

SENATE BILL No. 212

By Senator Steffen

2-10

1 AN ACT concerning ~~public health~~ **immunizations; granting immunity**
2 **from civil liability for exposure to disease resulting from lack of**
3 **immunization; prohibiting an employer from taking adverse**
4 **employment actions based upon an employee's immunization status;**
5 relating to childhood immunizations required for attendance at a child
6 care facility or school; relating to the department of health and
7 environment; powers of the secretary; amending K.S.A. 65-508 and 72-
8 6262 and repealing the existing sections.
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 *New Section 1. (a) Notwithstanding any other provision of law,*
12 *except as provided in subsection (b), a person shall be immune from civil*
13 *liability for damages, administrative fines or penalties for exposing,*
14 *potentially exposing or causing another to be exposed to infectious or*
15 *contagious disease arising from such person's:*

16 *(1) Lack of immunization against such infectious or contagious*
17 *disease;*

18 *(2) decision not to require employees to be immunized against such*
19 *infectious disease; or*

20 *(3) decision to permit another who lacks immunization against*
21 *such disease to enter any premises under the control of such person that*
22 *is operated for any religious, civic, governmental, business or*
23 *commercial purpose, whether for-profit or not-for-profit.*

24 *(b) The provisions of this section shall not apply to:*

25 *(1) (A) Immunizations required by federal law or regulation; or*

26 *(B) immunizations related to military service, as defined in K.S.A.*
27 *48-3406, and amendments thereto; or*

28 *(2) civil liability when it is established that the act, omission or*
29 *decision constituted gross negligence or willful, wanton or reckless*
30 *conduct.*

31 *New Sec. 2. (a) It is an unlawful employment practice to engage in*
32 *any adverse employment action against a person because of such*
33 *person's decision to either receive or not receive a particular*
34 *immunization.*

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

36 *(1) "Adverse employment action" means an ultimate employment*

1 *decision involving hiring, firing, compensation, benefits or the failure to*
2 *promote or grant leave.*

3 (2) *"Employer" means the same as in K.S.A. 44-1112, and*
4 *amendments thereto.*

5 (3) *"Person" means individual, partnership, association,*
6 *organization, corporation, legal representative, trustee, trustee in*
7 *bankruptcy or receiver.*

8 ~~Section 1.~~ **Sec. 3.** K.S.A. 65-508 is hereby amended to read as
9 follows: 65-508. (a) Any maternity center or child care facility subject to
10 the provisions of this act shall:

11 (1) Be properly heated, plumbed, lighted and ventilated;

12 (2) have plumbing, water and sewerage systems ~~which~~ *that* conform to
13 all applicable state and local laws; and

14 (3) be operated with strict regard to the health, safety and welfare of
15 any woman or child.

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

23 (c) (1) The secretary of health and environment with the cooperation
24 of the secretary for children and families shall develop and adopt rules and
25 regulations for the operation and maintenance of maternity centers and
26 child care facilities. The rules and regulations for operating and
27 maintaining maternity centers and child care facilities shall be designed to
28 promote the health, safety and welfare of any woman or child served in
29 such facilities by ensuring safe and adequate physical surroundings,
30 healthful food, adequate handwashing, safe storage of toxic substances and
31 hazardous chemicals, sanitary diapering and toileting, home sanitation,
32 supervision and care of the residents by capable, qualified persons of
33 sufficient number, after-hour care, an adequate program of activities and
34 services, sudden infant death syndrome and safe sleep practices training,
35 prohibition on corporal punishment, crib safety, protection from electrical
36 hazards, protection from swimming pools and other water sources, fire
37 drills, emergency plans, safety of outdoor playground surfaces, door locks,
38 safety gates and transportation and such appropriate parental participation
39 as may be feasible under the circumstances. Boarding schools are excluded
40 from requirements regarding the number of qualified persons who must
41 supervise and provide care to residents.

42 (2) Rules and regulations developed under this subsection shall
43 include provisions for the competent supervision and care of children in

1 day care facilities. For purposes of such rules and regulations, competent
2 supervision as this term relates to children less than five years of age
3 includes, but is not limited to, direction of activities, adequate oversight
4 including sight or sound monitoring, or both, physical proximity to
5 children, diapering and toileting practices; and for all children, competent
6 supervision includes, but is not limited to, planning and supervision of
7 daily activities, safe sleep practices, including, but not limited to, visual or
8 sound monitoring, periodic checking, emergency response procedures and
9 drills, illness and injury response procedures, food service preparation and
10 sanitation, playground supervision, pool and water safety practices.

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

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

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

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

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

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

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

37 (h) *Except as provided in subsection (j), the following immunizations*
38 *are required for each child cared for in a child care facility pursuant to*
39 *subsection (g):*

- 40 (1) *Diphtheria;*
- 41 (2) *hepatitis A;*
- 42 (3) *hepatitis B;*
- 43 (4) *measles (rubeola);*

- 1 (5) *meningitis*;
- 2 (6) *mumps*;
- 3 (7) *pertussis (whooping cough)*;
- 4 (8) *poliomyelitis*;
- 5 (9) *rubella (German measles)*;
- 6 (10) *tetanus*; and
- 7 (11) *varicella (chicken pox)*.

8 (i) *The secretary may deem any immunization specified in subsection*
9 *(h) as no longer required if the secretary determines that such*
10 *immunization is not necessary or is unsafe.*

11 (j) *The immunization requirement of subsection (g) shall not apply if*
12 *one of the following is obtained:*

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

16 (2) *a written statement signed by a parent or guardian that the parent*
17 *or guardian is an adherent of a religious denomination whose teachings are*
18 *opposed to immunizations.*

19 ~~Sec. 2.~~ 4. K.S.A. 72-6262 is hereby amended to read as follows: 72-
20 6262. (a) In each school year, every ~~pupil~~ *student* enrolling or enrolled in
21 any school for the first time in this state, and each child enrolling or
22 enrolled for the first time in a preschool or day care program operated by a
23 school, and such other ~~pupils~~ *students* as may be designated by the
24 secretary, prior to admission to and attendance at school, shall present to
25 the appropriate school board certification from a physician or local health
26 department that the ~~pupil~~ *student* has received such tests *deemed*
27 *necessary by the secretary by such means as are approved by the*
28 *secretary, and inoculations such immunizations as ~~are specified in~~*
29 *subsection (b) ~~deemed necessary by the secretary by such means as are~~*
30 *approved by the secretary. Pupils* *Students* who have not completed the
31 required ~~inoculations~~ *immunizations* may enroll or remain enrolled while
32 completing the required ~~inoculations~~ *immunizations* if a physician or local
33 health department certifies that the ~~pupil~~ *student* has received the most
34 recent, appropriate ~~inoculations~~ *immunizations* in all required series.
35 Failure to timely complete all required series shall be deemed non-
36 compliance.

37 (b) *Except as provided in subsection (d), the following immunizations*
38 *are required for school attendance pursuant to subsection (a):*

- 39 (1) *Diphtheria*;
- 40 (2) *hepatitis A*;
- 41 (3) *hepatitis B*;
- 42 (4) *measles (rubeola)*;
- 43 (5) *meningitis*;

- 1 (6) *mumps*;
- 2 (7) *pertussis (whooping cough)*;
- 3 (8) *poliomyelitis*;
- 4 (9) *rubella (German measles)*;
- 5 (10) *tetanus*; and
- 6 (11) *varicella (chicken pox)*.

7 (c) *The secretary may deem any immunization specified in subsection*
8 *(b) as no longer required for school attendance if the secretary determines*
9 *that such immunization is not necessary for school attendance or is*
10 *unsafe.*

11 (d) As an alternative to the certification required under subsection (a),
12 a ~~pupil~~ *student* shall present:

- 13 (1) An annual written statement signed by a licensed physician stating
14 the physical condition of the child to be such that the tests or ~~inoculations~~
15 *immunizations* would ~~seriously~~ endanger the life or health of the child; or
- 16 (2) a written statement signed by one parent or guardian that the child
17 is an adherent of a religious denomination whose religious teachings are
18 opposed to such tests or ~~inoculations~~ *immunizations*.

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

24 ~~(d)~~(g) If a ~~pupil~~ *student* transfers from one school to another, the
25 school from which the ~~pupil~~ *student* transfers shall forward with the ~~pupil's~~
26 *student's* transcript the certification or statement showing evidence of
27 compliance with the requirements of this act to the school to which the
28 ~~pupil~~ *student* transfers.

29 Sec. ~~3~~. 5. K.S.A. 65-508 and 72-6262 are hereby repealed.

30 Sec. ~~4~~. 6. This act shall take effect and be in force from and after its
31 publication in the Kansas register.