

DRAFT ONLY
NOT APPROVED

HOUSE BILL NO. [BILL NUMBER]

Vaccine requirements-limitations.

Sponsored by: Representative(s) Wilson

A BILL

for

1 AN ACT relating to public health and safety; requiring
2 healthcare facilities, governmental entities and providers of
3 essential services to offer reasonable accommodations as
4 specified to persons unable or unwilling to provide
5 sufficient proof of immunization; creating a personal
6 exemption to mandatory immunizations for school children;
7 providing that requiring immunization as a condition of
8 employment is a discriminatory or unfair employment practice
9 as specified; providing definitions; and providing for an
10 effective date.

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12 *Be It Enacted by the Legislature of the State of Wyoming:*

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STAFF COMMENT

Under the Americans with Disabilities Act of 1990, an employer may have a workplace policy that includes "a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace." This policy may include a vaccination requirement. If a vaccination requirement screens out a worker with a disability, however, the employer must show that unvaccinated employees would pose a "direct threat" due to a "significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."

Title VII of the Civil Rights Act of 1964 requires an employer to accommodate an employee's sincerely held religious belief, practice or observance, unless it would cause an undue hardship on the business. Courts have said that an "undue hardship" under Title VII is created by an accommodation that has more than a "de minimis," or very small, cost or burden on the employer. The definition of religion is broad and protects religious beliefs and practices that may be unfamiliar to the employer.

Section 1. W.S. 35-4-140 is created to read:

35-4-140. Limitation on immunization requirements; healthcare facilities and publicly funded services.

(a) A healthcare facility shall provide a reasonable accommodation to any person seeking to visit a patient or resident of the healthcare facility if the person is unable or unwilling to provide sufficient proof of immunization.

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2 (b) A governmental entity or public employee shall
3 provide a reasonable accommodation, including through audio-
4 visual or computerized means, to any person seeking to access
5 a publicly funded service if the person is unable or unwilling
6 to provide sufficient proof of immunization.

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8 (c) As used in this section:

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10 (i) "Governmental entity" means as defined in W.S.
11 1-39-103(a) (i) and includes any "local government" as defined
12 in W.S. 1-39-103(a) (ii);

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14 (ii) "Healthcare facility" means as defined in
15 W.S. 35-2-901(a) (x);

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17 (iii) "Public employee" means any officer,
18 employee, servant of, or any person providing services as an
19 independent contractor of, a governmental entity;

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21 (iv) "Reasonable accommodation" means any change
22 in policy, process, location or other appropriate measures
23 that allows a person who is unable or unwilling to provide

1 sufficient proof of immunization to visit a patient or
2 resident of the healthcare facility or to access publicly
3 funded services unless doing so would create an undue hardship
4 or would pose a direct and unavoidable threat to the health
5 or safety of the patient, resident or staff or other patients
6 or residents of the healthcare facility.

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8 **Section 2.** W.S. 6-9-101 by creating a new subsection
9 (b) and by renumbering subsection (b) as subsection (c),
10 21-4-309(a) and (d) by creating a new paragraph (iv), 27-9-
11 105(a) by creating a new paragraph (v) and 27-11-113 are
12 amended to read:

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14 **6-9-101. Equal enjoyment of public accommodations and**
15 **facilities; penalties.**

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17 (b) Any provider of an essential service or product
18 shall provide a reasonable accommodation to any person
19 seeking to obtain an essential service or product offered by
20 the provider if the person is unable or unwilling to provide
21 sufficient proof of immunization. As used in this subsection:

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1 (i) "Essential service or product" means any
2 service or product provided by a pharmacy, drug store,
3 physician, physician assistant, nurse practitioner, dentist,
4 physical therapist, mental health specialist, kidney dialysis
5 center, ambulance service, hospital, funeral home, grocery
6 store, crisis shelter, bank or credit union, special needs
7 transportation or gasoline station;

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9 (ii) "Reasonable accommodation" means any change
10 in policy, process, location or other appropriate measures
11 that allows a person who is unable or unwilling to provide
12 sufficient proof of immunization to obtain an essential
13 service or product unless doing so would create an undue
14 hardship or pose a direct and unavoidable threat to the health
15 or safety of the person or others.

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17 ~~(b)~~(c) A person who intentionally violates this section
18 commits a misdemeanor punishable by imprisonment for not more
19 than six (6) months, a fine of not more than seven hundred
20 fifty dollars (\$750.00), or both.

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22 **21-4-309. Mandatory immunizations for children**
23 **attending schools; exceptions.**

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2 (a) Any person attending, full or part time, any public
3 or private school, kindergarten through twelfth grade, shall
4 within thirty (30) days after the date of school entry,
5 provide to the appropriate school official written
6 documentary proof of immunization. For purposes of this
7 section, documentary proof of immunization is written
8 certification by a private licensed physician or his
9 representative or by any public health authority, that the
10 person is fully immunized. Documentation shall include month,
11 day and year of each required immunization received against
12 vaccine preventable disease as designated by the state health
13 authority. No school administrator shall permit a student to
14 attend school for more than thirty (30) calendar days without
15 documentary proof of immunization. If immunization requires
16 a series of immunizations over a period of more than thirty
17 (30) calendar days, the child shall be permitted to attend
18 school while receiving continuing immunization if the school
19 administrator receives written notification by a private
20 licensed physician or his representative or by a public health
21 official, specifying a written schedule for necessary
22 immunization completion within the medically accepted time
23 period. Waivers shall be authorized by the state or county

1 health officer upon submission of written evidence of
2 religious objection, ~~or~~ medical contraindication ~~to the~~
3 ~~administration of any vaccine~~ or personal objection to the
4 administration of any vaccine. In the presence of an outbreak
5 of vaccine preventable disease as determined by the state or
6 county health authority, school children for whom a waiver
7 has been issued and who are not immunized against the
8 occurring vaccine preventable disease shall be excluded from
9 school attendance for a period of time determined by the state
10 or county health authority, but not suspended from school as
11 provided in W.S. 21-4-305. Children excluded from school
12 attendance under this section shall not be counted in the
13 aggregate number of pupils absent as defined in W.S. 21-13-
14 101(a)(i).

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16 (d) For purposes of this section:

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18 (iv) An immunization shall only be mandated after
19 the expiration of a five (5) year period immediately following
20 the beginning of the attendant federal post licensure vaccine
21 safety monitoring period for pediatric patients as
22 administered by the immunization safety office within the
23 center for disease control.

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2 **27-9-105. Discriminatory and unfair employment**
3 **practices enumerated; limitations.**

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5 (a) It is a discriminatory or unfair employment
6 practice:

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8 (v) For an employer to require as a condition of
9 employment that any employee or prospective employee be
10 immunized for any preventable disease unless the employer can
11 demonstrate that an unimmunized employee would create an
12 undue hardship or pose a direct threat to the health or safety
13 of persons in the workplace that cannot be eliminated or
14 reduced by means of a reasonable accommodation. As used in
15 this paragraph, "reasonable accommodation" means any change
16 to the application or hiring process, to the job, to the way
17 the job is done or the work environment that allows an
18 unimmunized person who is qualified for the job to perform
19 the essential functions of that job and enjoy equal employment
20 opportunities.

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22 **27-11-113. Physical examination of employees;**
23 **religious exemption.**

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2 Any employer may require an employee to submit to a physical
3 examination before employment or at any time during
4 employment, and shall provide for a physical examination, as
5 deemed necessary, due to exposure or contact with hazards or
6 environmental conditions which may be detrimental to the
7 health of the employee. Nothing in this or any other provision
8 of this act shall be deemed to authorize or require medical
9 examination, immunization or treatment for those who object
10 thereto on religious or personal grounds, except where such
11 is necessary for the protection of the health or safety of
12 others. The results of such examinations shall be furnished
13 only to the department, the employer and, upon request, to
14 the employee and the employee's physician. The employer shall
15 pay for such examination.

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17 **Section 3.** This act is effective immediately upon
18 completion of all acts necessary for a bill to become law as
19 provided by Article 4, Section 8 of the Wyoming Constitution.

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(END)