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REPORT OF THE REVENUE POLICY SUBCOMMITTEE

(G.M. Smith, Simrill, Herbkersman, Whitmire & Stavrinakis - Staff Contact: Sarah Hearn)

HOUSE BILL 3126

H. 3126 -- Reps. Jones, Burns, Chumley, Magnuson, Taylor, Haddon, Long, Forrest, McCabe, Oremus and Hill: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 11-1-130 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR THIS STATE OR ANY POLITICAL SUBDIVISION THEREOF TO ACCEPT ANY FEDERAL FUNDS TO ENFORCE AN UNLAWFUL FEDERAL MASK MANDATE OR UNLAWFUL FEDERAL VACCINE MANDATE.

Received by Ways and Means: 12/9/20

Summary of Bill:

This bill provides that it is unlawful for this state or its political subdivisions to accept any federal funds to enforce an federal mask mandate or federal vaccine mandate.

Estimated Revenue Impact:

Pending

Other Notes/Comments:

Strike-and-insert amendment adopted along with bill in subcommittee on 12/7/2021. Amendment is as follows: Section 1 prohibits the state or any political subdivision, including school districts, from mandating COVID-19 vaccines for employees, independent contractors, or students. Section 2 prohibits the same as section 1 but for first responders. Section 3 prohibits private employers from terminating or suspending individuals who do not receive a COVID-19 vaccine. Provision to protect private employers who are subject to federal vaccine mandates by allowing unvaccinated employees to undergo weekly COVID-19 testing -- this protects them from the forfeiture of federal funds. DHEC and MUSC will partner with private employers to provide this testing. Appropriating \$10 M to both agencies from the Contingency Reserve Fund to make this possible without placing a cost burden on the employers. Section 4 provides cause of action for employees to restore their position for violating this act and have the employer pay court costs and legal fees.

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

ALLEN .
DECEMBER 7, 2021

CLERK OF THE HOUSE

THE REVENUE POLICY SUBCOMMITTEE PROPOSES THE
FOLLOWING AMENDMENT No. TO H. 3126
(COUNCIL\SA\3126C007.DF.SA21):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY
STRIKING ALL AFTER THE ENACTING WORDS AND
INSERTING:**

**/ SECTION 1. THE STATE OR ANY POLITICAL
SUBDIVISION THEREOF, INCLUDING A SCHOOL
DISTRICT, MAY NOT ENACT A COVID-19 VACCINE
MANDATE FOR ANY EMPLOYEE, INDEPENDENT
CONTRACTOR, OR STUDENT AS A CONDITION OF
EMPLOYMENT OR ATTENDANCE.**

SECTION 2. CHAPTER 15, TITLE 8 OF THE 1976 CODE IS AMENDED BY ADDING:

“SECTION 8-15-80. (A) NEITHER THE STATE, NOR ANY OF ITS POLITICAL SUBDIVISIONS, MAY TERMINATE A PERSON EMPLOYED AS A FIRST RESPONDER IF THE FIRST RESPONDER DOES NOT UNDERGO A COVID-19 VACCINATION.

(B) FOR PURPOSES OF THIS SECTION, ‘FIRST RESPONDER’ MEANS A LAW ENFORCEMENT OFFICER, FIREFIGHTER, EMERGENCY MEDICAL TECHNICIAN, OR PARAMEDIC WHO IS PAID FROM PUBLIC FUNDS.”

SECTION 3. (A) A PRIVATE EMPLOYER MAY NOT TERMINATE OR SUSPEND AN INDIVIDUAL WHO DOES NOT RECEIVE A COVID-19 VACCINATION.

(B) IF A PRIVATE EMPLOYER IS SUBJECT TO A FEDERAL VACCINE MANDATE, IT MAY ALLOW AN UNVACCINATED EMPLOYEE TO UNDERGO WEEKLY COVID-19 TESTING WITHOUT BEING SUBJECT TO THE FORFEITURE OF FEDERAL FUNDS.

(C) THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND THE MEDICAL UNIVERSITY OF SOUTH CAROLINA SHALL PARTNER WITH PRIVATE EMPLOYERS TO PROVIDE COVID-19 TESTING.

(D) FROM THE CONTINGENCY RESERVE FUND, THERE IS APPROPRIATED TEN MILLION DOLLARS TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND TEN MILLION DOLLARS TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA TO FUND COVID-19 TESTING FOR PRIVATE EMPLOYERS.

SECTION 4. ANY EMPLOYER WHO VIOLATES ANY PROVISION OF THIS ACT IS LIABLE IN A CIVIL ACTION FOR LOST WAGES SUFFERED BY AN EMPLOYEE AS A RESULT OF THE VIOLATION, AND AN EMPLOYEE DISCHARGED OR DEMOTED IN VIOLATION OF THIS ACT IS ENTITLED TO BE REINSTATED TO HIS FORMER POSITION. THE STATUTE OF LIMITATIONS FOR ACTIONS UNDER THIS ACT IS ONE YEAR.

SECTION 5. IF ANY SECTION, SUBSECTION, PARAGRAPH, SUBPARAGRAPH, SENTENCE, CLAUSE, PHRASE, OR WORD OF THIS ACT IS FOR ANY REASON HELD TO BE UNCONSTITUTIONAL OR INVALID, SUCH HOLDING SHALL NOT AFFECT THE CONSTITUTIONALITY OR VALIDITY OF THE REMAINING PORTIONS OF THIS ACT, THE GENERAL ASSEMBLY HEREBY DECLARING THAT IT WOULD HAVE PASSED THIS ACT, AND EACH AND EVERY SECTION, SUBSECTION, PARAGRAPH, SUBPARAGRAPH, SENTENCE, CLAUSE, PHRASE, AND WORD THEREOF, IRRESPECTIVE OF THE FACT THAT ANY ONE OR MORE OTHER SECTIONS, SUBSECTIONS, PARAGRAPHS, SUBPARAGRAPHS, SENTENCES, CLAUSES, PHRASES, OR WORDS HEREOF MAY BE DECLARED TO BE UNCONSTITUTIONAL, INVALID, OR OTHERWISE INEFFECTIVE.

SECTION 6. THIS ACT TAKES EFFECT UPON APPROVAL BY THE GOVERNOR. /

**RENUMBER SECTIONS TO CONFORM.
AMEND TITLE TO CONFORM.**



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: H. 3126 Amended by House Ways and Means Revenue Policy
Legislative Subcommittee on December 7, 2021

Author: Jones

Subject: Mask Mandates

Requestor: House Ways and Means

RFA Analyst(s): Miller

Impact Date: December 9, 2021

Fiscal Impact Summary

This bill provides restrictions on COVID-19 vaccine mandates for the State, political subdivisions, and private employers, provides funding for testing by private employers under a federal vaccine mandate, and specifies that any employer who violates the provisions of this bill will be liable in a civil action. Revenue and Fiscal Affairs (RFA) contacted those agencies and political subdivisions that may be impacted based upon an initial review of the bill. Based upon the responses received thus far, the potential impact of the bill on expenditures and revenues is undetermined, as it will depend upon the outcome of current litigation in the federal court. Further, some agencies are still reviewing the bill. Those responses are either pending or may provide additional clarifications to the responses below.

Additionally, the bill appropriates \$10,000,000 each to the Department of Health and Environment Control (DHEC) and the Medical University of South Carolina (MUSC) from the FY 2021-22 Contingency Reserve Fund for COVID-19 testing for private employees under a federal vaccine mandate as an alternative to getting a vaccine. DHEC estimates the average cost per test is \$63.99. Therefore, the \$20,000,000 will cover approximately 313,500 COVID-19 tests. The number of tests that will be required is unknown and may also be affected by the outcome of federal litigation. The potential impact for the overall cost of testing will depend upon the number of tests needed and how the costs are divided among the agencies, private employers, health insurance, and any potential Federal Emergency Management Agency (FEMA) reimbursements.

Explanation of Fiscal Impact

**Amended by House Ways and Means Revenue Policy Legislative Subcommittee on
December 7, 2021**

State Expenditure

To determine the potential impact of this bill, RFA contacted those agencies and political subdivisions that may be impacted based upon an initial review of the bill as outlined below. However, depending upon responses, additional agencies may need to be contacted.

Estimate Scenario	A - All Employers	B - Private Sector Only	C - Vaccination Surge	D - Vaccine Hesitancy
OSHA Rule Application	ALL employers with 100+ employees	Private Sector employers with 100+ employees	ALL employers with 100+ employees	ALL employers with 100+ employees
Calculation Method	Assuming 1.2M employees in impacted organizations; applying statewide vaccination rate of 50.3%	Bureau of Labor Statistics data estimates 683,643 workers in private sector businesses with 100+ employees; applying statewide vaccination rate of 50.3%	Same calculations as A, but assumes a vaccination surge of 25% of impacted population	Based on June 2021 CDC vaccine hesitancy data; assumes remaining workers who are not "strongly hesitant" will become vaccinated
Impact of Mandate on Vaccination Behavior	No impact	No impact	25% surge in vaccination	CDC-identified "Movable Middle" become vaccinated
# of employees needing testing per week	596,400	339,771	447,300	175,000
Average cost per test	\$63.99	\$63.99	\$63.99	\$63.99
Weekly Testing Cost	\$38,163,636	\$21,741,919	\$28,622,727	\$11,198,250
Monthly Testing Cost	\$165,248,544	\$94,142,509	\$123,936,408	\$48,488,423
6-month Testing Cost	\$992,254,536	\$565,289,890	\$744,190,902	\$291,154,500

DHEC used workforce numbers from SC Department of Commerce, SC Department of Employment and Workforce, and the Bureau of Labor statistics. These numbers may include federal contractors and the Centers for Medicare and Medicaid Services (CMS)-certified facilities. Additionally, the average cost per test of \$63.99 is based on actual contract pricing for polymerase chain reaction (PCR) tests and antigen tests.

The above estimates reflect total statewide testing costs. DHEC is unsure how these costs will be covered among DHEC, MUSC, any potential FEMA reimbursements, health insurance policy coverage, and the private employer. However, DHEC did note that most health insurance policies only cover the cost of testing if the insured is symptomatic, and most screening testing is denied coverage.

This bill allocates a total of \$20,000,000, or \$10,000,000 each to DHEC and MUSC, from the FY 2021-22 Contingency Reserve Fund. These funds are to be used to provide weekly COVID-19 testing for employees who work for a private employer that is subject to a federal vaccine

mandate as an alternative to the receiving the COVID-19 vaccine. DHEC estimates the average cost per test is \$63.99. Therefore, the \$20,000,000 will cover approximately 313,500 COVID-19 tests. In addition to this \$20,000,000, assuming a worst-case scenario, this bill will result in additional expenditures due to COVID-19 testing of up to \$972,000,000 in the first six months of implementation. However, it is unclear who will be responsible for these expenditures.

Also, MUSC is working to provide additional information on the potential expenditure impact due to this bill.

State Revenue

This bill specifies that neither the State nor any political subdivisions, including school districts, may enact a COVID-19 vaccine mandate. Also, neither the State nor any political subdivision may terminate a first responder for failure to get a COVID-19 vaccine.

DHHS and MUSC work with CMS-certified facilities. CMS is a federal program and is currently in the process of litigating a COVID-19 vaccine mandate. If CMS's mandate goes into effect, DHHS and MUSC will be unable to meet the mandate requirements under the provisions of this bill. This bill, therefore, may result in a loss of Federal Funds from Medicare and Medicaid payments depending upon the outcome of the federal lawsuits.

Further, MUSC currently requires employees to get a COVID-19 vaccine in order to meet a federal contractual workforce requirement. This bill specifies that MUSC may no longer require COVID-19 vaccines for employees. Additionally, the federal vaccine mandates are suspended at this time due to federal litigation. If federal mandates take effect, MUSC estimates that failure to comply will potentially result in the loss of millions due to the loss of federal contracts for the research universities, including the University of South Carolina and Clemson.

Local Expenditure

This bill specifies that neither the State nor any political subdivisions, including school districts, may enact a COVID-19 vaccine mandate. Also, neither the State nor any political subdivision may terminate a first responder for failure to get a COVID-19 vaccine.

The State Department of Education (SDE) stated that no school district currently requires its employees to have a COVID-19 vaccine. Therefore, this bill will have no expenditure impact for school districts.

Additionally, RFA contacted the Municipal Association of South Carolina (MASC) and the South Carolina Association of Counties (SCAC) to determine the potential fiscal impact for this bill for local governing entities. The potential impact for local government is pending, contingent upon a response from MASC and SCAC.

Local Revenue

N/A



Frank A. Rainwater, Executive Director

South Carolina General Assembly
124th Session, 2021-2022

H. 3126

STATUS INFORMATION

General Bill

Sponsors: Reps. Jones, Burns, Chumley, Magnuson, Taylor, Haddon, Long, Forrest, McCabe, Oremus, Hill, M.M. Smith, Huggins, Wooten, Ballentine, Bustos, B. Cox, Elliott, Trantham, Willis, Nutt, Morgan, McCravy, Thayer, Dillard, V.S. Moss, Stringer, T. Moore, Allison, Hixon and Bennett

Document Path: I:\council\bill\sm\20129sa21.docx

Introduced in the House on January 12, 2021

Currently residing in the House Committee on **Ways and Means**

Summary: Mask mandates

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/9/2020	House	Prefiled
12/9/2020	House	Referred to Committee on Ways and Means
1/12/2021	House	Introduced and read first time (House Journal-page 81)
1/12/2021	House	Referred to Committee on Ways and Means (House Journal-page 81)
1/27/2021	House	Member(s) request name added as sponsor: Hill
12/6/2021	House	Member(s) request name added as sponsor: M.M.Smith, Huggins, Wooten, Ballentine, Bustos, B.Cox, Elliott, Trantham, Willis, Nutt, Morgan, McCravy, Thayer, Dillard, V.S.Moss, Stringer, T.Moore, Allison, Hixon, Bennett

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VERSIONS OF THIS BILL

[12/9/2020](#)

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A BILL

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, BY ADDING SECTION 11-1-130 SO AS TO PROVIDE
13 THAT IT IS UNLAWFUL FOR THIS STATE OR ANY
14 POLITICAL SUBDIVISION THEREOF TO ACCEPT ANY
15 FEDERAL FUNDS TO ENFORCE AN UNLAWFUL FEDERAL
16 MASK MANDATE OR UNLAWFUL FEDERAL VACCINE
17 MANDATE.

18
19 Be it enacted by the General Assembly of the State of South
20 Carolina:

21
22 SECTION 1. Chapter 1, Title 11 of the 1976 Code is amended by
23 adding:

24
25 "Section 11-1-130 (A) It is unlawful for this State, or any
26 political subdivision thereof, to accept any federal funds to enforce
27 an unlawful federal mask mandate or unlawful federal vaccine
28 mandate.

29 (B) An 'unlawful federal mask mandate' means any federal law,
30 order, rule, regulation, plan of action, or otherwise which requires a
31 resident of the State of South Carolina to wear a face mask or other
32 face covering to minimize the spread of COVID-19 or any other
33 infectious disease. Any such unlawful federal mask mandate is
34 invalid in this State and may not be recognized in this State and is
35 null, void, and of no effect in this State and includes, but is not
36 limited to:

37 (1) an executive order or proclamation of the President of the
38 United States requiring residents of this State to wear a face mask
39 or other face covering to minimize the spread of COVID-19 or any
40 other infectious disease;

41 (2) a rule, regulation, or requirement promulgated or issued
42 by a federal agency, or a subdivision of a federal agency, requiring

1 residents of this State to wear a face mask or other face covering to
2 minimize the spread of COVID-19 or any other infectious disease
3 including, but not limited to, rules, regulations, or requirements of
4 the Centers for Disease Control and Prevention, the National
5 Institutes of Health, the United States Department of Health and
6 Human Services, the United States Department of Education, the
7 Occupational Safety and Health Administration, the United States
8 Department of Labor, the Food Safety and Inspection Service, and
9 the United States Department of Agriculture;

10 (3) any order or other communication of any other federal
11 political subdivision, such as a coronavirus or COVID-19 task force,
12 requiring residents of this State to wear a face mask or other face
13 covering to minimize the spread of COVID-19 or any other
14 infectious disease; or

15 (4) a federal statute requiring residents of this State to wear a
16 face mask or other face covering to minimize the spread of
17 COVID-19 or any other infectious disease.

18 (C) An 'unlawful federal vaccine mandate' means federal law,
19 order, rule, regulation, plan of action, or otherwise which requires a
20 resident of the State of South Carolina to receive a vaccine to
21 minimize the spread of COVID-19 or any other infectious disease.
22 Any such unlawful federal vaccine mandate is invalid in this State
23 and may not be recognized in this State and is null, void, and of no
24 effect in this State and includes, but is not limited to:

25 (1) an executive order or proclamation of the President of the
26 United States requiring residents of this State to receive a vaccine to
27 minimize the spread of COVID-19 or any other infectious disease;

28 (2) a rule, regulation, or requirement promulgated or issued
29 by a federal agency, or a subdivision of a federal agency, requiring
30 residents of this State to receive a vaccine to minimize the spread of
31 COVID-19 or any other infectious disease including, but not limited
32 to, rules, regulations, or requirements of the Centers for Disease
33 Control and Prevention, the National Institutes of Health, the United
34 States Department of Health and Human Services, the United States
35 Department of Education, the Occupational Safety and Health
36 Administration, the United States Department of Labor, the Food
37 Safety and Inspection Service, and the United States Department of
38 Agriculture;

39 (3) any order or other communication of any other federal
40 political subdivision, such as a coronavirus or COVID-19 task force,
41 requiring residents of this State to receive a vaccine to minimize the
42 spread of COVID-19 or any other infectious disease; or

1 (4) a federal statute requiring residents of this State to receive
2 a vaccine to minimize the spread of COVID-19 or any other
3 infectious disease.”

4

5 SECTION 2. This act takes effect upon approval by the Governor.

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