

{As Amended by Senate on Final Action}

{As Amended by House on Final Action}

Special Session of 2021

HOUSE BILL No. 2001

By Representatives Barker, Landwehr, Owens and Tarwater

11-22

1 AN ACT concerning employer COVID-19 vaccine requirements; requiring
2 exemptions; providing for waiver requests; authorizing a complaint and
3 investigation process with the secretary of labor for violations related to
4 exemptions, ~~enforcement actions by the attorney general and civil~~
5 ~~penalties to be imposed by a court for such violations~~ *{and civil*
6 *penalties by the attorney general for such violations; relating to*
7 *employment security law; providing exceptions to benefit eligibility*
8 *conditions and disqualification conditions based on refusal to comply*
9 *with COVID-19 vaccine requirements; retroactive provision of*
10 *benefits when denied on the basis of discharge or suspension for*
11 *misconduct as the result of refusal to comply with COVID-19 vaccine*
12 *requirements; prohibiting employers from imposing COVID-19*
13 *vaccine requirements not expressly authorized by law; prohibiting*
14 *employer discrimination against employees based on receipt of a*
15 *COVID-19 vaccine}.*

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 ~~Section 1. (a) Notwithstanding any provision of law to the contrary, if~~
19 ~~an employer implements a COVID-19 vaccine requirement, the employer~~
20 ~~shall exempt an employee from such requirement, without punitive action,~~
21 ~~if the employee submits a written waiver request to the employer stating~~
22 ~~that complying with such requirement would:~~

23 ~~(1) Endanger the life or health of the employee or an individual who~~
24 ~~resides with the employee, as evidenced by an accompanying written~~
25 ~~statement signed by a physician or another person who performs acts~~
26 ~~pursuant to practice agreements, protocols or at the order, direction or~~
27 ~~delegation of a physician; or~~

28 ~~(2) violate sincerely held religious beliefs of the employee, as~~
29 ~~evidenced by an accompanying written statement signed by the employee.~~

30 ~~(b) An employer shall grant an exemption requested in accordance~~
31 ~~with this section based on sincerely held religious beliefs without inquiring~~
32 ~~into the sincerity of the request.~~

33 ~~(c) (1) An employee aggrieved by a violation of this section may file~~
34 ~~a complaint with the secretary of labor alleging that an employer failed to~~

1 ~~offer an exemption, improperly denied an exemption request, took punitive~~
2 ~~action against the employee or committed any other violation of this~~
3 ~~section.~~

4 ~~(2) (A) The secretary of labor shall promptly commence an~~
5 ~~investigation of each complaint filed pursuant to this subsection. The~~
6 ~~secretary shall complete such investigation and issue a final order within~~
7 ~~100 {25} days after the filing of the complaint. At a minimum, the~~
8 ~~investigation shall determine whether:~~

9 ~~(i) The employer imposed a COVID-19 vaccine requirement;~~

10 ~~(ii) the employee submitted a written waiver request in accordance~~
11 ~~with this section; and~~

12 ~~(iii) the employer committed any violation of this section;~~

13 ~~(B) Upon completing the investigation, the secretary of labor shall~~
14 ~~issue an order containing findings and conclusions as to whether the~~
15 ~~employer violated this section and provide such order to the employee and~~
16 ~~the employer. Such order is a final order for purposes of judicial review~~
17 ~~and shall state the right of the employee or the employer to appeal as~~
18 ~~provided in the Kansas judicial review act.~~

19 ~~(C) If the secretary of labor issues a final order finding that an~~
20 ~~employer violated this section, the secretary shall issue an order containing~~
21 ~~such findings and provide such order to the employee, the employer and~~
22 ~~the attorney general.~~

23 ~~(3) (A) Except as provided in paragraph (3)(B), upon receipt of an~~
24 ~~order from the secretary of labor pursuant to paragraph (2), the attorney~~
25 ~~general shall secure enforcement of such order by filing an action in an~~
26 ~~appropriate district court to impose civil penalties.~~

27 ~~(B) The attorney general shall not file a civil action against an~~
28 ~~employer if the employer reinstates the terminated employee with back~~
29 ~~pay to the date that the complaint was received by the secretary of labor~~
30 ~~under this subsection.~~

31 ~~(C) In an action filed pursuant to this subsection, the court may~~
32 ~~impose a civil penalty not to exceed:~~

33 ~~(i) \$10,000 per violation for an employer with fewer than 100~~
34 ~~employees; or~~

35 ~~(ii) \$50,000 per violation for an employer with 100 or more~~
36 ~~employees.~~

37 ~~(D) In determining the amount of the civil penalty for a violation, the~~
38 ~~court may consider the following factors:~~

39 ~~(i) Whether the employer knowingly and willfully violated this~~
40 ~~section;~~

41 ~~(ii) whether the employer has shown good faith in attempting to~~
42 ~~comply with this section;~~

43 ~~(iii) whether the employer has taken action to correct the violation;~~

1 ~~(iv) whether the employer has previously been assessed a civil~~
2 ~~penalty for violating this section; and~~

3 ~~(v) any other mitigating or aggravating factor that fairness or due~~
4 ~~process requires;~~

5 ~~(4) All civil penalties assessed and collected under this subsection~~
6 ~~shall be remitted to the state treasurer in accordance with the provisions of~~
7 ~~K.S.A. 75-4215, and amendments thereto. Upon receipt of each such~~
8 ~~remittance, the state treasurer shall deposit the entire amount in the state~~
9 ~~treasury to the credit of the state general fund.~~

10 ~~(d) As used in this section:~~

11 ~~(1) "COVID-19 vaccine" means an immunization, vaccination or~~
12 ~~injection against disease caused by the novel coronavirus identified as~~
13 ~~SARS-CoV-2 or disease caused by a variant of the virus;~~

14 ~~(2) "COVID-19 vaccine requirement" means that an employer:~~

15 ~~(A) Requires an employee to receive a COVID-19 vaccine;~~

16 ~~(B) requires an employee to provide documentation certifying receipt~~
17 ~~of a COVID-19 vaccine; or~~

18 ~~(C) enforces a requirement described in subparagraph (A) or (B) that~~
19 ~~is imposed by the federal government or any other entity;~~

20 ~~(3) "employee" means:~~

21 ~~(A) An individual who is employed in this state for wages by an~~
22 ~~employer;~~

23 ~~(B) an applicant for employment by an employer; or~~

24 ~~(C) a noncompensated intern or apprentice for an employer;~~

25 ~~(4) "employer" means any person in this state who employs one or~~
26 ~~more persons and includes the state of Kansas and all political~~
27 ~~subdivisions of the state;~~

28 ~~(5) "person" means an individual, partnership, association,~~
29 ~~organization, corporation, legal representative, trustee, trustee in~~
30 ~~bankruptcy or receiver;~~

31 ~~(6) "physician" means an individual licensed by the state board of~~
32 ~~healing arts to practice medicine and surgery;~~

33 ~~(7) "punitive action" means any of the following actions related to the~~
34 ~~employee's exemption request: Dismissal, demotion, transfer,~~
35 ~~reassignment, suspension, reprimand, warning of possible dismissal,~~
36 ~~withholding of work or assessing any monetary penalty or unreasonable~~
37 ~~charge; and~~

38 ~~(8) "religious beliefs" includes, but is not limited to, theistic and non-~~
39 ~~theistic moral and ethical beliefs as to what is right and wrong that are~~
40 ~~sincerely held with the strength of traditional religious views.~~

41 ~~(e) This section shall expire on June 1, 2023.~~

42 *{Section 1. (a) Notwithstanding any provision of law to the*
43 *contrary, if an employer implements a COVID-19 vaccine requirement,*

1 *the employer shall exempt an employee from such requirement, without*
2 *punitive action, if the employee submits a written waiver request to the*
3 *employer stating that complying with such requirement would:*

4 *(1) Endanger the life or health of the employee or an individual*
5 *who resides with the employee, as evidenced by an accompanying*
6 *written statement signed by a physician or another person who performs*
7 *acts pursuant to practice agreements, protocols or at the order, direction*
8 *or delegation of a physician; or*

9 *(2) violate sincerely held religious beliefs of the employee, as*
10 *evidenced by an accompanying written statement signed by the*
11 *employee.*

12 *(b) An employer shall grant an exemption requested in accordance*
13 *with this section based on sincerely held religious beliefs without*
14 *inquiring into the sincerity of the request.*

15 *(c) (1) An employer who fails to comply with this section and*
16 *terminates an employee based on a COVID-19 vaccine requirement*
17 *commits a violation of this section. Termination includes the functional*
18 *equivalent of termination. The terminated employee may file a complaint*
19 *with the secretary of labor alleging that an exemption has not been*
20 *offered or has been improperly applied or denied, resulting in the*
21 *employee's termination.*

22 *(2) (A) The secretary of labor shall conduct an investigation of*
23 *each complaint filed pursuant to this subsection. At a minimum, the*
24 *investigation shall determine whether:*

25 *(i) The employer imposed a COVID-19 vaccine requirement;*

26 *(ii) the employee submitted a written waiver request in accordance*
27 *with this section; and*

28 *(iii) the employee was terminated as a result of the COVID-19*
29 *vaccine requirement.*

30 *(B) If the secretary of labor finds that an employer violated this*
31 *section, the secretary shall issue an order containing such findings and*
32 *provide such order to the employee, the employer and the attorney*
33 *general.*

34 *(3) (A) Except as provided in paragraph (3)(B), upon receipt of an*
35 *order from the secretary of labor pursuant to paragraph (2), the attorney*
36 *general shall impose a civil penalty not to exceed:*

37 *(i) \$10,000 per violation for an employer with fewer than 100*
38 *employees; or*

39 *(ii) \$50,000 per violation for an employer with 100 or more*
40 *employees.*

41 *(B) The attorney general shall not impose a civil penalty against an*
42 *employer if the employer, prior to the issuance of a final order by the*
43 *attorney general, reinstates a terminated employee with back pay to the*

1 *date that the complaint was received by the secretary of labor under this*
2 *subsection.*

3 *(C) In determining the amount of the civil penalty for a violation,*
4 *the attorney general may consider the following factors:*

5 *(i) Whether the employer knowingly and willfully violated this*
6 *section;*

7 *(ii) whether the employer has shown good faith in attempting to*
8 *comply with this section;*

9 *(iii) whether the employer has taken action to correct the violation;*

10 *(iv) whether the employer has previously been assessed a civil*
11 *penalty for violating this section; and*

12 *(v) any other mitigating or aggravating factor that fairness or due*
13 *process requires.*

14 *(D) A civil penalty shall not be imposed pursuant to this subsection*
15 *except upon the written order of the attorney general to the employer*
16 *that violated this section. Such order is a final order for purposes of*
17 *judicial review and shall state the violation, the penalty to be imposed,*
18 *the factors considered in determining such penalty and the right of such*
19 *employer to appeal as provided in the Kansas judicial review act.*

20 *(4) All civil penalties assessed and collected under this subsection*
21 *shall be remitted to the state treasurer in accordance with the provisions*
22 *of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such*
23 *remittance, the state treasurer shall deposit the entire amount in the*
24 *state treasury to the credit of the state general fund.*

25 *(d) (1) An individual aggrieved by a violation of this section who is*
26 *otherwise eligible for benefits under the employment security law shall*
27 *not become ineligible for benefits pursuant to K.S.A. 44-705, and*
28 *amendments thereto, or be disqualified from receiving benefits pursuant*
29 *to K.S.A. 44-706, and amendments thereto, on the grounds that the*
30 *individual:*

31 *(A) Was discharged or suspended for misconduct if the employer's*
32 *conduct in discharging or suspending such individual was a violation of*
33 *this section; or*

34 *(B) has declined to accept work that requires compliance with a*
35 *COVID-19 vaccine requirement if the individual has requested an*
36 *exemption from the prospective employer in accordance with this section*
37 *and such request was denied. In such case, such work for such*
38 *individual shall be deemed not to constitute suitable work for purposes*
39 *of the employment security law.*

40 *(2) (A) Notwithstanding the time limitations of K.S.A. 44-709, and*
41 *amendments thereto, or the provisions of K.S.A. 44-706, and*
42 *amendments thereto, or any other provision of the employment security*
43 *law to the contrary, a claimant upon request shall be retroactively paid*

1 *benefits for any week that the claimant would otherwise have been*
2 *eligible for such benefits, if such claimant was disqualified from*
3 *receiving such benefits during the period of September 9, 2021, through*
4 *the effective date of this act on the grounds that the claimant was*
5 *discharged or suspended for misconduct as the result of the claimant's*
6 *refusal to comply with a COVID-19 vaccine requirement after the*
7 *individual requested an exemption or accommodation from such*
8 *requirement provided by state or federal law and such request was*
9 *denied.*

10 *(B) The secretary of labor shall independently review any claims*
11 *denied during the period of September 9, 2021, through the effective*
12 *date of this act to determine if the claimant was disqualified from*
13 *receiving benefits on the grounds that the claimant was discharged or*
14 *suspended for misconduct as the result of the claimant's refusal to*
15 *comply with a COVID-19 vaccine requirement after the individual*
16 *requested an exemption or accommodation from such requirement*
17 *provided by state or federal law and such request was denied. If the*
18 *claimant has not requested retroactive payment of such benefits as*
19 *provided by subparagraph (A), the secretary shall retroactively pay*
20 *benefits to such claimant for any week that the claimant would*
21 *otherwise have been eligible for such benefits.*

22 *(C) The claimant or the employer may appeal an award or denial of*
23 *benefits made pursuant to this subsection as provided in K.S.A. 44-709,*
24 *and amendments thereto.*

25 *(D) The secretary of labor shall develop and implement procedures*
26 *to enable claimants to retroactively substantiate and file claims under*
27 *this paragraph.*

28 *(3) As used in this subsection, terms mean the same as in the*
29 *employment security law.*

30 *(e) No employer shall impose a COVID-19 vaccine requirement*
31 *unless such requirement is expressly authorized by an act of the*
32 *legislature.*

33 *(f) No employer shall discriminate against any employee on the*
34 *basis of whether such employee has received a COVID-19 vaccine.*

35 *(g) As used in this section:*

36 *(1) "COVID-19 vaccine" means an immunization, vaccination or*
37 *injection against disease caused by the novel coronavirus identified as*
38 *SARS-CoV-2 or disease caused by a variant of the virus;*

39 *(2) "COVID-19 vaccine requirement" means that an employer:*

40 *(A) Requires an employee to receive a COVID-19 vaccine;*

41 *(B) requires an employee to provide documentation certifying*
42 *receipt of a COVID-19 vaccine; or*

43 *(C) enforces a requirement described in subparagraph (A) or (B)*

1 *that is imposed by the federal government or any other entity;*

2 (3) *"employee" means:*

3 (A) *An individual who is employed in this state for wages by an*
4 *employer;*

5 (B) *an applicant for employment by an employer; or*

6 (C) *a noncompensated intern or apprentice for an employer;*

7 (4) *"employer" means any person in this state who employs one or*
8 *more persons and includes the state of Kansas and all political*
9 *subdivisions of the state;*

10 (5) *"person" means an individual, partnership, association,*
11 *organization, corporation, legal representative, trustee, trustee in*
12 *bankruptcy or receiver;*

13 (6) *"physician" means an individual licensed by the state board of*
14 *healing arts to practice medicine and surgery;*

15 (7) *"punitive action" means any of the following actions related to*
16 *the employee's exemption request: Dismissal, demotion, transfer,*
17 *reassignment, suspension, reprimand, warning of possible dismissal,*
18 *withholding of work or assessing any monetary penalty or unreasonable*
19 *charge; and*

20 (8) *"religious beliefs" includes, but is not limited to, theistic and*
21 *non-theistic moral and ethical beliefs as to what is right and wrong that*
22 *are sincerely held with the strength of traditional religious views.}*

23 Sec. 2. This act shall take effect and be in force from and after its
24 publication in the Kansas register.