

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 2280**

As Recommended by Senate Committee on  
Public Health and Welfare

**Brief\***

Senate Sub. for HB 2280 would allow prescribers to prescribe U.S. Food and Drug Administration (FDA)-approved drugs, including, but not limited to, hydroxychloroquine sulfate and ivermectin, for the off-label use of preventing or treating COVID-19 infection. The bill would allow such prescriptions even if the patient has not been exposed to or tested positive for COVID-19. Such authorization would not apply to any controlled substances described in law relating to crimes involving controlled substances.

The bill would provide that recommendations, prescriptions, uses, or opinions of a prescriber related to treatment of COVID-19, including treatment that is not recommended or regulated by the State Board of Healing Arts (BOHA), the Kansas Department of Health and Environment (KDHE), or the FDA, would not be considered unprofessional conduct. The bill would apply these provisions retroactively to any disciplinary action taking place on or after March 12, 2020, and would require the BOHA to independently review all disciplinary action and rescind any such action prohibited by the bill.

The bill would amend the Pharmacy Act of the State of Kansas (Act) to prohibit pharmacists from refusing to fill or refill any prescription on the basis of such prescription being used to treat or prevent a COVID-19 infection.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would also amend law relating to child care facilities and schools to provide that children and students enrolling in a child care facility, school, or preschool or day care facility operated by a school, would be exempt from immunizations required by the Secretary of Health and Environment if such immunizations would violate sincerely held religious beliefs. The bill would provide that, in the case of a child care facility, the person maintaining a child care facility or, in the case of a school or preschool or day care operated by a school, a school district's Board of Education, such an exemption would be granted without inquiring into the sincerity of the request.

The bill would specify that, as they relate to immunization exemptions in the bill, "religious beliefs" includes, but is not limited, theistic and non-theistic moral and ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views.

The bill would also make technical amendments, including replacing the word "pupil" with "student."

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

## **Background**

HB 2280, as introduced, would have updated statutes relating to the powers, duties, and functions of the State Board of Pharmacy. On February 8, 2022, the Senate Committee on Public Health and Welfare inserted the provisions of SB 381, as amended by the Committee, (immunization requirements) and the provisions of SB 398 (prescription off-label use) and recommended a substitute bill.

[*Note:* The contents of HB 2280, as amended by the Senate Committee on Public Health and Welfare, were inserted into Sub. for SB 238 during the conference

committee process. The bill was passed by the Legislature and signed into law by the Governor on May 19, 2021.]

### ***SB 381 – Prescription Off-label Use***

SB 381 was introduced by the Senate Committee on Public Health and Welfare at the request of Senator Hilderbrand.

#### *Senate Committee on Public Health and Welfare*

In the Senate Committee hearing, Senator Steffen and nine private citizens provided **proponent** testimony, stating that doctors should not be limited in the range of potential treatment options available for preventing and treating COVID-19 and that patients should have access to the medications prescribed to them.

Several hundred private citizens submitted written-only proponent testimony.

A representative of the Kansas Medical Society provided neutral testimony, stating that patient autonomy should be balanced with best practices and standard of care and expressing concern the bill would remove the ability to bring certain claims against unprofessional conduct or substandard care.

A representative of the Kansas State Board of Healing Arts provided written-only neutral testimony.

Written-only **opponent** testimony was submitted by the the University of Kansas Health System on behalf of Ascension Via Christi Health, University of Kansas School of Health Professions, and University of Kansas physicians.

The Senate Committee amended the bill to remove language relating to pharmacists, including “a pharmacist shall dispense,” and to specify that pharmacists are

prohibited from refusing to fill or refill any prescription used to treat or prevent a COVID-19 infection.

The Senate Committee also amended the bill to add the contents of SB 398.

The Senate Committee placed the contents of SB 381, as amended, into HB 2280 and recommended a substitute bill be passed.

### *Fiscal Information*

According to the fiscal note prepared by the Division of the Budget on SB 381, as introduced, the BOHA indicates reviewing investigations related to the enactment of the bill would be time consuming but could be done with existing resources.

The State Board of Pharmacy (Board) indicates the bill could have a fiscal effect on expenditures as well as on licensees and registrants and that prescribing and dispensing of drugs, or failing to do so, could cause an increase in the number of complaints received by the Board. Complaints would require investigation and an increase in Board resources such as time and staff. The Board notes, in the past, such issues have created substantial fiscal impact to the Board, but the effect on the Board's expenditures cannot be determined.

Any fiscal effect associated with SB 381 is not reflected in *The FY 2023 Governor's Budget Report*.

### ***SB 398 – Immunization Requirements***

SB 398 was introduced by the Senate Committee on Public Health and Welfare at the request of Senator Steffen.

*Senate Committee on Public Health and Welfare*

The Senate Committee had not held a hearing on SB 398 at the time it was amended into SB 381.

*Fiscal Information*

According to the fiscal note prepared by the Division of the Budget on SB 398, the Kansas Department for Children and Families, State Department of Education, and KDHE indicate the bill would have no fiscal effect on the agencies.

Prescriptions for off-label use; Covid-19; vaccines; religious exemptions