

*SPECIAL SESSION OF 2021*

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2001**

As Amended by House on Final Action

**Brief\***

HB 2001 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.

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

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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>

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 25 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 imposed 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 previously been 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 State General Fund.

The bill would define "COVID-19 vaccine," "COVID-19 vaccine requirement," "employee," "employer," "person," "physician," "punitive action," and "religious beliefs" for the purposes of the bill.

The bill would state its provisions would expire on June 1, 2023.

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

## **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 bill regarding exemptions from employer vaccine requirements are similar to the 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](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.

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.

## **Fiscal Information**

No fiscal note was available on the bill at the time the House took action.

COVID-19 vaccines; Exemptions; Violations; Secretary of Labor; Attorney General