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 healthcare facilities, governmental entities and providers of essential services to offer reasonable accommodations as specified to persons unable or unwilling to provide sufficient proof of immunization; creating a personal exemption to mandatory immunizations for school children; providing that requiring immunization as a condition of employment is a discriminatory or unfair employment practice as specified; providing definitions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:
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.
(b) A governmental entity or public employee shall provide a reasonable accommodation, including through audio-visual or computerized means, to any person seeking to access a publicly funded service if the person is unable or unwilling to provide sufficient proof of immunization.

(c) As used in this section:

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

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

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

(iv) "Reasonable accommodation" means any change in policy, process, location or other appropriate measures that allows a person who is unable or unwilling to provide
sufficient proof of immunization to visit a patient or resident of the healthcare facility or to access publicly funded services unless doing so would create an undue hardship or would pose a direct and unavoidable threat to the health or safety of the patient, resident or staff or other patients or residents of the healthcare facility.

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

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

(b) Any provider of an essential service or product shall provide a reasonable accommodation to any person seeking to obtain an essential service or product offered by the provider if the person is unable or unwilling to provide sufficient proof of immunization. As used in this subsection:
(i) "Essential service or product" means any service or product provided by a pharmacy, drug store, physician, physician assistant, nurse practitioner, dentist, physical therapist, mental health specialist, kidney dialysis center, ambulance service, hospital, funeral home, grocery store, crisis shelter, bank or credit union, special needs transportation or gasoline station;

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

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

21-4-309. Mandatory immunizations for children attending schools; exceptions.
(a) 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 or personal objection 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).

(d) For purposes of this section:

(iv) An immunization shall only be mandated after the expiration of a five (5) year period immediately following the beginning of the attendant federal post licensure vaccine safety monitoring period for pediatric patients as administered by the immunization safety office within the center for disease control.
27-9-105. Discriminatory and unfair employment practices enumerated; limitations.

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

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

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 or personal grounds, except where such is necessary for the protection of the health or safety of others. 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.

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.