COMMITTEE REPORT

March 1, 2022

**H. 3126**

Introduced by Reps. Jones, Burns, Chumley, Magnuson, Taylor, Haddon, Long, Forrest, McCabe, Oremus, Hill, M.M. Smith, Huggins, Wooten, Ballentine, Bustos, B. Cox, Elliott, Trantham, Willis, Nutt, Morgan, McCravy, Thayer, V.S. Moss, Stringer, T. Moore, Allison, Hixon, Bennett, Fry, Kimmons, Davis and Murphy

S. Printed 3/1/22--S. [SEC 3/2/22 2:20 PM]

Read the first time January 11, 2022.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (H. 3126) to amend the Code of Laws of South Carolina, 1976, by adding Section 11‑1‑130 so as to provide that it is unlawful for this State or any, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. The General Assembly declares the practice of discrimination against an individual because the individual has chosen not to receive a COVID‑19 vaccination or booster is a matter of state concern and is in conflict with the ideals of South Carolina and the nation, as this discrimination interferes with opportunities of the individual to receive employment and to develop according to the individual’s own ability.

SECTION 2. The General Assembly believes that a federal vaccine mandate is unconstitutional and shall not be enforced by this State unless, after legal challenge, courts of this State or of the United States of America hold the federal vaccine mandate to be enforceable.

SECTION 3.(A) Except as provided in subsection (B), the State or any political subdivision thereof, including a school district, may not enact a COVID-19 vaccine mandate for:

(1) any employee, independent contractor, or nonemployee vendor as a condition of employment or conducting business with the State or a political subdivision; or

(2) any student as a condition of attendance.

(B) If the State or any political subdivision thereof, including a school district, is subject to a federal requirement that would lead to the forfeiture of federal funds due to a failure to require employees, independent contractors, or nonemployee vendors to receive a COVID-19 vaccination:

(1) the employer may require an unvaccinated employee, independent contractor, or nonemployee vendor to undergo weekly COVID-19 testing if the federal requirement allows for testing as an alternative to vaccination; or

(2) the employee is eligible for unemployment benefits subject to the benefit amounts, duration, and requirements as provided in Article 1, Chapter 35, Title 14 if the federal mandate gives the employer no alternative to terminating the employee without forfeiting federal funds.

(C) The Department of Health and Environmental Control and the Medical University of South Carolina shall partner with state and local government employers to provide COVID-19 testing as provided in subsection (B)(1).

SECTION 4. Chapter 15, Title 8 of the 1976 Code is amended by adding:

“Section 8-15-80. (A) Neither the State, nor any of its political subdivisions, may terminate, suspend, or otherwise reduce the compensation of a person employed as a first responder if the first responder does not undergo a COVID-19 vaccination.

(B) For purposes of this section, ‘first responder’ means a law enforcement officer, firefighter, emergency medical technician, or paramedic who is paid from public funds.”

SECTION 5. (A) If a private employer terminates, suspends, or otherwise reduces the compensation of an employee because the employee does not receive a COVID-19 vaccination or booster, that employee is eligible for unemployment benefits subject to the benefit amounts, duration, and requirements as provided in Article 1, Chapter 35, Title 14.

(B)(1) An employer who terminates, suspends, or otherwise reduces the compensation of an employee because the employee does not receive the COVID-19 vaccination or booster must pay a surcharge equal to ten times the amount of unemployment taxes the employer would pay if the employer were assigned to rate class 20. This surcharge must be deposited into the unemployment insurance trust fund, must be in effect for a period of four years, and is in addition to the unemployment taxes the employer is required to pay as determined by the Department of Employment and Workforce in the employer’s most recent tax rate notice.

(2) The department must enforce the payment of the surcharge imposed in subsection (1) in the same manner it enforces the payment of unemployment taxes.

(C) For purposes of this section, “private employer” means all employers other than the state and its political subdivisions, including school districts.

(D)(1) Employee eligibility for unemployment benefits pursuant to this section is retroactive to nine months prior to the effective date of this act. From the Contingency Reserve Fund, there is appropriated up to ten million dollars to the Department of Employment and Workforce to cover all expenses associated with providing retroactive unemployment benefits to individuals eligible for unemployment benefits pursuant to this subsection. Employees receiving retroactive benefits pursuant to this subsection do not factor into determining an employer’s unemployment tax rate.

(2) The disqualification from receipt of unemployment benefits does not apply to a claimant who left employment because the claimant’s employer required its employees to receive a COVID-19 vaccine and the claimant failed or refused a COVID-19 vaccine. Eligibility for unemployment benefits pursuant to this section is retroactive to nine months prior to the effective date of this act.

(E ) The provisions contained in subsection (B) do not apply to an employer if the employer submits an affidavit with the Department of Employment and Workforce attesting to the fact that the employer has a contract with the federal government that contains a valid, enforceable vaccine mandate and further attesting that a failure to adhere to the provisions contained in the vaccine mandate would place jobs at risk. The provisions contained is subsection (B) do not apply to an employer seeking to enter into a federal contract that includes a valid, enforceable vaccine mandate if the employer submits an affidavit with the Department of Employment and Workforce attesting to the fact that if the employer is awarded the contract, then the employer must enforce the valid, enforceable vaccine mandate in the contract in order to preserve existing jobs or to create new jobs. An affidavit filed with the Department of Employment and Workforce pursuant to this subsection remains in effect until revoked by the employer.

(F)(1) Nothing in this section shall be construed to alter or amend the ability of an employer to terminate an employee for reasons other than the employee’s COVID-19 vaccination status.

(2) This section does not create or imply a private cause of action for employees who are terminated after refusing to receive a vaccination mandated by their employer.

SECTION 6. Nothing contained in this act shall prevent an employer from encouraging, promoting, or administering vaccinations, and nothing in this act shall prevent an employer from offering incentives to employees who elect to be vaccinated.

SECTION 7. (A) A private employer’s vaccine mandate may not:

(1) extend to independent contractors, nonemployee vendors, or other third-parties that provide goods or services to the employer; and

(2) be used to coerce independent contractors, nonemployee vendors, or other third-parties that provide goods or services to the employer into implementing a vaccine mandate to maintain the business relationship.

(B) A private employer that violates a provision of this section must pay a surcharge equal to ten times the amount of unemployment taxes the employer would pay if the employer were assigned to rate class 20.

SECTION 8. Notwithstanding any other provision of law, a religious exemption or medical exemption must be honored in regards to any COVID-19 vaccine or booster requirement. A medical exemption may include the presence of antibodies, a prior positive COVID-19 test, or pregnancy. To claim a religious exemption, a person must provide his employer with a short, plain statement attesting to the fact that a tenet of his deeply held religious convictions would be violated by receiving the COVID-19 vaccine and booster.

SECTION 9. (A) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the basis of the person’s vaccination status.

(B) No person shall withhold, deny, or attempt to withhold or deny, or deprive, or attempt to deprive any person of any right or privilege secured by the provisions of subsection (B); or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by the provisions of subsection (B); or punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by the provisions of subsection (B).

(C) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section if discrimination or segregation by it is supported by state action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premise, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station;

(3) any hospital, clinic, or other medical facility which provides overnight accommodations;

(4) any retail or wholesale establishment;

(5) any motion picture house, theater, concert hall, billiard parlor, saloon, barroom, golf course, sports arena, stadium, or other place of amusement, exhibition, recreation, or entertainment; and

(6) any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

(D) The provisions of this chapter do not apply to a private club or other establishment not in fact open to the general public. An institution, a club, an organization, or a place of accommodation, as defined in subsection (D), which offers memberships for less than thirty days is not private within the meaning of this section.

(E) Complaints concerning violations of the provisions of this section must be processed and heard pursuant to Article 3, Chapter 9, Title 43. Penalties and remedies for violations of this section are governed by the provisions contained in Article 5, Chapter 9, Title 43.

(F) For the purposes of this section:

(1) “Supported by state action” means the licensing or permitting of any establishment or any agent of an establishment listed above, subject to the exclusion provided in Section 45‑9‑20, which has or must have a license or permit from the State, its agencies, or local governmental entities to lawfully operate.

(2) “Vaccination status” means whether a person has been vaccinated against COVID-19, or has received a COVID-19 vaccination booster.

SECTION 10. The provisions contained in Act 99 of 2021, the South Carolina COVID‑19 Liability Immunity Act, are hereby reenacted, retroactive to the date that Act 99 of 2021 expired, by this act. Act 99 of 2021’s provisions apply to all civil and administrative causes of action that arise between March 13, 2020, and December 31, 2023, and are based upon facts that occurred during this time period.

SECTION 11. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 12. This act takes effect upon approval by the Governor. All provisions of this act are repealed on December 31, 2023 unless reauthorized by the General Assembly. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 11‑1‑130 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR THIS STATE OR ANY POLITICAL SUBDIVISION THEREOF TO ACCEPT ANY FEDERAL FUNDS TO ENFORCE AN UNLAWFUL FEDERAL MASK MANDATE OR UNLAWFUL FEDERAL VACCINE MANDATE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The State or any political subdivision thereof, including a school district, may not enact a COVID-19 vaccine mandate for any employee, independent contractor, nonemployee vendor, or student as a condition of employment or attendance.

SECTION 2. Chapter 15, Title 8 of the 1976 Code is amended by adding:

“Section 8-15-80. (A) Neither the State, nor any of its political subdivisions, may terminate a person employed as a first responder if the first responder does not undergo a COVID-19 vaccination.

(B) For purposes of this section, ‘first responder’ means a law enforcement officer, firefighter, emergency medical technician, or paramedic who is paid from public funds.”

SECTION 3. (A) If a private employer terminates or suspends an individual because they do not receive a COVID-19 vaccination, that individual is eligible for unemployment benefits.

(B) The General Assembly holds that a federal vaccine mandate is unconstitutional and shall not be enforced by this State. However, if a private employer believes it is subject to the forfeiture of federal funds due to a failure to require employees to receive a COVID-19 vaccination, the private employer may require an unvaccinated employee to undergo weekly COVID-19 testing.

(C) The Department of Health and Environmental Control and the Medical University of South Carolina shall partner with private employers to provide COVID-19 testing.

(D) From the Contingency Reserve Fund, there is appropriated ten million dollars to the Department of Health and Environmental Control and ten million dollars to the Medical University of South Carolina to fund COVID-19 testing for private employers.

SECTION 4. Notwithstanding any other provision of law, a religious exemption or medical exemption must be honored in regards to any COVID-19 vaccine requirement. A medical exemption may include the presence of antibodies, a prior positive COVID-19 test, or pregnancy.

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor and the provisions of this act are repealed on December 31, 2022 unless reauthorized by the General Assembly.

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