COMMITTEE REPORT

December 9, 2021

**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 12/9/21--H.

Read the first time January 12, 2021.

**THE COMMITTEE ON WAYS AND MEANS**

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 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) A private employer may not terminate or suspend an individual who does not receive a COVID-19 vaccination.

(B) If a private employer is subject to a federal vaccine mandate, it may allow an unvaccinated employee to undergo weekly COVID-19 testing without being subject to the forfeiture of federal funds.

(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. Any employer who violates any provision of this act is liable in a civil action for lost wages suffered by an employee as a result of the violation, and an employee discharged in violation of this act is entitled to be reinstated to his former position. Furthermore, an employee may recover costs and reasonable attorney's fees as the court may allow. The statute of limitations for actions under this act is one year.

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, 2024 unless reauthorized by the General Assembly. /

Renumber sections to conform.

Amend title to conform.

G. MURRELL SMITH, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by House Ways and Means Revenue Policy Legislative Subcommittee on December 7, 2021**

**State Expenditure**

To determine the potential impact of this bill, RFA contacted those agencies and political subdivisions that may be impacted based upon an initial review of the bill as outlined below. However, depending upon responses, additional agencies may need to be contacted.

This bill specifies that neither the State nor any political subdivisions, including school districts, may enact a COVID-19 vaccine mandate as a condition of employment or attendance. Also, neither the State nor any political subdivision may terminate a first responder for failure to get a COVID-19 vaccine. Additionally, a private employer may not terminate or suspend an individual who does not receive a COVID-19 vaccination. If a private employer is subject to a federal vaccine mandate the employer may allow an employee the alternative choice of weekly COVID-19 testing. Further, any employer who violates the provisions of this bill will be liable in a civil action. Also, the bill directs DHEC and MUSC to partner with private employers to provide COVID-19 testing. Each of these agencies is appropriated $10,000,000 from the FY 2021-22 Contingency Reserve Fund to fund this COVID-19 testing.

The Division of State Human Resources, within the Department of Administration, has allowed each state agency to determine whether a COVID-19 vaccine mandate is appropriate and does not have specific knowledge of which agencies, if any, have enacted a COVID-19 vaccine mandate. The agency is not aware of any current mandates by an agency, but it is currently unclear whether any agencies will be impacted as this information has not been reported.

Additionally, this bill requires DHEC and MUSC to partner with private employers to offer weekly COVID-19 testing to employees as an alternative to getting a vaccine. DHEC has offered four scenarios to estimate the potential statewide cost of this testing.

Estimate A - All Employers B - Private Sector Only C - Vaccination Surge D - Vaccine

Scenario Hesitancy

OSHA Rule ALL employers with Private Sector ALL employers with ALL employers

Application 100+ employees employers with 100+ 100+ employees with 100+

employees employees

Calculation Assuming 1.2M Bureau of Labor Same calculations as Based on June

Method employees in Statistics data estimates A, but assumes a 2021 CDC

impacted 683,643 workers in vaccination surge of vaccine

organizations; private sector businesses 25% of impacted hesitancy data;

applying statewide with 100+ employees; population assumes

vaccination rate of applying statewide remaining

50.3% vaccination rate of workers who

50.3% are not

"strongly

hesitant"

will become

vaccinated

Impact of No impact No impact 25% surge in CDC-identified

Mandate on vaccination "Movable

Middle"

Vaccination become

Behavior vaccinated

# of 596,400 339,771 447,300 175,000

employees

needing

testing

per week

Average $63.99 $63.99 $63.99 $63.99

cost

per test

Weekly $38,163,636 $21,741,919 $28,622,727 $11,198,250

Testing

Cost

Monthly $165,248,544 $94,142,509 $123,936,408 $48,488,423

Testing

Cost

6-month $992,254,536 $565,289,890 $744,190,902 $291,154,500

Testing

Cost

DHEC used workforce numbers from SC Department of Commerce, SC Department of Employment and Workforce, and the Bureau of Labor statistics. These numbers may include federal contractors and the Centers for Medicare and Medicaid Services (CMS)-certified facilities. Additionally, the average cost per test of $63.99 is based on actual contract pricing for polymerase chain reaction (PCR) tests and antigen tests.

The above estimates reflect total statewide testing costs. DHEC is unsure how these costs will be covered among DHEC, MUSC, any potential FEMA reimbursements, health insurance policy coverage, and the private employer. However, DHEC did note that most health insurance policies only cover the cost of testing if the insured is symptomatic, and most screening testing is denied coverage.

This bill allocates a total of $20,000,0000, or $10,000,000 each to DHEC and MUSC, from the FY 2021-22 Contingency Reserve Fund. These funds are to be used to provide weekly COVID-19 testing for employees who work for a private employer that is subject to a federal vaccine mandate as an alternative to the receiving the COVID-19 vaccine. DHEC estimates the average cost per test is $63.99. Therefore, the $20,000,000 will cover approximately 313,500 COVID-19 tests. In addition to this $20,000,000, assuming a worst-case scenario, this bill will result in additional expenditures due to COVID-19 testing of up to $972,000,000 in the first six months of implementation. However, it is unclear who will be responsible for these expenditures.

Also, MUSC is working to provide additional information on the potential expenditure impact due to this bill.

**State Revenue**

This bill specifies that neither the State nor any political subdivisions, including school districts, may enact a COVID-19 vaccine mandate. Also, neither the State nor any political subdivision may terminate a first responder for failure to get a COVID-19 vaccine.

DHHS and MUSC work with CMS-certified facilities. CMS is a federal program and is currently in the process of litigating a COVID-19 vaccine mandate. If CMS’s mandate goes into effect, DHHS and MUSC will be unable to meet the mandate requirements under the provisions of this bill. This bill, therefore, may result in a loss of federal funds from Medicare and Medicaid payments depending upon the outcome of the federal lawsuits.

Further, MUSC currently requires employees to get a COVID-19 vaccine in order to meet a federal contractual workforce requirement. This bill specifies that MUSC may no longer require COVID-19 vaccines for employees. Additionally, the federal vaccine mandates are suspended at this time due to federal litigation. If federal mandates take effect, MUSC estimates that failure to comply will potentially result in the loss of millions due to the loss of federal contracts for the research universities, including the University of South Carolina and Clemson.

**Local Expenditure**

This bill specifies that neither the State nor any political subdivisions, including school districts, may enact a COVID-19 vaccine mandate. Also, neither the State nor any political subdivision may terminate a first responder for failure to get a COVID-19 vaccine.

The State Department of Education (SDE) stated that no school district currently requires its employees to have a COVID-19 vaccine. Therefore, this bill will have no expenditure impact for school districts.

Additionally, RFA contacted the Municipal Association of South Carolina (MASC) and the South Carolina Association of Counties (SCAC) to determine the potential fiscal impact for this bill for local governing entities. The potential impact for local government is pending, contingent upon a response from MASC and SCAC.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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. Chapter 1, Title 11 of the 1976 Code is amended by adding:

“Section 11‑1‑130 (A) 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.

(B) An ‘unlawful federal mask mandate’ means any federal law, order, rule, regulation, plan of action, or otherwise which requires a resident of the State of South Carolina to wear a face mask or other face covering to minimize the spread of COVID‑19 or any other infectious disease. Any such unlawful federal mask mandate is invalid in this State and may not be recognized in this State and is null, void, and of no effect in this State and includes, but is not limited to:

(1) an executive order or proclamation of the President of the United States requiring residents of this State to wear a face mask or other face covering to minimize the spread of COVID‑19 or any other infectious disease;

(2) a rule, regulation, or requirement promulgated or issued by a federal agency, or a subdivision of a federal agency, requiring residents of this State to wear a face mask or other face covering to minimize the spread of COVID‑19 or any other infectious disease including, but not limited to, rules, regulations, or requirements of the Centers for Disease Control and Prevention, the National Institutes of Health, the United States Department of Health and Human Services, the United States Department of Education, the Occupational Safety and Health Administration, the United States Department of Labor, the Food Safety and Inspection Service, and the United States Department of Agriculture;

(3) any order or other communication of any other federal political subdivision, such as a coronavirus or COVID‑19 task force, requiring residents of this State to wear a face mask or other face covering to minimize the spread of COVID‑19 or any other infectious disease; or

(4) a federal statute requiring residents of this State to wear a face mask or other face covering to minimize the spread of COVID‑19 or any other infectious disease.

(C) An ‘unlawful federal vaccine mandate’ means federal law, order, rule, regulation, plan of action, or otherwise which requires a resident of the State of South Carolina to receive a vaccine to minimize the spread of COVID‑19 or any other infectious disease. Any such unlawful federal vaccine mandate is invalid in this State and may not be recognized in this State and is null, void, and of no effect in this State and includes, but is not limited to:

(1) an executive order or proclamation of the President of the United States requiring residents of this State to receive a vaccine to minimize the spread of COVID‑19 or any other infectious disease;

(2) a rule, regulation, or requirement promulgated or issued by a federal agency, or a subdivision of a federal agency, requiring residents of this State to receive a vaccine to minimize the spread of COVID‑19 or any other infectious disease including, but not limited to, rules, regulations, or requirements of the Centers for Disease Control and Prevention, the National Institutes of Health, the United States Department of Health and Human Services, the United States Department of Education, the Occupational Safety and Health Administration, the United States Department of Labor, the Food Safety and Inspection Service, and the United States Department of Agriculture;

(3) any order or other communication of any other federal political subdivision, such as a coronavirus or COVID‑19 task force, requiring residents of this State to receive a vaccine to minimize the spread of COVID‑19 or any other infectious disease; or

(4) a federal statute requiring residents of this State to receive a vaccine to minimize the spread of COVID‑19 or any other infectious disease.”

SECTION 2. This act takes effect upon approval by the Governor.

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