

CONFERENCE COMMITTEE REPORT

MR. SPEAKER and MR. PRESIDENT: Your committee on conference on Senate amendments to **HB 2390** 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 Senate Substitute for House Bill No. 2390, as follows:

On page 3, following line 14, by inserting:

"Sec. 2. K.S.A. 2022 Supp. 44-663 is hereby amended to read as follows: 44-663. (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 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.

(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 employment security fund, established by K.S.A. 44-712, and amendments thereto.

(d) 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;or

(D) a student attending a public or nonpublic high school or a postsecondary educational institution who, as part of coursework, interacts with patients and delivers care at a healthcare facility under the supervision of an individual licensed to provide such patient care;

(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 9, following line 8, by inserting:

"Sec. 11. K.S.A. 65-508 is hereby amended to read as follows: 65-508. (a) ~~Any~~A

maternity center or child care facility subject to the provisions of this act shall:

- (1) Be properly heated, plumbed, lighted and ventilated;
- (2) have plumbing, water and sewerage systems ~~which~~ that conform to all applicable state and local laws; and
- (3) be operated with strict regard to the health, safety and welfare of any woman or child.

(b) Every maternity center or child care facility shall furnish or cause to be furnished for the use of each resident and employee individual towel, ~~wash cloth~~ washcloth, comb and individual drinking cup or sanitary bubbling fountain, and toothbrushes for all other than infants, and shall keep or require such articles to be kept at all times in a clean and sanitary condition. Every maternity center or child care facility shall comply with all applicable fire codes and rules and regulations of the state fire marshal.

(c) (1) The secretary of health and environment with the cooperation of the secretary for children and families shall develop and adopt rules and regulations for the operation and maintenance of maternity centers and child care facilities. The rules and regulations for operating and maintaining maternity centers and child care facilities shall be designed to promote the health, safety and welfare of any woman or child served in such facilities by ensuring safe and adequate physical surroundings, healthful food, adequate handwashing, safe storage of toxic substances and hazardous chemicals, sanitary diapering and toileting, home sanitation, supervision and care of the residents by capable, qualified persons of sufficient number, after-hour care, an adequate program of activities and services, sudden infant death syndrome and safe sleep practices training, prohibition on corporal punishment, crib safety, protection from electrical hazards, protection from swimming pools and other water sources, fire drills, emergency plans, safety of outdoor playground surfaces, door locks, safety gates and

transportation and such appropriate parental participation as may be feasible under the circumstances. Boarding schools are excluded from requirements regarding the number of qualified persons who must supervise and provide care to residents.

(2) Rules and regulations developed under this subsection shall include provisions for the competent supervision and care of children in day care facilities. For purposes of such rules and regulations, competent supervision as this term relates to children less than five years of age includes, but is not limited to, direction of activities, adequate oversight including sight or sound monitoring, or both, physical proximity to children, diapering and toileting practices; and for all children, competent supervision includes, but is not limited to, planning and supervision of daily activities, safe sleep practices, including, but not limited to, visual or sound monitoring, periodic checking, emergency response procedures and drills, illness and injury response procedures, food service preparation and sanitation, playground supervision, pool and water safety practices.

(d) In addition to any rules and regulations adopted under this section for safe sleep practices, child care facilities shall ensure that all of the following requirements are met for children under 12 months of age:

(1) A child shall only be placed to sleep on a surface and in an area that has been approved for use as such by the secretary of health and environment;

(2) the sleep surface shall be free from soft or loose bedding, including, but not limited to, blankets, bumpers and pillows; and

(3) the sleep surface shall be free from toys, including mobiles and other types of play equipment or devices.

(e) Child care facilities shall ensure that children over 12 months of age only be placed to sleep on a surface and in an area that has been approved for use as such by the secretary of health and environment.

(f) The secretary of health and environment may exercise discretion to make exceptions to requirements in subsections (d) and (e) where special health needs exist.

(g)(1) Each child cared for in a child care facility, including children of the person maintaining the facility, shall be required to have current such immunizations as the secretary of health and environment considers necessary. The person maintaining a child care facility shall maintain a record of each child's immunizations and shall provide to the secretary of health and environment such information relating thereto, in accordance with rules and regulations of the secretary, but the person maintaining a child care facility shall not have such person's license revoked solely for the failure to have or to maintain the immunization records required by this subsection.

(2) (A) The secretary of health and environment shall not require a child cared for in a child care facility to receive a COVID-19 vaccine.

(B) As used in this paragraph, "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.

(h)(1) ~~The~~Any other immunization requirement of subsection (g) shall not apply if one of the following is obtained:

~~(1)(A)~~ Certification from a licensed physician stating that the physical condition of the child is such that immunization would endanger the child's life or health; or

~~(2)(B)~~ a written statement signed by ~~a~~ at least one parent or guardian stating that the requirement would violate sincerely held religious beliefs of the parent or guardian ~~is an adherent of a religious denomination whose teachings are opposed to immunizations.~~

(2) The person maintaining a child care facility shall grant an exemption requested in accordance with this subsection based on sincerely held religious beliefs without inquiring into

the sincerity of the request.

(3) As used in this section, "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 11, following line 23, by inserting:

"Sec. 13. K.S.A. 72-6262 is hereby amended to read as follows: 72-6262. (a) (1) In each school year, every ~~pupil~~ student enrolling or enrolled in any school for the first time in this state, and each child enrolling or enrolled for the first time in a preschool or day care program operated by a school, and such other ~~pupils~~ students as may be designated by the secretary, prior to admission to and attendance at school, shall present to the appropriate school board certification from a physician or local health department that the ~~pupil~~ student has received such tests and inoculations as are deemed necessary by the secretary by such means as are approved by the secretary. ~~Pupils~~ Students who have not completed the required inoculations may enroll or remain enrolled while completing the required inoculations if a physician or local health department certifies that the ~~pupil~~ student has received the most recent appropriate inoculations in all required series. Failure to timely complete all required series shall be deemed non-compliance.

(2) (A) The secretary of health and environment shall not require a student described in paragraph (1) to receive a COVID-19 vaccine.

(B) As used in this paragraph, "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.

(b) (1) As an alternative to ~~the any other~~ certification required under subsection (a), a ~~pupil~~ student shall present:

~~(1)(A)~~ An annual written statement signed by a licensed physician stating the physical condition of the child ~~to be~~ is such that the tests or inoculations would seriously endanger the life or health of the child; or

~~(2)(B)~~ a written statement signed by at least one parent or guardian stating that the requirement would violate sincerely held religious beliefs of the child ~~is an adherent of a religious denomination whose religious teachings are opposed to such tests or inoculations.~~

(2) The board of education of a school district shall grant such alternative to the certification presented in this subsection based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(3) As used in this section, "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.

(c) On or before May 15 of each school year, the school board of every school affected by this act shall notify the parents or guardians of all known ~~pupils~~ students who are enrolled or who will be enrolling in the school of the provisions this act and any policy regarding the implementation of the provisions of this act adopted by the school board.

(d) If a ~~pupil~~ student transfers from one school to another, the school from which the ~~pupil~~ student transfers shall forward with the ~~pupil's~~ student's transcript the certification or statement showing evidence of compliance with the requirements of this act to the school to which the ~~pupil~~ student transfers.";

Also on page 11, in line 25, by striking the first "and" and inserting a comma; also in line 25, after "65-129d" by inserting ", 65-508 and 72-6262"; also in line 25, after "Supp." by inserting "44-663,";

And by renumbering sections accordingly;

On page 1, in the title, in line 8, after the semicolon by inserting "relating to vaccinations; requirements to attend child care facilities and elementary, secondary and public or private postsecondary educational institutions; prohibiting an inquiry into the sincerity of a request for an exemption from vaccine requirements; prohibiting the secretary of health and environment from requiring a COVID-19 vaccination in order to attend a child care facility or school;"; in line 9, by striking the first "and" and inserting a comma; also in line 9, after "65-129d" by inserting ", 65-508 and 72-6262"; also in line 9, after "Supp." by inserting "44-663,";

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

Conferees on part of Senate

Conferees on part of House