

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 212**

As Amended by Senate Committee on Public  
Health and Welfare

**Brief\***

SB 212, as amended, would create new law regarding unlawful employment practices, making it an unlawful employment practice to engage in any adverse action against a person because of such person's decision to either receive or not receive a particular immunization and would establish related immunity provisions. The bill would remove authority of the Secretary of Health and Environment (Secretary) to add new immunizations to the schedule required for children in a child care facility and for school attendance. The bill would allow the Secretary to remove immunizations from the schedule should the Secretary determine an immunization to be unnecessary or unsafe. The bill would insert the list of required immunizations in statute. The bill would also make technical changes.

The bill would be in effect upon publication in the *Kansas Register*.

***Employment Practices Regarding Immunizations***

***Immunity Provisions (New Section 1)***

The bill would state a person shall be immune from civil liability for damages, administrative fines or penalties for exposing, potentially exposing, or causing another to be exposed to infectious or contagious disease arising from such person's:

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Lack of immunization against such infectious or contagious disease;
- Decision not to require employees to be immunized against such infectious disease; or
- Decision to permit another who lacks immunization against such disease to enter any premises under the control of such person that is operated for any religious, civic, governmental, business or commercial purposes, whether for-profit or not-for-profit.

The immunity would not apply to:

- Immunizations required by federal law or regulation or immunizations related to military service as defined in statute; or
- Civil liability when it is established the act, omission, or decision constituted gross negligence or willful, wanton, or reckless conduct.

#### *Unlawful Employment Practice (New Section 2)*

The bill would state it is an unlawful employment practice to engage in any adverse employment action against a person because of such person's decision to either receive or not receive a particular immunization.

The bill would define the following terms:

- "Adverse employment action" would mean an ultimate employment decision involving hiring, firing, compensation, benefits, or the failure to promote or grant leave;
- "Employer" would mean the same as defined in the Kansas Age Discrimination in Employment Act (defined as any person in this state who employs

four or more persons and any person acting directly or indirectly for such person, and includes the State and all political subdivisions of the State); and

“Person” would mean [an] individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy, or receiver.

***Immunization Schedule (Section 3 and Section 4)***

The bill would add in statute the following list of required immunizations for each child in a child care facility and for school attendance:

- Diphtheria;
- Hepatitis A;
- Hepatitis B;
- Measles (rubeola);
- Meningitis;
- Mumps;
- Pertussis (whooping cough);
- Poliomyelitis;
- Rubella (German measles);
- Tetanus; and
- Varicella (chicken pox).

[*Note:* This list of required immunizations is the same as the list currently required in KAR 28-1-20 for a “susceptible child,” defined as any individual who attends school, as

defined in statute, or any individual who is enrolled, is placed, or resides in a child care facility, as defined in statute, or a preschool or child care program operated by a school.]

## **Background**

SB 212 was introduced by Senator Steffen.

### *Senate Committee on Public Health and Welfare*

In the Senate Committee hearing on March 22, 2021, Senator Steffen, representatives of Kansans for Health Freedom, and two private citizens provided **proponent** testimony. Proponents stated the bill would give the power to assess the need for new immunizations to the Legislature instead of the Secretary and parents should have the ultimate decision on if their child should receive a vaccine.

Written-only **proponent** testimony was provided by 84 private citizens.

Representative Eplee, the Secretary, and representatives of KFMC Health Improvement Partners, the Kansas School Nurses Organization, and Mid America Immunization Coalition provided **opponent** testimony. Opponents indicated there is no need to change the current process in which the Secretary is advised by the Kansas Immunization Program and the federal Advisory Committee on Immunization Practices (ACIP) on the immunization schedule.

Written-only **opponent** testimony was provided by representatives of the Barber County Health Department, Biotechnology Innovation Organization, Geary County Health Department, Immunize Kansas Coalition, Kansas Academy of Family Physicians, Kansas Action for Children, Kansas Association of Local Health Departments, Kansas Chapter of American Academy of Pediatrics, Kansas Medical Society, Kansas Public Health Association, Kansas School Nurses

Organization, Kansas State Nurses Association, Linn County Health Department, Morton County Health Department, National Association of School Nurses, and SEK Multi-County Health Department and by eight private citizens.

Neutral testimony was provided by a professor of the University of Kansas Cancer Center. The professor explained the membership of ACIP and the process for developing recommendations for vaccine use in the United States.

The Senate Committee amended the bill to add the contents of SB 213 (adverse employment actions), as amended by the Committee to include provision for immunity for civil liability and remove language regarding plaintiff damages related to unlawful employment practice violations.

***SB 213 (Employment Practices Regarding Immunizations)***

SB 213 was introduced by Senator Steffen.

*Senate Committee on Commerce*

In the Senate Committee hearing on February 25, 2021, Senator Steffen, representatives of Kansans for Health Freedom, and two private citizens provided **proponent** testimony. Proponents indicated the bill would protect the freedom of employees, prevent employers from mandating vaccines, and limit future liability and litigation on this issue.

Written-only **proponent** testimony was provided by the National Vaccine Information Center and 99 private citizens.

Representative Eplee, a representative of the Kansas Chamber, and three private citizens provided **opponent** testimony. Opponents indicated employers should have the right to determine their own policies for their employees and these types of policies are best left to the employer to decide.

Written-only **opponent** testimony was provided by representatives of Immunize Kansas Coalition, Kansas Academy of Family Physicians, Kansas Action for Children, Kansas Association of Local Health Departments, Kansas Association of School Boards, Kansas Chapter American Academy of Pediatrics, the Kansas Department for Health and Environment (KDHE), KFMC Health Improvement Partners, Kansas Public Health Association, Kansas School Nurses Organization, LeadingAge Kansas, Mid America Immunization Coalition, and Overland Park Chamber of Commerce and by two private citizens.

No neutral testimony was provided.

### **Fiscal Information**

#### ***SB 212 (Immunization Schedule)***

According to the fiscal note prepared by the Division of the Budget on SB 212, as introduced, KDHE states enactment of the bill would have no fiscal effect on the agency.

#### ***SB 213 (Employment Practices Regarding Vaccines)***

According to the fiscal note prepared by the Division of the Budget on SB 213, as introduced, the Department of Administration indicates, regarding the COVID-19 vaccine, statewide guidance has been issued clarifying state agencies cannot mandate employees to be vaccinated. There may be other vaccines required by certain state agencies based on the work performed by their employees. However, the fiscal effect is unknown.

The Office of Judicial Administration (OJA) indicates enactment of the bill could increase the number of cases filed in courts, which would increase the amount of time spent by judicial personnel hearing and processing the cases. The

additional cases would also increase the amount of revenue received from docket fees and fines. However, OJA is unable to estimate the fiscal effect because the number of cases that would be filed is unknown.

The Department of Labor indicates there would be no fiscal effect on the agency.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

***SB 212 (Immunization Schedule)***

According to the fiscal note prepared by the Division of the Budget on SB 212, as introduced, KDHE states enactment of the bill would have no fiscal effect on the agency.

Vaccines; COVID-19; Kansas Department of Health and Environment; employer; employees; employment law; immunity; civil liability