COVID-19 discriminatory practices—prohibition.

Sponsored by: Senator(s) Steinmetz, Cooper, Dockstader, Driskill, French, Hicks, Hutchings, McKeown, Salazar and Schuler and Representative(s) Bear, Gray, Greear, Haroldson, Heiner, Jennings, Knapp, Neiman, Ottman, Rodriguez-Williams and Styvar

A BILL

for

AN ACT relating to miscellaneous offenses; prohibiting discrimination based on COVID-19 vaccination status as specified; prohibiting discrimination based on COVID-19 vaccination status in health insurance as specified; prohibiting a requirement of COVID-19 vaccinations in order to receive or access benefits, services or educational opportunities as specified; providing a criminal penalty; authorizing civil remedies; providing definitions; making conforming amendments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:
Section 1. W.S. 26-20-901 and 35-4-140 are created to read:

ARTICLE 9
COVID-19 HEALTH INSURANCE LIMITATIONS

26-20-901. Immunizations; prohibited actions; insurers and insurer ratings; penalties.

(a) As used in this section:

(i) "COVID-19" means as defined by W.S. 1-1-141(a)(ii);

(ii) "COVID-19 vaccination" means as defined in W.S. 35-4-140(a)(iii);

(iii) "COVID-19 vaccination status" means as defined in W.S. 35-4-140(a)(iv).

(b) An insurer providing a group or individual policy, contract or plan for health insurance shall not use the COVID-19 vaccination status of a person as a basis to
reject, deny, limit, cancel, refuse to renew, increase the premiums for, limit the amount, extent or kind of coverage available to or otherwise adversely affect eligibility or coverage for the group or individual health policy, contract or plan for health insurance.

(c) An insurer providing a group or individual policy, contract or plan for health insurance shall not use the COVID-19 vaccination status of a person as a qualification or requirement for contracting with the person's health care provider or as a basis for terminating a contract with the person's health care provider.

(d) An insurer providing a group or individual policy, contract or plan for health insurance shall not do any of the following regarding the administration of COVID-19 vaccinations to covered persons:

(i) Provide financial or other incentives to a participating health care provider based upon attaining a certain immunization administration rate for COVID-19;
(ii) Impose a financial or other penalty on a participating health care provider who does not attain a certain immunization administration rate for COVID-19.

(e) The COVID-19 vaccination status of a person covered by a group or individual policy, contract or plan for health insurance shall not be used as a factor in the rating of a group or individual policy, contract or plan for health insurance in this state.

(f) An insurer issuing a group or individual policy, contract or plan for health insurance in violation of this section is subject to the penalties and liabilities imposed by W.S. 35-4-140.

35-4-140. Discrimination based on COVID-19 vaccination status prohibited; penalties; civil remedies.

(a) As used in this section:

(i) "COVID-19" means as defined by W.S. 1-1-141(a)(ii);
(ii) "COVID-19 immunity passport" means a document, digital record or software application that evidences that a person has received a COVID-19 vaccination or that a person has recovered from an active COVID-19 infection;

(iii) "COVID-19 vaccination" means any vaccine that is marketed to prevent COVID-19 or any vaccine that is marketed to diminish or decrease the symptoms of COVID-19;

(iv) "COVID-19 vaccination status" means evidence of whether a person has received one (1) or more doses of a COVID-19 vaccine;

(v) "Health care" means as defined by W.S. 35-22-402(a)(viii);

(vi) "Public accommodation" means a private entity that owns, leases, leases to or operates a place of public accommodation, as that term is defined in 28 C.F.R. § 36.104 as of October 1, 2021.

(b) No person shall:
(i) Refuse, withhold from or deny to a person any services, goods, facilities, advantages and privileges that are public in nature or that invite the patronage of the public, or any licensing, employment opportunities, educational opportunities or health care, based on the person's COVID-19 vaccination status or whether a person has a COVID-19 immunity passport; or

(ii) Ask a person or inquire into a person's COVID-19 vaccination status or ask or inquire whether a person has a COVID-19 immunity passport in order for the person to access any services, goods, facilities, advantages and privileges that are public in nature or that invite the patronage of the public, or any licensing, employment opportunities, educational opportunities or health care.

(c) No public accommodation shall exclude, limit, segregate, refuse to serve or otherwise discriminate against a person based on the person's COVID-19 vaccination status or based on whether the person has a COVID-19 immunity passport.
(d) Any person or public accommodation that violates subsection (b) or subsection (c) of this section shall be guilty of a misdemeanor punishable by imprisonment not to exceed six (6) months, a fine not to exceed seven hundred fifty dollars ($750.00), or both.

(e) Notwithstanding W.S. 1-1-141 and 35-4-114, any person aggrieved by a discriminatory practice prohibited by subsection (b) or subsection (c) of this section may bring a civil cause of action against the violator for compensatory damages and injunctive relief or other equitable relief.

Section 2. W.S. 1-1-141(a)(iii)(intro), 14-4-116(b), 21-4-309(a), 27-11-113, 35-4-113(c), 35-4-114(a), (d) and by creating a new subsection (f) and 35-4-139 are amended to read:

1-1-141. COVID-19 exposure and illness; assumption of the risk.

(a) As used in this section:
(iii) "COVID-19 liability claim" excludes a cause of action filed under W.S. 35-4-140 (e) and means a cause of action for:


(b) Except as provided in W.S. 35-4-140, all persons over eighteen (18) months old attending or transferring into a child caring facility are required to be completely immunized in a similar manner to W.S. 21-4-309.

21-4-309. Mandatory immunizations for children attending schools; exceptions.

(a) Except as prohibited by W.S. 35-4-140, any person attending, full or part time, any public or private school, kindergarten through twelfth grade, shall within thirty (30) days after the date of school entry, provide to the appropriate school official written documentary proof of immunization. For purposes of this section, documentary proof of immunization is written certification by a private
licensed physician or his representative or by any public health authority, that the person is fully immunized. Documentation shall include month, day and year of each required immunization received against vaccine preventable disease as designated by the state health authority. No school administrator shall permit a student to attend school for more than thirty (30) calendar days without documentary proof of immunization. If immunization requires a series of immunizations over a period of more than thirty (30) calendar days, the child shall be permitted to attend school while receiving continuing immunization if the school administrator receives written notification by a private licensed physician or his representative or by a public health official, specifying a written schedule for necessary immunization completion within the medically accepted time period. Waivers shall be authorized by the state or county health officer upon submission of written evidence of religious objection or medical contraindication to the administration of any vaccine. In the presence of an outbreak of vaccine preventable disease as determined by the state or county health authority, school children for whom a waiver has been issued and who are not immunized against the occurring
vaccine preventable disease shall be excluded from school attendance for a period of time determined by the state or county health authority, but not suspended from school as provided in W.S. 21-4-305. Children excluded from school attendance under this section shall not be counted in the aggregate number of pupils absent as defined in W.S. 21-13-101(a)(i).

27-11-113. Physical examination of employees; religious exemption.

Any employer may require an employee to submit to a physical examination before employment or at any time during employment, and shall provide for a physical examination, as deemed necessary, due to exposure or contact with hazards or environmental conditions which may be detrimental to the health of the employee. Nothing in this or any other provision of this act shall be deemed to authorize or require medical examination, immunization or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others, except that no immunization that violates W.S. 35-4-140 shall ever be
required. The results of such examinations shall be furnished only to the department, the employer and, upon request, to the employee and the employee's physician. The employer shall pay for such examination.

35-4-113. Treatment when consent is not available; quarantine.

(c) Except as prohibited by W.S. 35-4-140, if a person withholds or refuses consent for himself, a minor or other incompetent when the vaccination or medical treatment is reasonably needed to protect the health of others from a disease carrying the risk of death or disability, then the person for whom the vaccination or medical treatment is refused may be quarantined by the state health officer.

35-4-114. Immunity from liability.

(a) Except as provided in subsection (f) of this section, during a public health emergency as defined by W.S. 35-4-115(a)(i) and subject to subsection (d) of this section, any health care provider or other person, including a business entity, who in good faith follows the
instructions of a state, city, town or county health
officer or who acts in good faith in responding to the
public health emergency is immune from any liability
arising from complying with those instructions or acting in
good faith. This immunity shall apply to health care
providers who are retired, who have an inactive license or
who are licensed in another state without a valid Wyoming
license and while performing as a volunteer during a
declared public health emergency as defined by W.S.
35-4-115(a)(i). This immunity shall not apply to acts or
omissions constituting gross negligence or willful or
wanton misconduct.

(d) Except as provided in subsection (f) of this
section, any health care provider, person or entity shall
be immune from liability for damages in an action involving
a COVID-19 liability claim unless the person seeking
damages proves that the health care provider, person or
entity took actions that constitutes gross negligence or
willful or wanton misconduct. Nothing in this subsection
shall be construed to limit any other immunity available
under law, including the immunity provided in subsection
(a) of this section. As used in this subsection, "COVID-19 liability claim" means as defined by W.S. 1-1-141(a)(iii).

(f) A person who violates W.S. 35-4-140 shall not be entitled to the immunity provided by this section.

35-4-139. Childhood immunizations.

The department of health through rule and regulation shall develop and implement a program to provide vaccines for all children of Wyoming residents who are not federally vaccine eligible children as defined in 42 U.S.C. § 1396s(b)(2) or subsequent similar federal enactment. Except as prohibited by W.S. 35-4-140, vaccines provided pursuant to this section shall include those determined to be necessary for the healthy development of children and prescribed in rules and regulations of the department based on recommendations from an advisory group which the department director shall appoint consisting of a representative of an organization representing physicians licensed in Wyoming, at least one (1) pediatric physician licensed in Wyoming and at least one (1) family physician licensed in Wyoming.
Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)