

SPECIAL SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2001

As Amended by Senate on Final Action

Brief*

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

Prohibition of Employer COVID-19 Vaccine Requirements Unless Authorized by Kansas Legislature

The bill would prohibit any employer from imposing a COVID-19 vaccine requirement unless such requirement is expressly authorized by an act of the Legislature.

Prohibition of Discrimination on the Basis of Employee COVID-19 Vaccination Status

The bill would prohibit any employer from discriminating against any employee on the basis of whether such employee has received a COVID-19 vaccine.

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:

*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>

- 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.

Civil Penalties for Employer Violations

The bill would provide that an employer who fails to comply with such provisions and terminates (including the functional equivalent of termination) an employee based on a COVID-19 vaccine requirement has committed a violation of the bill's provisions, and the terminated employee can file a complaint with the Secretary of Labor (Secretary) alleging that an exemption has not been offered or has been improperly applied or denied, resulting in the employee's termination. The bill would require the Secretary to conduct 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 employee was terminated as a result of the COVID-19 vaccine requirement.

If the Secretary finds that an employer violated the bill's provisions, the bill would require the Secretary to issue an order containing such findings and provide the 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 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. A civil penalty would not be imposed against an employer if the employer, prior to the issuance of a final order by the Attorney General, reinstates a terminated employee with back pay to the date that the complaint was received by the Secretary.

In determining the amount of a civil penalty for a violation, the bill would permit the Attorney General 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 prohibit a civil penalty from being imposed except upon the written order of the Attorney General to the employer violating the bill's provisions, and such order would be a final order for purposes of judicial review. The bill would require the order to state the violation, the penalty to be

imposed, the factors considered in determining such penalty, and the right of such employer to appeal as provided in the Kansas Judicial Review Act.

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.

Eligibility for Unemployment Benefits

The bill would provide that an individual aggrieved by a violation of the bill's provisions 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 individual:

- Was discharged or suspended for misconduct, if the employer's conduct in discharging or suspending such individual 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 individual 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 individual would be deemed not to constitute suitable work for purposes of the Employment Security Law.

The bill would require that a claimant, upon request, 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 individual 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.

Definitions

For purposes of its provisions, the bill would define “COVID-19 vaccine,” “COVID-19 vaccine requirement,” “employee,” “employer,” “person,” “physician,” “punitive action,” and “religious beliefs.”

Effective Date

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 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 contains similar provisions regarding exemptions from employer vaccine requirements. Differences in the versions include 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: This amendment was not retained in the Senate version.]

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;
- Prohibiting employer COVID-19 vaccine requirements unless authorized by an act of the Legislature; and
- Prohibiting discrimination by an employer against an employee on the basis of COVID-19 vaccination status.

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