

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.

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Conferees on part of Senate

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Conferees on part of House