MISSISSIPPI LEGISLATURE

REGULAR SESSION 2022

By: Representatives Yancey, Ford (73rd)

To: Public Health and Human Services

HOUSE BILL NO. 1450

AN ACT TO REQUIRE EMPLOYERS THAT REQUIRE OR ARE MANDATED TO
REQUIRE VACCINATION OR IMMUNIZATION FOR COVID-19 OR ITS VARIANTS
FOR ITS EMPLOYEES TO PROVIDE A SPECIFIC EXEMPTION PROCESS; TO
PROVIDE THAT THE SPECIFIC EXEMPTION PROCESS SHALL INCLUDE OPTIONS
THAT ALLOW THE EMPLOYEE TO PRODUCE EITHER A NEGATIVE TEST RESULT
SHOWING THAT THE EMPLOYEE IS NOT POSITIVE FOR COVID-19, OR PROOF
OF IMMUNITY FOR THE VIRUS THAT CAUSES COVID-19 OR ITS VARIANTS; TO
PROVIDE THAT THE COST OF THE TESTING SHALL BE COVERED BY ANY STATE
OR FEDERAL FUNDING MADE AVAILABLE IF THE EMPLOYEE'S HEALTH BENEFIT
PLAN DOES NOT PROVIDE COVERAGE FOR THE TESTING; TO PROVIDE THAT IF
AN EMPLOYEE COMPLIES WITH THE REQUIREMENTS OF THE SPECIFIC
EXEMPTION PROCESS RELATED TO COVID-19 AS REQUIRED BY THIS ACT, THE
EMPLOYEE SHALL NOT BE TERMINATED FOR MANDATES RELATED TO COVID-19;
TO PROVIDE THAT IF AN EMPLOYEE IS TERMINATED DUE TO THE EMPLOYER'S
VIOLATION OF THIS ACT, THE EMPLOYEE MAY BE ELIGIBLE FOR
UNEMPLOYMENT BENEFITS IN ADDITION TO ANY OTHER REMEDY AVAILABLE TO
THE EMPLOYEE; TO AMEND SECTION 71-5-511, MISSISSIPPI CODE OF 1972,
TO CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Legislative findings and intent. (1) The
Legislature finds that:

(a) The United States Government is mandating that
employers take actions related to Coronavirus Disease 2019
(COVID-19) vaccinations, including forcing an employee to be
vaccinated against the employee's will;

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(b) Vaccination mandates are an overreach of authority by the government;
(c) Many employers and employees in Mississippi will soon be subject to this vaccination mandate; and
(d) Mississippi employees need to be protected from this type of overreach by the government.

(2) The Legislature intends for this act to:
   (a) Protect employees in Mississippi from impending terminations due to vaccination mandates; and
   (b) Create the ability for funding to be available to assist employees in Mississippi with the costs associated with testing related to the vaccination mandate through the methods provided in this act, including, without limitation, COVID-19 relief funds distributed from the American Rescue Plan Act of 2021, Public Law No. 117-2.

SECTION 2. Exemption for employees from mandates related to Coronavirus Disease 2019 (COVID-19). (1) An employer that requires or is mandated to require vaccination or immunization for Coronavirus Disease 2019 (COVID-19) or its variants for its employees shall provide a specific exemption process.
   (2) The specific exemption process shall include options that allow the employee to produce either:
      (a) A negative antigen detection test result or molecular diagnostic test result no more than one (1) time per week showing that the employee is not positive for COVID-19; or
(b) Proof of immunity for the virus that causes coronavirus disease 2019 (COVID-19) or its variants, including without limitation the presence of antibodies, T-cell response, or proof of a positive test for COVID-19 or its variants, on a basis of two (2) times per year, not to exceed one (1) time every six (6) months, from a licensed health care provider.

(3) (a) If multiple proven test processes are available to an employee under subsection (1) of this section, the employee may choose which test to take.

(b) The employee may provide test results obtained outside of the employer or a licensed healthcare provider if the test meets the guidelines contained within the Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency (Revised) issued by the United States Department of Health and Human Services Food and Drug Administration Center for Devices and Radiological Health.

(c) (i) The cost of the testing shall be covered by any state or federal funding made available, including without limitation COVID-19 relief funds distributed from the American Rescue Plan Act of 2021, Public Law No. 117-2, if the employee's health benefit plan does not provide coverage for the testing.

(ii) If the cost of testing under subparagraph (i) of this paragraph (c) is not available, the cost of the testing shall be covered by the employee.
(4) An employer shall provide the specific exemption process required under this section in addition to any other exemptions offered by the employer.

(5) If an employee complies with the requirements of the specific exemption process related to COVID-19 as required by this section, the employee shall not be terminated for mandates related to COVID-19.

(6) Nothing in this section should be interpreted to modify any other agreements between the employer and employee or to amend or affect the employment-at-will doctrine, whether written or otherwise.

(7) The Department of Finance and Administration shall establish rules regarding the method of distribution of COVID-19 relief funds from the American Rescue Plan Act of 2021, Public Law No. 117-2, to employees and employers to cover the cost of testing, to include without limitation the:
   (a) Timely distribution of funds to recipients within thirty (30) days;
   (b) Establishment of an option for distribution to an employer that chooses to receive funds for disbursement to employees; and
   (c) Verification and method of authentication of receipts that shall meet legislative auditing requirements, including without limitation the development of forms.
(8) The department shall report to the Legislative Budget Office on a monthly basis on the disbursement of funds under this section.

(9) If an employee is terminated due to the employer's violation of this section, the employee may be eligible for unemployment benefits in addition to any other remedy available to the employee.

(10) This section shall be repealed on July 31, 2023, unless extended by the Legislature.

SECTION 3. Section 71-5-511, Mississippi Code of 1972, is amended as follows:

71-5-511. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

(a) (i) He has registered for work at and thereafter has continued to report to the department in accordance with such regulations as the department may prescribe; except that the department may, by regulation, waive or alter either or both of the requirements of this subparagraph as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter; and

(ii) He participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by the department, it has been
determined that he is likely to exhaust regular benefits and needs reemployment services, unless the department determines that:

1. The individual has completed such services; or

2. There is justifiable cause for the claimant's failure to participate in such services.

(b) He has made a claim for benefits in accordance with the provisions of Section 71-5-515 and in accordance with such regulations as the department may prescribe thereunder.

(c) He is able to work, available for work and actively seeking work.

(d) He has been unemployed for a waiting period of one (1) week. No week shall be counted as a week of unemployment for the purposes of this paragraph:

   (i) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

   (ii) If benefits have been paid with respect thereto;

   (iii) Unless the individual was eligible for benefits with respect thereto, as provided in Sections 71-5-511 and 71-5-513, except for the requirements of this paragraph.

(e) For weeks beginning on or before July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than thirty-six (36) times his weekly benefit.
amount; he has been paid wages for insured work during at least two (2) quarters of his base period; and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than sixteen (16) times the minimum weekly benefit amount. For benefit years beginning after July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty-six (26) times the minimum weekly benefit amount. For purposes of this paragraph, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has satisfied the conditions of Section 71-5-11, subsection H, or Section 71-5-361, subsection (3), with respect to becoming an employer.

(f) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed service in "employment" as defined in Section 71-5-11, subsection I, and earned remuneration for such service in an amount equal to
not less than eight (8) times his weekly benefit amount applicable
to his next preceding benefit year.

(g) Benefits based on service in employment defined in
Section 71-5-11, subsection I(3) and I(4), and Section 71-5-361,
subsection (4) shall be payable in the same amount, on the same
terms, and subject to the same conditions as compensation payable
on the basis of other service subject to this chapter, except that
benefits based on service in an instructional, research or
principal administrative capacity in an institution of higher
learning (as defined in Section 71-5-11, subsection N) with
respect to service performed prior to January 1, 1978, shall not
be paid to an individual for any week of unemployment which begins
during the period between two (2) successive academic years, or
during a similar period between two (2) regular terms, whether or
not successive, or during a period of paid sabbatical leave
provided for in the individual's contract, if the individual has a
contract or contracts to perform services in any such capacity for
any institution or institutions of higher learning for both such
academic years or both such terms.

(h) Benefits based on service in employment defined in
Section 71-5-11, subsection I(3) and I(4), shall be payable in the
same amount, on the same terms and subject to the same conditions
as compensation payable on the basis of other service subject to
this chapter, except that:
(i) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual, if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and provided that paragraph (g) of this section shall apply with respect to such services prior to January 1, 1978. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(ii) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two (2) successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this
subparagraph and such individual was not offered an opportunity to
perform such services for the educational institution for the
second of such academic years or terms, such individual shall be
entitled to a retroactive payment of compensation for each week
for which the individual filed a timely claim for compensation and
for which compensation was denied solely by reason of this clause.
In no event shall benefits be paid unless the individual employee
was terminated by the employer.

(iii) With respect to services described in
subparagraphs (i) and (ii) of this paragraph (h), benefits shall
not be payable on the basis of services in any such capacities to
any individual for any week which commences during an established
and customary vacation period or holiday recess if such individual
performs such services in the first of such academic years or
terms, or in the period immediately before such vacation period or
holiday recess, and there is a reasonable assurance that such
individual will perform such services in the period immediately
following such vacation period or holiday recess.

(iv) With respect to any services described in
subparagraphs (i) and (ii) of this paragraph (h), benefits shall
not be payable on the basis of services in any such capacities as
specified in subparagraphs (i), (ii) and (iii) of this paragraph
(h) to any individual who performed such services in an
educational institution while in the employ of an educational
service agency. For purposes of this paragraph, the term
"educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(v) With respect to services to which Sections 71-5-357 and 71-5-359 apply, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in subparagraphs (i), (ii), (iii) and (iv) of this paragraph (h).

(i) Subsequent to December 31, 1977, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sports seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(j) (i) Subsequent to December 31, 1977, benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such
services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act).

(ii) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(iii) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made, except upon a preponderance of the evidence.

(k) An individual shall be deemed prima facie unavailable for work, and therefore ineligible to receive benefits, during any period which, with respect to his employment status, is found by the department to be a holiday or vacation period.

(l) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause.
connected with the work under this paragraph unless the temporary employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(ii) That unemployment benefits may be denied if the temporary employee fails to do so.

(m) An employee who is terminated due to the employer's violation of Section 1 of this act may be eligible for benefits if the employee meets the other eligibility criteria specified under this section.

SECTION 4. This act shall take effect and be in force from and after its passage.