

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend **HB 2001**, as amended by House on Final Action, 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"

Senator _____