

Journal of the Senate

FIRST DAY – SPECIAL SESSION

SENATE CHAMBER, TOPEKA, KANSAS
Monday, November 22, 2021, 10:00 a.m.

Pursuant to the Governor's notification of November 12, 2021, the Senate convened for a Special Session of the Kansas Legislature with President Ty Masterson in the chair. President Masterson introduced Catherine Gunsalus, Assistant Secretary of State, who delivered the following message:

PROCLAMATION CALLING THE LEGISLATURE INTO SPECIAL SESSION

TO THE PEOPLE OF KANSAS, GREETINGS:

WHEREAS, the Kansas Constitution's provision for the Governor to convene a special session of the Legislature by legislative petition is an important mechanism for Kansans to have their voices heard by and through their elected representatives in special circumstances; and

WHEREAS, Article 1, Section 5 of the Kansas Constitution provides that when a petition signed by at least two-thirds of the members of the House of Representatives and by at least two-thirds of the members of the Senate, the Governor shall call the legislature into special session; and

WHEREAS, K.S.A. 46-1401 provides that each signature page composing such legislative petition shall state a uniform time and date at which the petition seeks to convene the Legislature and that each legislator's signature shall be notarized; and

WHEREAS, on November 12, 2021, my office received petition signature pages from 86 members of the House of Representatives and 29 members of the Senate, each calling for the Legislature to convene in special session on November 22, 2021, at 10:00 a.m.; and

WHEREAS, after thorough review, the petition consists of sufficient signature pages that substantially comply with the requirements of K.S.A. 46-1401 to reach the two-thirds requirement for both the House of Representatives and the Senate; and

WHEREAS, the Governor's constitutional obligation to call a special session of the Legislature in these circumstances is clear.

NOW, THEREFORE, I, Laura Kelly, GOVERNOR OF THE STATE OF KANSAS, by the authority vested in me by the Constitution of the State of Kansas and having determined that the petition signatures submitted substantially comply with applicable legal requirements, do hereby call the Legislature of the State of Kansas into Special Session at the Capitol in Topeka, Kansas, on the 22nd day of November 2021, at the hour of 10:00 o'clock a.m.

DONE: At the Capitol in Topeka
 under the Great Seal of the State
 this 12th day of November, A.D. 2021

BY THE GOVERNOR: LAURA KELLY
 Governor
 SCOTT SCHWAB
 Secretary of State
 CATHERINE GUNSALUS
 Assistant Secretary of State

MESSAGE FROM THE GOVERNOR

This special session of the Legislature has been called because, for the first time in our state's history, a petition of the requisite two-thirds of the members of both the House of Representatives and the Senate was delivered to the Governor's Office. Therefore, pursuant to my constitutional and statutory obligations, I issued a proclamation calling the Legislature into session today.

I urge all legislators to remember that each day the Legislature is in session costs Kansas taxpayers tens of thousands of dollars. Because the regular 2022 session of the Legislature convening in January will allow for full consideration of proposals to address the challenges facing our state, it is in the best interests of Kansans that this special session be brief. I look forward to working with both chambers to ensure that any legislation enacted during this special session is targeted, needed, and beneficial to the citizens of Kansas and the business of Kansas.

THE GOVERNOR'S OFFICE
 BY THE GOVERNOR

LAURA KELLY
 Dated 11/22/2021

In accordance with the provisions of the Constitution of the State of Kansas and the Proclamation as read, President Masterson called the 2021 Special Session of the Legislature to order.

Roll was called with 38 senators present.

Senators O'Shea and Petty were excused.

Invocation by Reverend Cecil T. Washington:

“For Such A Time As This”
 Psalm 106:1, Esther 4:13, John 8:32, Col. 3:16

Heavenly Father, we come today entering a season of gratefulness; a season of thanksgiving. You used the Psalmist in 106:1, to remind us to praise and give You thanks, for You are good and Your love is enduring.

And Lord while it is a season of gratefulness, it's also a season of turmoil. We're grateful for the freedoms we have enjoyed in this nation; the freedom to bring Your purposes to fruition. But Lord, Your thoughts are far beyond ours, way too magnificent to fit these little pea brains of ours. So, we need Your Divine intervention. Lord, we need You to free us from self deception and from the falsehood of others. Let the truth that sets us free dwell richly in our hearts. [John 8:32, Col. 3:16] And Lord, while we

find ourselves in a season of turmoil, we're still looking to You and trusting You to bring us through.

In the book of Esther, chapter 4, we find that Your people were in turmoil and in serious need of freedom. You had placed Esther in a position of influence. But Lord, like some of us, she was reluctant to speak up. Then for the sake of Your people's freedom, You inspired Mordecai to speak up and challenge her.

Lord, let us be burdened with that same challenge. Let Mordecai's words to Esther, resonate with us. When it comes to Your people enjoying freedom, he told Esther, not to think for a moment, that because she was in a place of influence, that she could keep quiet and be exonerated from the approaching negative outcomes. Don't think that by not speaking up, by not confronting the problem, you'll escape the destructive consequences.

So Lord, let each of us know that all the voices of influence in these halls are here, like Mordecai told Esther, "for such a time as this."

I pray this, in the precious Name of Jesus, and for the sake of our freedoms, Lord, that we may continue to experience and enjoy Your enduring love, Amen and Amen.

The Pledge of Allegiance was led by President Masterson.

Vice President Rick Wilborn assumed the chair.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

On emergency motion of Senator Alley, **SR 1701**, by Senators Masterson, Alley and Sykes, as follows, was introduced and adopted:

SENATE RESOLUTION No. SR 1701 –

A RESOLUTION relating to the organization of the Senate.

Be it resolved by the Senate of the State of Kansas: That the secretary of the Senate notify the House of Representatives that the Senate is organized with the following officers:

Ty Masterson, president,
Rick Wilborn, vice president,
Larry Alley, majority leader,
Dinah Sykes, minority leader,
Corey Carnahan, secretary,
Don Cackler, sergeant at arms,

and awaits the pleasure of the House of Representatives.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 1, AN ACT concerning employer COVID-19 vaccine requirements; requiring exemptions; providing for waiver requests; authorizing a complaint and investigation process with the secretary of labor for violations related to exemptions and civil penalties by the attorney general for such violations; relating to employment security law; providing exceptions to benefit eligibility conditions and disqualification conditions based on refusal to comply with COVID-19 vaccine requirements; retroactive provision of benefits when denied on the basis of discharge or suspension for misconduct as the result of refusal to comply with COVID-19 vaccine requirements,

by Senators Masterson, Alley and Wilborn.

SB 2, AN ACT concerning public health; relating to responses to infectious or contagious disease by certain public and private entities; prohibiting certain acts by business entities, governmental entities or public officials based upon a person's vaccination status or possession of an immunity passport; access to services, goods, facilities and opportunities; proceedings under the revised Kansas code for care of children; proceedings related to legal custody, residency and parenting time of a child under the Kansas family law code; access to healthcare services and prohibiting discrimination in rendering healthcare services; ensuring a right to in-person visitation at medical care facilities and adult care homes; allowing patients to sign a liability waiver to be prescribed off-label use drugs; prohibiting certain public health orders related to isolation and quarantine, stay-at-home orders, curfews and face masks; providing criminal penalties for an individual who disregards an isolation or quarantine recommendation when great bodily harm to another person or death of another person results from such act; clarifying eligibility for benefits under the employment security law related to an employee's unwillingness to receive a vaccination; modifying the Kansas act against discrimination to define unlawful employment practices related to vaccination status or possession of an immunity passport; limiting state of disaster emergency powers of the governor related to stay-at-home orders, curfews and face masks; relating to childhood immunizations required for attendance at a child care facility or school; powers of the secretary of health and environment and local health officers; isolation or quarantine recommendations; amending K.S.A. 38-2269, 44-706, 44-1002, 44-1009, 65-129, 65-129b, 65-129c, 65-129d, 65-508, 65-1637 and 72-6262 and K.S.A. 2021 Supp. 21-5424, 23-3201, 48-925, 65-101, 65-201, 65-202, 65-1120 and 65-2836 and repealing the existing sections, by Senators Steffen, Straub, Thompson and Tyson.

SCR 1601— A CONCURRENT RESOLUTION informing the governor that the two houses of the legislature are duly organized and ready to receive communications.

On motion of Senator Alley, **SCR 1601** was adopted by voice vote.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

Under the authority of the President, the Vice President, referred **SB 1** to the **Committee of the Whole**.

ORIGINAL MOTION

Senator Alley moved an emergency be declared and **SB 1** be advanced to Final Action subject to amendment, debate and roll call. The motion was adopted by a 2/3 majority.

An amendment was offered by Senator Straub on **SB 1**. A ruling of the chair was requested as to the germaneness to the bill. The Chair of the Rules Committee ruled the amendment not germane.

Senator Straub challenged the ruling of the Rules Committee. The ruling was sustained.

Senator Pyle moved to call the previous question. Without the showing of ten hands the motion failed.

President Masterson withdrew **SB 1** from Final Action and re-referred to the Calendar under the heading **General Orders**.

MESSAGE FROM THE HOUSE

Announcing adoption of **HR 6001**, a resolution relating to the organization of the 2021 Special Session of the House of Representatives and selection of the following officers:

Ron Ryckman, Speaker of the House
Blaine Finch, Speaker Pro Tem
Dan Hawkins, Majority Leader
Tom Sawyer, Minority Leader
Susan Kannarr, Chief Clerk
Foster Chisholm, Sgt. At Arms
and awaits the pleasure of the Senate.

Announcing passage of **HB 2001**, as amended.

Announcing adoption of **SCR 1601**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2001 was thereupon introduced and read by title.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

Under the authority of the President, the Vice President, referred **HB 2001** to the **Committee of the Whole**.

ORIGINAL MOTION

Senator Alley moved an emergency be declared and **HB 2001** be advanced to Final Action subject to amendment, debate and roll call. The motion was adopted by a 2/3 majority.

HB 2001 be amended by motion of Senator Masterson; on page 1, by striking all in lines 8 through 36;

By striking all on page 2;

On page 3, by striking all in lines 1 through 29; following line 29 by inserting:

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

(1) Endanger the life or health of the employee or an individual who resides 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

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

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

(c) (1) An employer who fails to comply with this section and terminates an employee based on a COVID-19 vaccine requirement commits a violation of this section. Termination includes the functional equivalent of termination. The terminated employee may file a complaint with the secretary of labor alleging that an exemption

has not been offered or has been improperly applied or denied, resulting in the employee's termination.

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

- (i) The employer imposed a COVID-19 vaccine requirement;
- (ii) the employee submitted a written waiver request in accordance with this section; and
- (iii) the employee was terminated as a result of the COVID-19 vaccine requirement.

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

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

- (i) \$10,000 per violation for an employer with fewer than 100 employees; or
- (ii) \$50,000 per violation for an employer with 100 or more employees.

(B) The attorney general shall not impose a civil penalty 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 of labor under this subsection.

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

- (i) Whether the employer knowingly and willfully violated this section;
- (ii) whether the employer has shown good faith in attempting to comply with this section;
- (iii) whether the employer has taken action to correct the violation;
- (iv) whether the employer has previously been assessed a civil penalty for violating this section; and
- (v) any other mitigating or aggravating factor that fairness or due process requires.

(D) A civil penalty shall not be imposed pursuant to this subsection except upon the written order of the attorney general to the employer that violated this section. Such order is a final order for purposes of judicial review and shall 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.

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

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

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

(B) 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 this section and such request was denied. In such case, such work for such individual shall be deemed not to constitute suitable work for purposes of the employment security law.

(2) (A) Notwithstanding the time limitations of K.S.A. 44-709, and amendments thereto, or the provisions of K.S.A. 44-706, and amendments thereto, or any other provision of the employment security law to the contrary, a claimant upon request shall be retroactively paid benefits for any week that the claimant would otherwise have been eligible for such benefits, if such claimant was disqualified from receiving such benefits during the period of September 9, 2021, through the effective date of this act 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.

(B) The secretary of labor shall independently review any claims denied during the period of September 9, 2021, through the effective date of this act to determine if the claimant was disqualified from receiving benefits 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. If the claimant has not requested retroactive payment of such benefits as provided by subparagraph (A), the secretary shall retroactively pay benefits to such claimant for any week that the claimant would otherwise have been eligible for such benefits.

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

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

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

(e) As used in this section:

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

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

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

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

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

(3) "employee" means:

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

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

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

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

(5) "person" means an individual, partnership, association, organization,

corporation, legal representative, trustee, trustee in bankruptcy or receiver;

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

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

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

On page 1, in the title, in line 4, by striking all after "exemptions"; in line 5, by striking all before the period and inserting "and civil penalties by the attorney general for such violations; relating to employment security law; providing exceptions to benefit eligibility conditions and disqualification conditions based on refusal to comply with COVID-19 vaccine requirements; retroactive provision of benefits when denied on the basis of discharge or suspension for misconduct as the result of refusal to comply with COVID-19 vaccine requirements"

The amendment was adopted.

HB 2001 be further amended by motion of Senator Pyle; by amending the amendment designated as fa_2021_hb2001_s_9135, adopted by the Senate Committee of the Whole on November 22, 2021, after "(e)" by inserting "No employer shall impose a COVID-19 vaccine requirement unless such requirement is expressly authorized by an act of the legislature.

(f)";

In the title, after the insertion, by inserting "; prohibiting employers from imposing COVID-19 vaccine requirements not expressly authorized by law"

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 28; Nays 7; Present and Passing 3; Absent or Not Voting 2.

Yeas: Alley, Baumgardner, Billinger, Bowers, Claeys, Dietrich, Doll, Erickson, Fagg, Gossage, Hilderbrand, Kerschen, Kloos, Longbine, Masterson, McGinn, Olson, Peck, Petersen, Pittman, Pyle, Ryckman, Steffen, Straub, Thompson, Tyson, Warren, Wilborn.

Nays: Corson, Francisco, Hawk, Holland, Holscher, Sykes, Ware.

Present and Passing: Faust-Goudeau, Haley, Suellentrop.

Absent or Not Voting: O'Shea, Pettey.

HB 2001 be further amended by motion of Senator Straub; by amending the amendment designated as fa_2021_hb2001_s_9135, adopted by the Senate Committee of the Whole on November 22, 2021, in Section 1, after "(e)" by inserting "No employer shall discriminate against any employee on the basis of whether such employee has received a COVID-19 vaccine.

(f)";

On page 1, in the title, in line 5, before the period by inserting "; prohibiting employer discrimination against employees based on receipt of a COVID-19 vaccine"

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 30; Nays 6; Present and Passing 2; Absent or Not Voting 2.

Yeas: Baumgardner, Billinger, Bowers, Claeys, Dietrich, Doll, Erickson, Fagg, Faust-

Goudeau, Gossage, Haley, Hilderbrand, Holland, Kerschen, Kloos, Longbine, Masterson, McGinn, Olson, Peck, Petersen, Pittman, Pyle, Ryckman, Steffen, Straub, Thompson, Tyson, Warren, Wilborn.

Nays: Alley, Corson, Hawk, Holscher, Sykes, Ware.

Present and Passing: Francisco, Suellentrop.

Absent or Not Voting: O'Shea, Pettey.

An amendment was offered by Senator McGinn. A ruling of the chair was requested as to the germaneness to the bill. The Chair of the Rules Committee ruled the amendment not germane.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2001, AN ACT concerning employer COVID-19 vaccine requirements; requiring exemptions; providing for waiver requests; authorizing a complaint and investigation process with the secretary of labor for violations related to exemptions and civil penalties by the attorney general for such violations; relating to employment security law; providing exceptions to benefit eligibility conditions and disqualification conditions based on refusal to comply with COVID-19 vaccine requirements; retroactive provision of benefits when denied on the basis of discharge or suspension for misconduct as the result of refusal to comply with COVID-19 vaccine requirements; prohibiting employers from imposing COVID-19 vaccine requirements not expressly authorized by law; prohibiting employer discrimination against employees based on receipt of a COVID-19 vaccine.

On roll call, the vote was: Yeas 25; Nays 13; Present and Passing 0; Absent or Not Voting 2.

Yeas: Alley, Baumgardner, Billinger, Bowers, Claeys, Erickson, Fagg, Faust-Goudeau, Gossage, Hilderbrand, Kerschen, Kloos, Masterson, Olson, Peck, Petersen, Pittman, Pyle, Ryckman, Steffen, Straub, Thompson, Tyson, Warren, Wilborn.

Nays: Corson, Dietrich, Doll, Francisco, Haley, Hawk, Holland, Holscher, Longbine, McGinn, Suellentrop, Sykes, Ware.

Absent or Not Voting: O'Shea, Pettey.

The bill passed, as amended.

Senator Alley moved the Senate recess to the sound of the gavel.

The Senate met pursuant to recess with President Masterson in the Chair.

MESSAGE FROM THE HOUSE

The House nonconcur in Senate amendments to **HB 2001**, requests a conference and has appointed Representatives Barker, Owens and Miller as conferees on the part of the House.

ORIGINAL MOTION

On motion of Senator Alley, the Senate acceded to the request of the House for a conference on **HB 2001**.

The President appointed Senators Masterson, Erickson and Corson as conferees on the part of the Senate.

On motion of Senator Alley the Senate recessed until 8:00 p.m.

The Senate met pursuant to recess with Vice President Wilborn in the Chair.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER and MR. PRESIDENT: Your committee on conference on Senate amendments to **HB 2001** submits the following report:

Your committee on conference agrees to disagree and recommends that a new conference committee be appointed;

And your committee on conference recommends the adoption of this report.

TY MASTERSON

RENEE ERICKSON

Conferees on part of Senate

JOHN BARKER

STEPHEN OWENS

VIC MILLER

Conferees on part of House

On motion of Senator Masterson the Senate adopted the conference committee report on **HB 2001**, and requested a new conference be appointed.

The Vice President appointed Senators Masterson, Erickson and Corson as a second Conference Committee on the part of the Senate on **HB 2001**.

On motion of Senator Alley the Senate recessed until the sound of the gavel.

The Senate met pursuant with President Masterson in the Chair.

On motion of Senator Alley the Senate recessed until the sound of the gavel.

The Senate met pursuant with Vice President Wilborn in the Chair.

MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report to agree to disagree on **HB 2001**, and has appointed Representatives Barker, Owens and Miller as second conferees on the part of the House.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER and MR. PRESIDENT: Your committee on conference on Senate amendments to **HB 2001** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed as Amended by Senate on Final Action, as follows:

On page 4, in line 15, by striking all after "(1)"; by striking all in lines 16 through 43;

On page 5, by striking all in lines 1 through 19 and inserting "An employee aggrieved by a violation of this section may file a complaint with the secretary of labor 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.

(2) (A) The secretary of labor shall promptly commence an investigation of each complaint filed pursuant to this subsection. The secretary shall complete such investigation and issue a final order within 60 calendar days after the filing of the complaint. At a minimum, the investigation shall determine whether:

- (i) The employer imposed a COVID-19 vaccine requirement;
- (ii) the employee submitted a written waiver request in accordance with this section; and
- (iii) the employer committed any violation of this section.

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

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

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

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

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

- (i) \$10,000 per violation for an employer with fewer than 100 employees; or
- (ii) \$50,000 per violation for an employer with 100 or more employees.

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

- (i) Whether the employer knowingly and willfully violated this section;
- (ii) whether the employer has shown good faith in attempting to comply with this section;
- (iii) whether the employer has taken action to correct the violation;
- (iv) whether the employer has been previously assessed a civil penalty for violating this section; and
- (v) any other mitigating or aggravating factor that fairness or due process requires.";

Also on page 5, in line 24, by striking "state general fund" and inserting "employment security fund, established by K.S.A. 44-712, and amendments thereto"; in line 25, by striking all after "(d)"; by striking all in lines 26 through 43;

On page 6, by striking all in lines 1 through 34; in line 35, by striking "(g)";

On page 7, following line 22, by inserting:

"Sec. 2. (a) An individual aggrieved by a violation of section 1, and amendments thereto, who has filed a claim for benefits under the employment security law and who is otherwise eligible for benefits under the employment security law shall not become

ineligible for benefits pursuant to K.S.A. 44-705, and amendments thereto, or be disqualified from receiving benefits pursuant to K.S.A. 44-706, and amendments thereto, on the grounds that the claimant:

(1) Was discharged or suspended for misconduct if the employer's conduct in discharging or suspending such claimant was a violation of section 1, and amendments thereto; or

(2) 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 section 1, and amendments thereto, and such request was denied. In such case, such work for such claimant shall be deemed not to constitute suitable work for purposes of the employment security law.

(b) (1) Notwithstanding the time limitations of K.S.A. 44-709, and amendments thereto, the provisions of K.S.A. 44-706, and amendments thereto, or any other provision of the employment security law to the contrary, a claimant upon request shall be retroactively paid benefits for any week that the claimant would otherwise have been eligible for such benefits, if such claimant was disqualified from receiving such benefits during the period of September 9, 2021, through the effective date of this act 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.

(2) The secretary of labor shall independently review any claims denied during the period of September 9, 2021, through the effective date of this act to determine if the claimant was disqualified from receiving benefits 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. If the claimant has not requested retroactive payment of such benefits as provided by paragraph (1), the secretary shall retroactively pay benefits to such claimant for any week that the claimant would otherwise have been eligible for such benefits.

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

(4) The secretary of labor shall develop and implement procedures to enable claimants to retroactively substantiate and file claims under this subsection.

(c) Benefits awarded to a claimant who receives back pay pursuant to section 1(c), and amendments thereto, shall be subject to the repayment or benefit offset and other provisions of K.S.A. 44-706(s) and 44-719(d), and amendments thereto, if applicable.

(d) As used in this section:

(1) "COVID-19 vaccine requirement" means the same as in section 1, and amendments thereto; and

(2) all other terms mean the same as in the employment security law.

Sec. 3. (a) In the event that all or any portion of the provisions of section 1, and amendments thereto, are held to be unconstitutional by any court of competent jurisdiction, upon a final order, the attorney general shall certify to the secretary of state that such holding has occurred. Upon receipt of such certification, the secretary of state shall cause a notice of such certification to be published in the Kansas register.

(b) On and after the effective date of this act and upon the publication of the notice by the secretary of state in the Kansas register as provided by subsection (a), section 2, and amendments thereto, is hereby repealed.

(c) In the event that all or any portion of the provisions of section 2, and amendments thereto, are held to be unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of any other provision of section 1, and amendments thereto, and to this end the provisions of section 2, and amendments thereto, are severable.";

And by renumbering sections accordingly;

On page 1, in the title, in line 5, by striking all after the stricken material; in line 6, by striking all before "for" and inserting "; enforcement actions by the attorney general and civil penalties to be imposed by a court"; in line 12, by striking all after the semicolon; by striking all in lines 13 and 14; in line 15, by striking all before the period and inserting "repealing certain sections upon a final order holding certain provisions unconstitutional";

And your committee on conference recommends the adoption of this report.

TY MASTERSON

RENEE ERICKSON

Conferees on part of Senate

JOHN BARKER

STEPHEN OWENS

Conferees on part of House

Senator Masterson moved the Senate adopt the Conference Committee Report on **HB 2001**.

On roll call, the vote was: Yeas 24; Nays 11; Present and Passing 0; Absent or Not Voting 5.

Yeas: Alley, Baumgardner, Billinger, Bowers, Claeys, Erickson, Fagg, Gossage, Hilderbrand, Kerschen, Kloos, Masterson, Olson, Peck, Petersen, Pittman, Pyle, Ryckman, Steffen, Straub, Thompson, Tyson, Warren, Wilborn.

Nays: Corson, Dietrich, Doll, Francisco, Haley, Holland, Holscher, Longbine, McGinn, Suellentrop, Sykes.

Absent or Not Voting: Faust-Goudeau, Hawk, O'Shea, Pettey, Ware.

The Conference Committee Report was adopted.

EXPLANATION OF VOTE

Mr. Vice President: I have always been a local control, limited government legislator and I absolutely do not support federal government overreach and the mandates we have been debating today. I support religious freedom and have recognized religious exemptions in my former career. The problem is that the federal government has put Kansas businesses in an impossible situation. My business community is opposed to this bill, my hospitals are opposed to this bill, and the Attorney General has already filed suit on behalf of Kansas. It makes much more sense to let the courts determine what is or is not constitutional. I am concerned that we will be putting more Kansans on unemployment during a labor shortage and that feels not only irresponsible but it

exacerbates the problem, prolonging the economic recovery for Kansas. I stand ready to find solutions to the many issues facing Kansas communities, but I cannot support this bill because I believe it creates more problems than it solves.—BRENDA DIETRICH

Mr. Vice President: I understand that many Kansans are hurt, confused, and uncertain as we continue to navigate this pandemic. I understand that we would all like to go back to how things were before, that we'd like to keep working our jobs, that we'd like to make decisions without feeling the weight of our communities on our shoulders. This bill does not do that. It does not guarantee that you will have a job, regardless of your personal health choices or religious beliefs. Instead, it provides a patina of support while putting Kansas businesses in an impossible position. I hope that this body does address the workers rights issues that have arisen throughout this debate. We do not need to make things harder for our businesses and provide Kansans with a false sense of security in the meantime. I vote no.—DINAH SYKES

Senators Francisco, Haley and Holland request the record to show they concur with the "Explanation of Vote" offered by Senator Sykes on **HB 2001**.

Mr. Vice President: Over 350 million individual's rights are being trampled by a Presidential mandate that violates the 1st, 4th, 5th, 9th, 10th, and 14th Amendments. Kansans are fed up and since the mandate, have been rising up to say...this is where it must stop. If we cannot stop this intrusion into our most personal decisions about our health, where does it end? We have heard the voices of our citizens...and tonight we are at the beginning of a turning point back toward individual liberty. States have plenary power, and the duty to fight against unconstitutional actions. It has taken over 100 years to reach this level of Federal tyranny, and it will take a long time to restore the rights originally intended by our founders. But that journey has necessarily begun with this vital bill that protects jobs, families, and the rights of our citizens. Is this bill the perfect remedy? No. Many of us here tonight want a lot more. But this is a victory for liberty, and the patriots standing tall across Kansas whose voices matter. They are why we are here tonight...and we cannot let our vigilance wane or drop our guard. Liberty is only one generation from extinction.—MIKE THOMPSON

Senators Gossage, Peck, Petersen, Steffen and Straub request the record to show they concur with the "Explanation of Vote" offered by Senator Thompson on **HB 2001**.

Mr. Vice President: It's important to remember the reason we are here is because of one man – Joe Biden, who that he must push through constitutionally dubious vaccine mandates through regulatory agencies, attempting to use American businesses as proxies to do what he knew he legally could not do. These mandates have put our state, our businesses, and regular Kansans in a horrible position. Do what we say - or fire your employees. Do what we say - or lose your job. No matter if you've done any number of things to keep your workforce safe, you *must* obey us or you will be fined, or lose your federal contract, or be forced to fire the same front-line heroes that we were celebrating mere months ago, exacerbating the very workforce shortage which is already hurting Kansas businesses. That is why we are here today. We are deeply thankful for the thousands of Kansans who wrote us, called us, and testified before the special joint committee. While there are competing liberty interests before us today, when legislators are faced with a vote in which individual liberties are at stake, we must

stand with the people. I vote Yes on **HB 2001**.—KELLIE WARREN

Senators Erickson and Gossage request the record to show they concur with the "Explanation of Vote" offered by Senator Warren on **HB 2001**.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

SENATE CONCURRENT RESOLUTION No. **SCR 1602**—

By Senators Masterson, Alley and Sykes

A CONCURRENT RESOLUTION relating to the 2021 special session of the legislature and providing for the adjournment thereof.

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the legislature shall adjourn sine die at the close of business of the daily session convened on November 22, 2021.

On emergency motion of Senator Alley **SCR 1602** was adopted by voice vote.

In compliance with **SCR 1602**, Senator Alley moved the Senate adjourn sine die. The motion carried.

President Masterson thereupon announced: By virtue of the authority vested in me as President of the Senate, I now declare the 2021 Special Session of the Legislature adjourned sine die.”

MESSAGE FROM THE HOUSE

The House adopted the Conference Committee report on **HB 2001**.

Announcing adoption of **SCR 1602**.

CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks*.

COREY CARNAHAN, *Secretary of the Senate*.

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