

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 425

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO IMMUNIZATIONS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION
2 67-5902, IDAHO CODE, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS;
3 AMENDING CHAPTER 59, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
4 TION 67-5909B, IDAHO CODE, TO PROHIBIT CERTAIN ACTS OF DISCRIMINATION
5 ON THE BASIS OF IMMUNIZATION STATUS OR THE POSSESSION OF AN IMMUNITY
6 PASSPORT AND TO PROVIDE FOR CERTAIN EXCEPTIONS; AMENDING CHAPTER 4, TI-
7 TLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-451B, IDAHO CODE,
8 TO ESTABLISH PROVISIONS REGARDING THE FEDERAL OVERREACH LEGAL DEFENSE
9 FUND; PROVIDING FOR AN APPROPRIATION TO THE FEDERAL OVERREACH LEGAL
10 DEFENSE FUND; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. LEGISLATIVE INTENT. The Legislature finds that President
14 Joe Biden issued two executive orders mandating COVID-19 vaccinations for
15 federal workers and contractors and has further unveiled new vaccination
16 and testing requirements for health care providers and employers with 100 or
17 more employees. The Biden Administration's vaccine mandate and its plan to
18 fine certain employers who do not require their employees to be vaccinated
19 or submit to weekly COVID-19 testing is an unconstitutional overreach of
20 the power the several states entrusted to the central government under the
21 principles of American federalism. It is the intent of the Legislature to
22 protect and defend Idahoans from such overreach by the federal government.

23 SECTION 2. That Section 67-5902, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 67-5902. DEFINITIONS. In this chapter, unless the context otherwise
26 requires:

27 (1) "Commission" means the commission on human rights created by this
28 chapter~~.~~.

29 (2) "Commissioner" means a member of the commission~~.~~.

30 (3) "Discriminatory practice" means a practice designated as discrimi-
31 natory under the terms of this chapter~~.~~.

32 (4) "Immunity passport" means a document, digital record, or software
33 application indicating that a person is immune to a disease as a result of a
34 vaccine or infection and recovery.

35 (5) "Immunization status" means an indication of whether a person has
36 received one (1) or more doses of a vaccine.

37 (6) "National origin" includes the national origin of an ancestor~~.~~.

38 (57) "Person" includes an individual, association, corporation, joint
39 apprenticeship committee, joint-stock company, labor union, legal repre-
40 sentative, mutual company, partnership, any other legal or commercial en-
41 tity, the state, or any governmental entity or agency~~.~~.

1 (68) "Employer" means a person, wherever situated, who hires five (5)
 2 or more employees for each working day in each of twenty (20) or more calen-
 3 dar weeks in the current or preceding calendar year whose services are to be
 4 partially or wholly performed in the state of Idaho, except for domestic ser-
 5 vants hired to work in and about the person's household. The term also means:

6 (a) A person who as contractor or subcontractor is furnishing material
 7 or ~~performing work for~~ working in the state;

8 (b) Any agency of or any governmental entity within the state; and

9 (c) Any agent of such employer.

10 (79) "Employment agency" means a person regularly undertaking with or
 11 without compensation to procure employees for an employer or to procure for
 12 employees opportunities to work for an employer and includes an agent of such
 13 a person~~.~~

14 (810) "Labor organization" includes:

15 (a) An organization of any kind, an agency or employee representation
 16 committee, group, association, or plan in which employees participate
 17 and which exists for the purpose, in whole or in part, of dealing with
 18 employers concerning grievance, labor disputes, wages, rates of pay,
 19 hours, or other terms or conditions of employment;

20 (b) A conference, general committee, joint or system board, or joint
 21 council which is subordinate to a national or international labor or-
 22 ganization; or

23 (c) An agent of a labor organization.

24 (911) "Place of public accommodation" means a business, accommodation,
 25 refreshment, entertainment, recreation, or transportation facility of any
 26 kind, whether licensed or not, whose goods, services, facilities, privi-
 27 leges, advantages or accommodations are extended, offered, sold, or other-
 28 wise made available to the public~~.~~

29 (102) "Educational institution" means a public or private institution
 30 and includes an academy, college, elementary or secondary school, extension
 31 course, kindergarten, nursery, school system, or university and a business,
 32 nursing, professional, secretarial, technical, or vocational school and in-
 33 cludes an agent of an educational institution~~.~~

34 (113) "Real property" includes buildings, structures, real estate,
 35 lands, tenements, leaseholds, interests in real estate cooperatives, con-
 36 dominiums, and hereditaments, corporeal and incorporeal or any interest
 37 therein~~.~~

38 (124) "Real estate transaction" includes the sale, exchange, rental or
 39 lease of real property~~.~~

40 (135) "Housing accommodation" includes any improved or unimproved real
 41 property, or part thereof, ~~which is used or occupied, or~~ as the home or resi-
 42 dence of one (1) or more individuals~~.~~

43 (146) "Real estate broker or salesman" means a person, whether licensed
 44 or not, who, for or with the expectation of receiving a consideration, lists,
 45 sells, purchases, exchanges, rents, or leases real property, or who negoti-
 46 ates or attempts to negotiate any of these activities, or who holds himself
 47 out as engaged in these activities, or who negotiates or attempts to negoti-
 48 ate a loan secured or to be secured by mortgage or other encumbrance upon real
 49 property, or who is engaged in the business of listing real property in a pub-
 50 lication; or a person employed by or acting on behalf of any of these~~.~~

1 (157) "Disability" means a physical or mental condition of a person,
 2 whether congenital or acquired, which constitutes a substantial limitation
 3 to that person and is demonstrable by medically accepted clinical or lab-
 4 oratory diagnostic techniques. A person with a disability is one who (a)
 5 has such a disability, or (b) has a record of such a disability, or (c) is
 6 regarded as having such a disability.

7 (168) "Reasonable accommodation" means an adjustment which does not
 8 (a) unduly disrupt or interfere with the employer's normal operations, (b)
 9 threaten the health or safety of the person with the disability or others,
 10 (c) contradict a business necessity of the employer, or (d) impose undue
 11 hardship on the employer based on the size of the employer's business, the
 12 type of business, the financial resources, and the estimated cost and extent
 13 of the adjustment.

14 (179) "Readily achievable" means easily accomplishable and able to be
 15 carried out without much difficulty or expense. In determining whether an
 16 action is readily achievable, factors to be considered include (a) the na-
 17 ture and cost of the action needed under this chapter, (b) the overall fi-
 18 nancial resources of the facility or facilities involved in the action, the
 19 number of persons employed at the facility, the effect on expenses and re-
 20 sources, or the impact otherwise of the action upon the operation of the fa-
 21 cility, (c) the overall financial resources of the covered entity, the over-
 22 all size of the business of a covered entity with respect to the number of its
 23 employees, the number, type, and location of its facilities, and (d) the type
 24 of operation or operations of the covered entity, including the composition,
 25 structure, and functions of the workforce of the entity, the geographic sep-
 26 arateness, administrative or fiscal relationship of the facility or facili-
 27 ties in question to the covered entity.

28 SECTION 3. That Chapter 59, Title 67, Idaho Code, be, and the same is
 29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 30 ignated as Section 67-5909B, Idaho Code, and to read as follows:

31 67-5909B. ACTS PROHIBITED -- DISCRIMINATION BASED ON IMMUNIZATION
 32 STATUS OR POSSESSION OF IMMUNITY PASSPORT. (1) Except as otherwise provided
 33 in this section, it is an unlawful discriminatory practice for:

34 (a) A person to refuse, withhold from, or deny a person any local or
 35 state government services, goods, facilities, advantages, privileges,
 36 licensing, educational opportunities, health care access, contract
 37 work, or employment opportunities based on the person's immunization
 38 status or whether the person has an immunity passport;

39 (b) An employer to refuse employment to a person, to bar a person from
 40 employment, or to discriminate against a person as to compensation or as
 41 to a term, condition, or privilege of employment based on the person's
 42 immunization status or whether the person has an immunity passport; or

43 (c) A public accommodation to exclude, limit, segregate, refuse to
 44 serve, or otherwise discriminate against a person based on the person's
 45 immunization status or whether the person has an immunity passport.

46 (2) This section does not apply to immunization requirements for:

47 (a) Schools, as provided in chapter 48, title 39, Idaho Code;

48 (b) Day care facilities, as provided in chapter 11, title 39, Idaho
 49 Code; and

1 (c) Licensed nursing homes, long-term care facilities, or assisted
2 living facilities during any period of time that compliance with
3 subsection (1) of this section would result in a violation of the reg-
4 ulations or guidance issued by the centers for medicare and medicaid
5 services.

6 (3) (a) A person does not unlawfully discriminate under this section if
7 the person recommends that an employee or contractor receive a vaccina-
8 tion.

9 (b) A health care facility, as defined in section 48-303, Idaho Code,
10 except as otherwise provided in subsection (2) (c) of this section, does
11 not unlawfully discriminate under this section if both of the following
12 requirements are met:

13 (i) The facility asks an employee or contractor to volunteer
14 the person's immunization status for the purpose of determin-
15 ing whether the health care facility should implement reasonable
16 accommodation measures to protect the safety and health of em-
17 ployees, contractors, patients, visitors, and other persons from
18 communicable diseases. A health care facility may consider an
19 employee or contractor to be unvaccinated or nonimmune if the
20 employee or contractor declines to provide the person's immu-
21 nization status to the health care facility for the purpose of
22 determining whether reasonable accommodation measures should be
23 implemented; and

24 (ii) The facility implements reasonable accommodation measures
25 for employees, contractors, patients, visitors, and other per-
26 sons who are not vaccinated or not immune to protect the safety and
27 health of employees, contractors, patients, visitors, and other
28 persons from communicable diseases.

29 (4) An individual may not be required to receive an inoculation by any
30 vaccine whose use is allowed only under an emergency use authorization or any
31 vaccine undergoing safety trials.

32 SECTION 4. That Chapter 4, Title 67, Idaho Code, be, and the same is
33 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
34 ignated as Section 67-451B, Idaho Code, and to read as follows:

35 67-451B. FEDERAL OVERREACH LEGAL DEFENSE FUND CREATED. There is
36 hereby created in the state treasury the federal overreach legal defense
37 fund. The federal overreach legal defense fund shall consist of such moneys
38 as are placed into it by appropriations and shall be continuously appropri-
39 ated to the senate and the house of representatives. Any interest earned
40 shall remain in the fund. The federal overreach legal defense fund shall be
41 specifically exempt from the provisions of chapter 35, title 67, Idaho Code,
42 and from the provisions of chapter 36, title 67, Idaho Code. The president
43 pro tempore of the senate and the speaker of the house of representatives
44 are hereby authorized to make expenditures out of the fund for any necessary
45 legal expenses of the legislature in defending the state of Idaho from over-
46 reach by the federal government.

47 SECTION 5. FISCAL YEAR 2022 CASH TRANSFER TO THE FEDERAL OVERREACH LE-
48 GAL DEFENSE FUND. There is hereby appropriated and the Office of the State

1 Controller shall transfer \$2,000,000 from the General Fund to the Federal
2 Overreach Legal Defense Fund as soon as practicable for the period July 1,
3 2021, through June 30, 2022.

4 SECTION 6. SEVERABILITY. The provisions of this act are hereby declared
5 to be severable and if any provision of this act or the application of such
6 provision to any person or circumstance is declared invalid for any reason,
7 such declaration shall not affect the validity of the remaining portions of
8 this act.

9 SECTION 7. An emergency existing therefor, which emergency is hereby
10 declared to exist, this act shall be in full force and effect on and after its
11 passage and approval.