

SPECIAL SESSION OF 2021

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2001**

As Agreed to November 22, 2021

Brief*

HB 2001, as amended, would create law related to employer COVID-19 vaccine requirements and exemptions and related eligibility for unemployment benefits.

Employer COVID-19 Vaccine Requirements and Exemptions

The bill would require, notwithstanding any provision of law to the contrary, an employer who implements a COVID-19 vaccine requirement to exempt an employee from such requirement, without punitive action, if the employee submits a written waiver request to the employer stating that complying with the requirement would:

- Endanger the life or health of the employee or an individual residing with the employee, as evidenced by an accompanying written statement signed by a physician or another person who performs acts pursuant to practice agreements, protocols, or at the order, direction, or delegation of a physician; or
- Violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would require an employer to grant an exemption requested in accordance with the bill based on sincerely held religious beliefs without inquiring as to the sincerity of the request.

The bill would provide that an employee aggrieved by a violation of the bill's provisions could file a complaint with the Secretary of Labor (Secretary) alleging that an employer failed to offer an exemption, improperly denied an exemption request, took punitive action against the employee, or committed any other violation of this section. The bill would require the Secretary to promptly commence an investigation of each complaint filed under these provisions, to determine, at a minimum, whether:

- The employer imposed a COVID-19 vaccine requirement;
- The employee submitted a written waiver request in accordance with the bill's provisions; and
- The employer committed any violation of this section.

The bill would require the Secretary to complete such investigation and issue a final order within 60 calendar days after the filing of the complaint. The bill would require the order to contain findings and conclusions as to whether the employer violated the bill's provisions and require the Secretary to provide the order to the employee and the employer. The order would be a final order for purposes of judicial review and would be required to state the right of the employee or employer to appeal as provided in the Kansas Judicial Review Act.

If the Secretary issues a final order finding that an employer violated the bill's provisions, the bill would require the Secretary to issue an order containing such findings and provide such order to the employee, the employer, and the Attorney General.

The bill would require the Attorney General, upon receipt of such order from the Secretary, to secure enforcement of such order by filing an action in an appropriate district court to impose civil penalties. Such civil action would not be filed against an employer if the employer reinstates a terminated employee with back pay to the date that the complaint was received by the Secretary.

In such action, the court could impose a civil penalty not to exceed \$10,000 per violation for an employer with fewer than 100 employees, or \$50,000 per violation for an employer with 100 or more employees.

In determining the amount of a civil penalty for a violation, the bill would permit the court to consider:

- Whether the employer knowingly and willfully violated the bill's provisions;
- Whether the employer has shown good faith in attempting to comply with the bill's provisions;
- Whether the employer has taken action to correct the violation;
- Whether the employer has been previously assessed a civil penalty for violating the bill's provisions; and
- Any other mitigating or aggravating factor that fairness or due process requires.

The bill would require all civil penalties assessed and collected under the bill's provisions to be remitted to the State Treasurer for deposit in the State Treasury to the credit of the Employment Security Fund.

For purposes of this section, the bill would define "COVID-19 vaccine," "COVID-19 vaccine requirement,"

“employee,” “employer,” “person,” “physician,” “punitive action,” and “religious beliefs.”

Eligibility for Unemployment Benefits

The bill would provide that an individual aggrieved by a violation of the bill’s provisions who has filed a claim for benefits under the Employment Security Law and who is otherwise eligible for benefits under the Employment Security Law would not become ineligible for benefits or be disqualified from receiving benefits on the grounds that the claimant:

- Was discharged or suspended for misconduct, if the employer’s conduct in discharging or suspending such claimant was a violation of the bill’s provisions; or
- Has declined to accept work that requires compliance with a COVID-19 vaccine requirement, if the claimant has requested an exemption from the prospective employer in accordance with the bill’s provisions, and such request was denied. In such case, such work for the claimant would be deemed not to constitute suitable work for purposes of the Employment Security Law.

The bill would require that, upon request by a claimant, the claimant be retroactively paid benefits for any week the claimant would otherwise have been eligible for such benefits, if the claimant was disqualified from receiving such benefits during the period of September 9, 2021, through the effective date of the bill, on the grounds that the claimant was discharged or suspended for misconduct as the result of the claimant’s refusal to comply with a COVID-19 vaccine requirement after the claimant requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

The bill would require the Secretary to independently review any claims denied during the same period because the claimant was disqualified on the same grounds under the same circumstances, and, if the claimant has not requested retroactive payment of such benefits, the Secretary would be required to retroactively pay benefits to such claimant for any week the claimant would otherwise have been eligible for such benefits. The Secretary would be required to develop and implement procedures to enable claimants to retroactively substantiate and file claims under these provisions, and the claimant or the employer would be allowed to appeal an award or denial of benefits made pursuant to these provisions.

Benefits awarded to a claimant who received back pay pursuant to the bill's provisions would be subject to the repayment or benefit offset and other related provisions, if applicable.

For purposes of this section, the bill would define "COVID-19 vaccine requirement."

Severability Clause

The bill would provide, if any of the provisions regarding employer COVID-19 vaccine requirements and exemptions are held to be unconstitutional by a court of competent jurisdiction, then upon final order by the court, the Attorney General would be required to certify to the Secretary of State that such holding has occurred, and the Secretary of State would then be required to publish notice of such certification in the *Kansas Register*. Upon such publication, the provisions regarding eligibility for unemployment benefits would be repealed.

The bill would provide, if any of the provisions regarding unemployment benefits are held to be unconstitutional by a court of competent jurisdiction, these provisions would be

severable, and such holding would not affect the validity of the provisions regarding employer COVID-19 vaccine requirements and exemptions.

Effective Date

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

Conference Committee Action

The second Conference Committee agreed to the House version of the bill, modified to:

- Add the Senate provisions regarding unemployment insurance eligibility;
- Require the Secretary to complete the investigation and issue a final order within 60 calendar days rather than 25 days;
- Remove the sunset date;
- Add a severability clause; and
- Direct the proceeds from the civil penalties to the Employment Security Fund, rather than the State General Fund.

Background

On September 9, 2021, President Biden announced four federal actions regarding COVID-19 mandates:

- Issuance of Executive Order 14042, requiring COVID-19 vaccination for employees of contractors of federal executive departments and agencies (contractor mandate);

- Issuance of Executive Order 14043, ordering each federal executive branch agency to implement COVID-19 vaccination requirements for all federal employees (federal employee mandate);
- Development of an emergency standard by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) requiring employers with 100 or more employees to mandate each employee be vaccinated or submit to weekly testing (OSHA mandate); and
- Expansion of a prior COVID-19 vaccination requirement by the U.S. Centers for Medicare and Medicaid Services (CMS) to require such vaccination of workers in most health care settings receiving Medicare or Medicaid reimbursement (CMS mandate).

Subsequent to the announcement and pursuant to KSA 46-1205, the Legislative Coordinating Council (LCC) appointed 11 members of the Legislature to serve as members of the Special Committee on Government Overreach and the Impact of COVID-19 Mandates (Committee). The LCC directed the Committee to review and examine federal mandates including, but not limited to, employer, federal contractor, and health care worker vaccine mandates; masking; and mandates requiring proof of vaccination status; and to provide recommendations for responses to the mandates. The LCC granted the Committee five days to complete this task.

The Committee met four times, on October 29 and 30 and November 9 and 12, 2021. The Committee received overviews of the federal vaccine mandates and related federal actions from staff and heard public comment on the federal vaccine mandates and testimony regarding possible state responses from various attorneys, representatives of associations and organizations, and private citizens.

On November 12, 2021, the Committee held informational hearings on two bill drafts that contained provisions regarding exemptions from employer vaccine requirements and unemployment benefits eligibility. Provisions in the draft bills are similar to some provisions contained in HB 2001. The Committee recommended the Legislature call a Special Session by petition for consideration of the bill drafts.

Further information regarding the Committee's activities and the informational hearings on the bill drafts may be found in the Committee's Preliminary Report: http://www.kslegislature.org/li_2021s/documents/Preliminary_Report_-_2021_Sp_Comm_on_Gov_Overreach_and_the_Impact_of_COVID-19_Mandates.pdf.

Background of HB 2001

HB 2001 was introduced by Representatives Barker, Landwehr, Owens, and Tarwater. As introduced, the bill contained provisions regarding exemptions from employer vaccine requirements. [Note: The Senate version contained similar provisions regarding exemptions from employer vaccine requirements. Differences in the versions included procedural differences and House-only provisions regarding district court involvement in enforcement actions, a 25-day time limit for the Secretary's investigation, and an expiration date of June 1, 2023.]

On emergency final action, subject to amendment and debate, the House amended the bill to reduce the number of days, from 100 to 25, the Secretary has to complete an investigation and issue an order. [Note: The Senate version did not include a time limitation on the Secretary's investigation, but the Conference Committee restored the time limitation and modified it to 60 calendar days.]

On final action, subject to amendment, debate, and roll call, the Senate adopted amendments:

- Replacing the House language with the language of SB 1, as introduced, containing provisions regarding exemptions from employer vaccine requirements and unemployment benefits eligibility. [Note: The Conference Committee restored the House version of the provisions regarding exemptions from employer vaccine requirements, with further modifications, and retained the Senate language regarding unemployment benefits eligibility.];
- Prohibiting employer COVID-19 vaccine requirements unless authorized by an act of the Legislature. [Note: This amendment was not retained by the Conference Committee.]; and
- Prohibiting discrimination by an employer against an employee on the basis of COVID-19 vaccination status. [Note: This amendment was not retained by the Conference Committee.]

Background of SB 1

SB 1 was introduced by Senators Masterson, Alley, and Wilborn.

Fiscal Information

No fiscal note was available on HB 2001 or SB 1 at the time the House and Senate took action.

COVID-19 vaccines; Exemptions; Violations; Secretary of Labor; Attorney General; Employment Security Law; Eligibility

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