of a judgment assessing damages under
12 K.S.A. 2021 Supp. 60-4405, and amendments thereto; *or*

13 *(11) to have declined to render healthcare services or otherwise*
14 *discriminated in rendering healthcare services to a person in violation of*
15 *section 4, and amendments thereto.*

16 (b) *Proceedings.* Upon filing of a sworn complaint with the board
17 charging a person with having been guilty of any of the unlawful practices
18 specified in subsection (a), two or more members of the board shall
19 investigate the charges, or the board may designate and authorize an
20 employee or employees of the board to conduct an investigation. After
21 investigation, the board may institute charges. If an investigation, in the
22 opinion of the board, reveals reasonable grounds for believing the
23 applicant or licensee is guilty of the charges, the board shall fix a time and
24 place for proceedings, which shall be conducted in accordance with the
25 provisions of the Kansas administrative procedure act.

26 (c) *Witnesses.* No person shall be excused from testifying in any
27 proceedings before the board under this act or in any civil proceedings
28 under this act before a court of competent jurisdiction on the ground that
29 such testimony may incriminate the person testifying, but such testimony
30 shall not be used against the person for the prosecution of any crime under
31 the laws of this state except the crime of perjury as defined in K.S.A. 2021
32 Supp. 21-5903, and amendments thereto.

33 (d) *Costs.* If final agency action of the board in a proceeding under
34 this section is adverse to the applicant or licensee, the costs of the board's
35 proceedings shall be charged to the applicant or licensee as in ordinary
36 civil actions in the district court, but if the board is the unsuccessful party,
37 the costs shall be paid by the board. Witness fees and costs may be taxed
38 by the board according to the statutes relating to procedure in the district
39 court. All costs accrued by the board, when it is the successful party, and
40 which the attorney general certifies cannot be collected from the applicant
41 or licensee shall be paid from the board of nursing fee fund. All moneys
42 collected following board proceedings shall be credited in full to the board
43 of nursing fee fund.

1 (e) *Professional incompetency defined.* As used in this section,
2 "professional incompetency" means:

3 (1) One or more instances involving failure to adhere to the
4 applicable standard of care to a degree which constitutes gross negligence,
5 as determined by the board;

6 (2) repeated instances involving failure to adhere to the applicable
7 standard of care to a degree which constitutes ordinary negligence, as
8 determined by the board; or

9 (3) a pattern of practice or other behavior which demonstrates a
10 manifest incapacity or incompetence to practice nursing.

11 (f) *Criminal justice information.* The board upon request shall receive
12 from the Kansas bureau of investigation such criminal history record
13 information relating to arrests and criminal convictions as necessary for
14 the purpose of determining initial and continuing qualifications of
15 licensees of and applicants for licensure by the board.

16 Sec. 14. K.S.A. 2021 Supp. 65-2836 is hereby amended to read as
17 follows: 65-2836. A licensee's license may be revoked, suspended or
18 limited, or the licensee may be publicly censured or placed under
19 probationary conditions, or an application for a license or for reinstatement
20 of a license may be denied upon a finding of the existence of any of the
21 following grounds:

22 (a) The licensee has committed fraud or misrepresentation in
23 applying for or securing an original, renewal or reinstated license.

24 (b) The licensee has committed an act of unprofessional or
25 dishonorable conduct or professional incompetency, except that the board
26 may take appropriate disciplinary action or enter into a non-disciplinary
27 resolution when a licensee has engaged in any conduct or professional
28 practice on a single occasion that, if continued, would reasonably be
29 expected to constitute an inability to practice the healing arts with
30 reasonable skill and safety to patients or unprofessional conduct as defined
31 in K.S.A. 65-2837, and amendments thereto.

32 (c) The licensee has been convicted of a felony or class A
33 misdemeanor, or substantially similar offense in another jurisdiction,
34 whether or not related to the practice of the healing arts, or the licensee has
35 been convicted in a special or general court-martial, whether or not related
36 to the practice of the healing arts. The board shall revoke a licensee's
37 license following conviction of a felony or substantially similar offense in
38 another jurisdiction, or following conviction in a general court-martial
39 occurring after July 1, 2000, unless a $\frac{2}{3}$ majority of the board members
40 present and voting determine by clear and convincing evidence that such
41 licensee will not pose a threat to the public in such person's capacity as a
42 licensee and that such person has been sufficiently rehabilitated to warrant
43 the public trust. In the case of a person who has been convicted of a felony

1 or convicted in a general court-martial and who applies for an original
2 license or to reinstate a canceled license, the application for a license shall
3 be denied unless a $\frac{2}{3}$ majority of the board members present and voting on
4 such application determine by clear and convincing evidence that such
5 person will not pose a threat to the public in such person's capacity as a
6 licensee and that such person has been sufficiently rehabilitated to warrant
7 the public trust.

8 (d) The licensee has used fraudulent or false advertisements.

9 (e) The licensee is addicted to or has distributed intoxicating liquors
10 or drugs for any other than lawful purposes.

11 (f) The licensee has willfully or repeatedly violated this act, the
12 pharmacy act of the state of Kansas or the uniform controlled substances
13 act, or any rules and regulations adopted pursuant thereto, or any rules and
14 regulations of the secretary of health and environment that are relevant to
15 the practice of the healing arts.

16 (g) The licensee has unlawfully invaded the field of practice of any
17 branch of the healing arts in which the licensee is not licensed to practice.

18 (h) The licensee has engaged in the practice of the healing arts under
19 a false or assumed name, or the impersonation of another practitioner. The
20 provisions of this subsection relating to an assumed name shall not apply
21 to licensees practicing under a professional corporation, under a business
22 entity that holds a certificate of authorization pursuant to K.S.A. 2021
23 Supp. 65-28,134, and amendments thereto, or under any other legal entity
24 duly authorized to provide such professional services in the state of
25 Kansas.

26 (i) The licensee's ability to practice the healing arts with reasonable
27 skill and safety to patients is impaired by reason of physical or mental
28 illness, or condition or use of alcohol, drugs or controlled substances. All
29 information, reports, findings and other records relating to impairment
30 shall be confidential and not subject to discovery by or release to any
31 person or entity outside of a board proceeding.

32 (j) The licensee has had a license to practice the healing arts revoked,
33 suspended or limited, has been censured or has had other disciplinary
34 action taken, or an application for a license denied, by the proper licensing
35 authority of another state, territory, District of Columbia, or other country.

36 (k) The licensee has violated any lawful rule and regulation
37 promulgated by the board or violated any lawful order or directive of the
38 board previously entered by the board.

39 (l) The licensee has failed to report or reveal the knowledge required
40 to be reported or revealed under K.S.A. 65-28,122, and amendments
41 thereto.

42 (m) The licensee, if licensed to practice medicine and surgery, has
43 failed to inform in writing a patient suffering from any form of

1 abnormality of the breast tissue for which surgery is a recommended form
2 of treatment, of alternative methods of treatment recognized by licensees
3 of the same profession in the same or similar communities as being
4 acceptable under like conditions and circumstances.

5 (n) The licensee has cheated on or attempted to subvert the validity of
6 the examination for a license.

7 (o) The licensee has been found to be mentally ill, disabled, not guilty
8 by reason of insanity, not guilty because the licensee suffers from a mental
9 disease or defect or incompetent to stand trial by a court of competent
10 jurisdiction.

11 (p) The licensee has prescribed, sold, administered, distributed or
12 given a controlled substance to any person for other than medically
13 accepted or lawful purposes.

14 (q) The licensee has violated a federal law or regulation relating to
15 controlled substances.

16 (r) The licensee has failed to furnish the board, or its investigators or
17 representatives, any information legally requested by the board.

18 (s) Sanctions or disciplinary actions have been taken against the
19 licensee by a peer review committee, healthcare facility, a governmental
20 agency or department or a professional association or society for acts or
21 conduct similar to acts or conduct that would constitute grounds for
22 disciplinary action under this section.

23 (t) The licensee has failed to report to the board any adverse action
24 taken against the licensee by another state or licensing jurisdiction, a peer
25 review body, a healthcare facility, a professional association or society, a
26 governmental agency, by a law enforcement agency or a court for acts or
27 conduct similar to acts or conduct that would constitute grounds for
28 disciplinary action under this section.

29 (u) The licensee has surrendered a license or authorization to practice
30 the healing arts in another state or jurisdiction, has surrendered the
31 authority to utilize controlled substances issued by any state or federal
32 agency, has agreed to a limitation to or restriction of privileges at any
33 medical care facility or has surrendered the licensee's membership on any
34 professional staff or in any professional association or society while under
35 investigation for acts or conduct similar to acts or conduct that would
36 constitute grounds for disciplinary action under this section.

37 (v) The licensee has failed to report to the board surrender of the
38 licensee's license or authorization to practice the healing arts in another
39 state or jurisdiction or surrender of the licensee's membership on any
40 professional staff or in any professional association or society while under
41 investigation for acts or conduct similar to acts or conduct that would
42 constitute grounds for disciplinary action under this section.

43 (w) The licensee has an adverse judgment, award or settlement

1 against the licensee resulting from a medical liability claim related to acts
2 or conduct similar to acts or conduct that would constitute grounds for
3 disciplinary action under this section.

4 (x) The licensee has failed to report to the board any adverse
5 judgment, settlement or award against the licensee resulting from a
6 medical malpractice liability claim related to acts or conduct similar to acts
7 or conduct that would constitute grounds for disciplinary action under this
8 section.

9 (y) The licensee has failed to maintain a policy of professional
10 liability insurance as required by K.S.A. 40-3402 or 40-3403a, and
11 amendments thereto.

12 (z) The licensee has failed to pay the premium surcharges as required
13 by K.S.A. 40-3404, and amendments thereto.

14 (aa) The licensee has knowingly submitted any misleading, deceptive,
15 untrue or fraudulent representation on a claim form, bill or statement.

16 (bb) The licensee as the supervising physician for a physician
17 assistant has failed to adequately direct and supervise the physician
18 assistant in accordance with the physician assistant licensure act or rules
19 and regulations adopted under such act.

20 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406,
21 prior to its repeal, or K.S.A. 2021 Supp. 21-5407, and amendments
22 thereto, as established by any of the following:

23 (1) A copy of the record of criminal conviction or plea of guilty for a
24 felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2021
25 Supp. 21-5407, and amendments thereto.

26 (2) A copy of the record of a judgment of contempt of court for
27 violating an injunction issued under K.S.A. 60-4404, and amendments
28 thereto.

29 (3) A copy of the record of a judgment assessing damages under
30 K.S.A. 60-4405, and amendments thereto.

31 (dd) The licensee has given a worthless check or stopped payment on
32 a debit or credit card for fees or moneys legally due to the board.

33 (ee) The licensee has knowingly or negligently abandoned medical
34 records.

35 (ff) *The licensee has declined to render healthcare services or*
36 *otherwise discriminated in rendering healthcare services to a person in*
37 *violation of section 4, and amendments thereto.*

38 Sec. 15. K.S.A. 38-2269, 44-1002 and 44-1009 and K.S.A. 2021
39 Supp. 23-3201, 65-101, 65-201, 65-202, 65-1120 and 65-2836 are hereby
40 repealed.

41 Sec. 16. This act shall take effect and be in force from and after its
42 publication in the Kansas register.