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H.B. 218
(1_134_0788-8)
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 218's Bill Analysis](#)

Version: In House Commerce and Labor

Primary Sponsor: Rep. Cutrona

Local Impact Statement Procedure Required: No

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Highlights

- Public schools and institutions of higher education, or public employers may experience costs if any changes to vaccination policies are necessary. Additionally, these entities may experience costs if any mitigation measures are adopted to prevent the spread of disease. Any other impacts are uncertain.
- The bill's provisions related to workers' compensation would increase benefits paid from the State Insurance Fund or by self-insuring public employers, including self-insuring local governments. The magnitude of such increase is undetermined.
- The bill requires the Ohio Department of Health to adopt rules regarding the retesting frequency to determine antibody presence, which could increase costs minimally. The bill specifies that retesting cannot be more than once per year.
- The bill's extension of qualified civil immunity provisions may create an expenditure savings effect for local trial courts by reducing the time and effort that otherwise may have been expended to adjudicate civil actions resulting from actions in response to and as a result of certain coronaviruses.
- The bill expands conduct constituting unlawful employment discrimination to include violations of the bill's provisions regulating certain employee requirements. The Ohio Civil Rights Commission could realize an increase in costs. The total costs would depend on the number of cases.
- The State Medical Board could experience a minimal increase in costs for investigations or disciplinary action taken for violations of the bill's requirements regarding written statements for medical contraindication exemptions.

- The potential fiscal effects of the bill's mandamus action provisions on courts, as well as state agencies and political subdivisions as defendants, is uncertain.

Detailed Analysis

mRNA, DNA, and genetic technologies and exemptions

The bill specifies that a school, private college, or a state institution of higher education, is prohibited from requiring a student to receive a vaccine, drug, biological product, or form of genetic immunotherapy utilizing messenger ribonucleic acid (mRNA), deoxyribonucleic acid (DNA), or any other genetic vaccine technology for which the U.S. Food and Drug Administration (FDA) has not issued a biologics license or otherwise granted full approval. In addition, the bill prohibits employers from requiring an employee to receive any of these technologies for which the FDA has not issued a biologics license or otherwise granted full approval. The bill also specifies the following exemptions for requirements for a vaccine, drug, biological product, or form of genetic immunotherapy which has been issued a biologics license or otherwise granted full approval: (1) medical contraindications, (2) natural immunity, and (3) reasons of personal conscience, including religious convictions. All exemptions claimed must be submitted in written form; for the purposes of claiming a medical contraindications exemption, an individual must submit a written statement signed by a physician with whom the individual has a bona fide physician-patient relationship. The bill also specifies that a written statement of exemption and documentation of such is a private record. The Ohio Department of Health (ODH) is required to adopt rules establishing the frequency with which an individual claiming a natural immunity exemption must be retested. In adopting the rules, ODH is prohibited from requiring retesting more than once per year. With regard to the exemptions for reasons of personal conscience, including religious convictions, the bill prohibits a school, private or state university, or employer from expelling a student or terminating an employee's employment because the exemption was claimed. The bill provides that these exemptions do not apply to certain students or employees studying or working at a children's hospital or an intensive care or critical care unit. The private college, state institution, or employer must make a good faith effort to provide equitable instruction and training for a student or employment for an employee who refuses a COVID-19 vaccine and who cannot claim an exemption. The bill specifies that it does not apply to an employer that is not a hospital and that, as a regular part of its business, the employer conducts research on, develops, handles, administers, transports, or stores infectious organisms. The bill specifies that no student or employee is responsible for any costs or fees associated with mitigation measures taken to prevent the spread of disease, including testing for active infection and masking. However, in the case of a student or employee who is exempt because of natural immunity, the student or employee is responsible for any costs or fees associated with demonstrating natural immunity. The bill also specifies that a school is prohibited from denying a student the opportunity to participate in activities affiliated with the school or on school property based solely on the student's COVID-19 vaccination status.

The bill also specifies that no individual can be required to show proof of COVID-19 vaccination in order to (1) enter a facility controlled, operated, or owned by any business, political subdivision, public official, or state agency, (2) receive a service provided by any business, political subdivision, public official, or state agency, or (3) enter a building, facility, or place controlled, operated, or owned by a court or to receive a service provided in such a building, facility, or place, but only if the individual enters for purposes other than attending a court proceeding or event or

the individual receives a service not related to a court proceeding or event. The bill specifies that a court may award reasonable attorney's fees to the prevailing party in any action to enforce this provision.

As a result of these provisions, there may be costs to public schools or public employers if any changes to vaccination policies are necessary. In addition, if a public school or public employer adopts any mitigation measures, the entity might realize costs. There may also be costs for a state institution of higher education to make a good faith effort to provide equitable instruction and training for a student who refuses a COVID-19 vaccine and who cannot claim an exemption. ODH will realize a minimal increase in costs to adopt rules regarding the retesting frequency to determine antibody presence. The State Medical Board may also incur minimal costs for any investigations or disciplinary action taken in response to a physician who provides a written statement on behalf of an individual seeking a medical contraindications exemption without a bona fide physician-patient relationship. Local courts may also experience an increase in costs if any action is brought regarding proof of vaccination. Any other impacts will depend on a number of factors and thus, are uncertain.

Qualified civil immunity

The bill extends certain timelines related to qualified civil immunity enacted in H.B. 606 of the 133rd General Assembly. The bill provides that the qualified civil immunity for health care providers applies to actions in response to and as a result of MERS-CoV, SARS-CoV, or SARS-CoV-2 or any mutation thereof. These provisions are extended through June 30, 2023, and also include hearing aid dealers and hearing aid fitters. As a result, this may create an expenditure savings effect for local trial courts by reducing the time and effort that otherwise may have been expended to adjudicate civil actions resulting from a disaster or emergency. Additionally, the bill may decrease investigation or disciplinary costs for certain state occupational licensing boards due to the expansion of immunity from professional discipline resulting from and in response to MERS-CoV, SARS-CoV, or SARS-CoV-2 or any mutation thereof.

Workers' compensation

The bill states that injuries under workers' compensation law includes an injury or disability caused by a COVID-19 vaccine, if the employer required the employee to receive the vaccine as a condition of employment. In addition, the bill specifies the following conditions for claims arising during the period beginning on the effective date of the bill and ending September 30, 2025: (1) no claimant is entitled to workers' compensation or benefits under Chapter 4121, 4123, 4127, or 4131 of the Revised Code for an injury caused by a vaccine that utilizes mRNA, DNA, or other genetic vaccine technology if the vaccine was required by an employer as a condition of employment and the claimant received compensation under the "National Childhood Vaccine Injury Act of 1986," 42 United States Code (U.S.C.) 300aa-1, *et seq.* or "The Public Readiness and Emergency Preparedness (PREP) Act," 42 U.S.C. 247d-6d, and (2) if the claimant received both (a) an award of workers' compensation or benefits for an injury caused by such a vaccine required by an employer as a condition of employment and (b) compensation under the acts, the Bureau of Workers' Compensation Administrator or any self-insuring employer is allowed to collect the awarded amount of workers' compensation or benefits paid to or on behalf of the claimant for such injury, including any interest, attorney's fees, and costs the Administrator or the self-insuring employer incurs in collecting that payment.

The bill's provisions related to workers' compensation would increase benefits paid from the State Insurance Fund or by self-insuring public employers, including self-insuring local governments. The magnitude of such increase is undetermined. However, due to the claw back provision, for claims arising during the temporary period ending on September 30, 2025, the fiscal cost of the bill may be reduced if certain claimants simultaneously received workers' compensation or benefits under the federal acts described in the bill.

EMT COVID-19 test administration

The bill also permits an emergency medical technician-basic, emergency medical technician-intermediate, and emergency medical technician-paramedic who has received proper training to administer a test for COVID-19 and collect and label test specimens. This provision has no direct fiscal effect on the state or its political subdivisions.

Employment discrimination

The bill will increase the workload of the Ohio Civil Rights Commission depending on the number of complaints alleging unlawful employment discrimination related to employee requirements discussed above. If the number of additional complaints filed is relatively small, then it is likely that the Commission can absorb the related work utilizing existing staff and appropriated resources. However, if a significant number of complaints arise, additional resources may be necessary.

The unlawful employment discrimination provision should not have a significant impact on the courts of common pleas because, like all other employment discrimination claims, the Commission is required to exhaust specific procedures before a claimant can obtain a right to sue from the Commission and then bring a civil action in the appropriate common pleas court.

Mandamus actions

Under the bill, students, as well as employees of the state or a political subdivision that have not filed an employment discrimination claim with the Civil Rights Commission, are permitted to commence a mandamus action in accordance with R.C. Chapter 2731 to obtain a judgment ordering a school, private college, or state institution of higher education, as applicable, to comply with the bill's provisions regulating certain requirements detailed above. Under current law, the Supreme Court of Ohio, a court of appeals, or a court of common pleas allow a writ of mandamus. The frequency writ applications, the potential fiscal effects on the courts, as well as state agencies and political subdivisions as defendants, is uncertain.

Synopsis of Fiscal Effect Changes

The substitute bill, I_134_0788-8, replaces all provisions in H.B. 218, As Introduced. Thus, all above-mentioned fiscal effects are new to the substitute bill.