SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 441

As Recommended by Senate Committee on
Public Health and Welfare

Brief*

SB 441 would enact the Biological Laboratory Accident Transparency Act.

Definitions

The bill would define terms as follows:

- "High-risk biological laboratory" would mean a commercial or research facility that:
    - Engages in research involving human pathogens or that grows or manipulates any pathogens listed in the National Institute of Allergy and Infectious Diseases list of priority and emergency infectious diseases; or
    - Runs as a biosafety level 3 or 4 or an animal biosafety level 3 or 4 laboratory or a similar biosafety level site;
- "Laboratory accident" would mean an event that leads to injury or human exposure to a pathogen, a loss of containment, or where an event may have done so, including an event where:
    - Skin is broken by a needle, bite, or any other source;
    - Any other injury causes harm or damage to an individual;

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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

    - A spill kit is needed or used;
    - A biosafety containment failure involving biosafety cabinets or equipment occurs;
    - Any specimens that could be infectious, including lab animals, are missing, stolen, or lost; or
    - Infectious or seropositives are detected;
- "Near-miss" would mean an event where it is determined not to qualify as a laboratory accident but could reasonably have qualified; and
- "Non-conformities" would mean all other incidents where a safety procedure was not followed.

Accident Reporting Procedure

The bill would require institutions and organizations to publicly report, in a summary format, any laboratory accident or near-miss event that occurs in any high-risk biological laboratory.

The bill would allow institutions and organizations to publicly report any laboratory accident or near-miss accident that occurs at:

- A site that only stores tissues not known to carry pathogens;
- Clinical facilities that only engage in diagnostic testing or treatment; or
- A biosafety level 1 or 2 or an animal biosafety level 1 or 2 laboratory.

The bill would encourage, but not require, institutions and organizations to report non-conformities.

Reporting that would be required under the bill would not replace or exclude any other reporting required for public health or any other purpose.

Reporting for accidents that would be mandated by the bill would:

- Contain a list of all accidents in the immediately preceding 10 years, except that no reporting shall be required prior to July 1, 2022;
- Be updated with events not later than one week after they occur;
- Be in a format that is human-readable and machine-readable, such as a spreadsheet;
- Be accessible and clearly linked on the institution's or organization's website, if such a website is maintained, or if an institution or organization does not maintain a website:
    - Be recorded in a separately publicly accessible database, if the data is available in a similarly timely manner and the database used is publicly noted and linked to the laboratory; or
    - Be provided by the institution or organization within two business days after a request for a copy of such report is made to the institution or organization; and
- Be submitted each quarter to the U.S. Department of Health and Human Services' Office of the Assistant Secretary for Preparedness and Response, or such office's federal designee.

Contents of Accident Reports

The bill would require that each accident report contain:

- The date the accident occurred;
- The date of the report;
- The laboratory or site where the accident occurred;
- A short description of the accident;
- A listing of any pathogen or strain or other materials involved;
- The number of individuals affected, and the injury or infection status of such persons;
- A summary of any suspected or known secondary exposures; and
- The type and size of the laboratory and the approximate number of person-hours spent in the laboratory each year.

Accident reports that would be mandated by the bill would not be required to contain any information that:

- Identifies non-public security measures or otherwise harms the security of the laboratory;
- Contains personally identifiable information of any individual; or
- Otherwise violates state or federal law.

The bill would require any failure to follow the reporting requirements of this section, including delayed reporting, or changes to update an event report with additional information to be noted in the report.

Limitations on Employers

The bill would prohibit employers from discharging, demoting, harassing, retaliating, or taking any other adverse action against an employee when such employee acted in good faith under the Act, including an employee who publicly discloses information withheld from an accident report required by this act or assists with investigations into violations of this act.

The bill would provide that any employer who violates these provisions:

- Be liable for damages for any loss of wages, actual damages, or other benefits;
- Be ordered to reinstate any employee discharged for acts taken in good faith by the employee in furtherance of an action under the Act; and
- May be enjoined from further violations of this section of the bill and ordered to provide other appropriate relief.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of a representative of Guarding Against Pandemics.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, a representative of 1Day Sooner provided **proponent** testimony, stating that the bill would support biosafety efforts and the need for public transparency without imposing undue additional burden on labs.

Representatives of the Office of the Vice President for Research at Kansas State University provided written-only **opponent** testimony, stating concern about increased regulatory burden, unclear and inconsistent definitions in the bill, unclear guidance on reporting, and duplication of efforts, as well as the risk for increased noncompliance and decreased public trust.

Neutral testimony was provided by the director of Kansas Health and Environmental Laboratories, stating the bill duplicates reporting that their high-risk biological laboratory, like other high-risk laboratories, must already complete and submit to the Centers for Disease Control and Prevention Select Agent Program.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Kansas Department of Health and Environment (KDHE) estimates enactment of the bill would result in initial expenditures of $70,000 from the State General Fund (SGF) in FY 2022 for the development and maintenance of a website and database for the public to report accidents as required by the Act. KDHE estimates annual expenditures, beginning in FY 2023, would total approximately $20,000 SGF for ongoing maintenance, IT licensing, and reporting.

The Kansas Department of Labor does not estimate any fiscal effect due to the enactment of the bill. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Biological Laboratory Accident Transparency Act; biological laboratories; safety; accident reporting