



LEGISLATURE OF THE STATE OF IDAHO



Sixty-sixth Legislature

First Regular Session - 2021

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO IMMUNIZATIONS; AMENDING SECTION 67-5902, IDAHO CODE, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 59, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5909B, IDAHO CODE, TO PROHIBIT CERTAIN ACTS OF DISCRIMINATION ON THE BASIS OF IMMUNIZATION STATUS OR THE POSSESSION OF AN IMMUNITY PASSPORT; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-5902, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

(3) "Discriminatory practice" means a practice designated as discriminatory under the terms of this chapter.

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

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

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

(57) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, any other legal or commercial entity, the state, or any governmental entity or agency.

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

(a) A person who as contractor or subcontractor is furnishing material or performing work for the state;

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

(c) Any agent of such employer.

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

(810) "Labor organization" includes:

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

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

9 (c) An agent of a labor organization.

10 (911) "Place of public accommodation" means a business, accommodation,
11 refreshment, entertainment, recreation, or transportation facility of any
12 kind, whether licensed or not, whose goods, services, facilities, privi-
13 leges, advantages or accommodations are extended, offered, sold, or other-
14 wise made available to the public~~7~~.

15 (102) "Educational institution" means a public or private institution
16 and includes an academy, college, elementary or secondary school, extension
17 course, kindergarten, nursery, school system, or university and a business,
18 nursing, professional, secretarial, technical, or vocational school and in-
19 cludes an agent of an educational institution~~7~~.

20 (113) "Real property" includes buildings, structures, real estate,
21 lands, tenements, leaseholds, interests in real estate cooperatives, con-
22 dominiums, and hereditaments, corporeal and incorporeal or any interest
23 therein~~7~~.

24 (124) "Real estate transaction" includes the sale, exchange, rental or
25 lease of real property~~7~~.

26 (135) "Housing accommodation" includes any improved or unimproved real
27 property, or part thereof, ~~which is~~ used or occupied~~7~~ as the home or resi-
28 dence of one (1) or more individuals~~7~~.

29 (146) "Real estate broker or salesman" means a person, whether licensed
30 or not, who, for or with the expectation of receiving a consideration, lists,
31 sells, purchases, exchanges, rents, or leases real property, or who negoti-
32 ates or attempts to negotiate any of these activities, or who holds himself
33 out as engaged in these activities, or who negotiates or attempts to negoti-
34 ate a loan secured or to be secured by mortgage or other encumbrance upon real
35 property, or who is engaged in the business of listing real property in a pub-
36 lication; or a person employed by or acting on behalf of any of these~~7~~.

37 (157) "Disability" means a physical or mental condition of a person,
38 whether congenital or acquired, which constitutes a substantial limitation
39 to that person and is demonstrable by medically accepted clinical or lab-
40 oratory diagnostic techniques. A person with a disability is one who (a)
41 has such a disability, or (b) has a record of such a disability, or (c) is
42 regarded as having such a disability~~7~~.

43 (168) "Reasonable accommodation" means an adjustment which does not
44 (a) unduly disrupt or interfere with the employer's normal operations, (b)
45 threaten the health or safety of the person with the disability or others,
46 (c) contradict a business necessity of the employer, or (d) impose undue
47 hardship on the employer based on the size of the employer's business, the
48 type of business, the financial resources, and the estimated cost and extent
49 of the adjustment~~7~~.

1 (179) "Readily achievable" means easily accomplishable and able to be
2 carried out without much difficulty or expense. In determining whether an
3 action is readily achievable, factors to be considered include (a) the na-
4 ture and cost of the action needed under this chapter, (b) the overall fi-
5 nancial resources of the facility or facilities involved in the action, the
6 number of persons employed at the facility, the effect on expenses and re-
7 sources, or the impact otherwise of the action upon the operation of the fa-
8 cility, (c) the overall financial resources of the covered entity, the over-
9 all size of the business of a covered entity with respect to the number of its
10 employees, the number, type, and location of its facilities, and (d) the type
11 of operation or operations of the covered entity, including the composition,
12 structure, and functions of the workforce of the entity, the geographic sep-
13 arateness, administrative or fiscal relationship of the facility or facili-
14 ties in question to the covered entity.

15 SECTION 2. That Chapter 59, Title 67, Idaho Code, be, and the same is
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
17 ignated as Section 67-5909B, Idaho Code, and to read as follows:

18 67-5909B. ACTS PROHIBITED -- DISCRIMINATION BASED ON IMMUNIZATION
19 STATUS OR POSSESSION OF IMMUNITY PASSPORT. (1) Except as otherwise provided
20 in this section, it is an unlawful discriminatory practice for:

21 (a) A person to refuse, withhold from, or deny a person any local or
22 state government services, goods, facilities, advantages, privileges,
23 licensing, educational opportunities, health care access, or employ-
24 ment opportunities based on the person's immunization status or whether
25 the person has an immunity passport;

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

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

33 (2) This section does not apply to immunization requirements set forth
34 for schools pursuant to chapter 48, title 39, Idaho Code, or for day care fa-
35 cilities pursuant to chapter 11, title 39, Idaho Code.

36 (3) (a) A person does not unlawfully discriminate under this section if
37 the person recommends that an employee receive a vaccination.

38 (b) A health care facility, as defined in section 48-303, Idaho Code,
39 does not unlawfully discriminate under this section if both of the fol-
40 lowing requirements are met:

41 (i) The facility asks an employee to volunteer the employee's
42 immunization status for the purpose of determining whether the
43 health care facility should implement reasonable accommodation
44 measures to protect the safety and health of employees, patients,
45 visitors, and other persons from communicable diseases. A health
46 care facility may consider an employee to be unvaccinated or
47 nonimmune if the employee declines to provide the employee's im-
48 munization status to the health care facility for the purpose of

1 determining whether reasonable accommodation measures should be
2 implemented; and

3 (ii) The facility implements reasonable accommodation measures
4 for employees, patients, visitors, and other persons who are not
5 vaccinated or not immune to protect the safety and health of em-
6 ployees, patients, visitors, and other persons from communicable
7 diseases.

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

11 (5) A licensed nursing home, long-term care facility, or assisted liv-
12 ing facility is exempt from complying with this section during any period of
13 time that such compliance would result in a violation of the regulations or
14 guidance issued by the centers for medicare and medicaid services or the cen-
15 ters for disease control and prevention.

16 SECTION 3. SEVERABILITY. The provisions of this act are hereby declared
17 to be severable and if any provision of this act or the application of such
18 provision to any person or circumstance is declared invalid for any reason,
19 such declaration shall not affect the validity of the remaining portions of
20 this act.

21 SECTION 4. An emergency existing therefor, which emergency is hereby
22 declared to exist, this act shall be in full force and effect on and after its
23 passage and approval.

STATEMENT OF PURPOSE

This bill amends Idaho Code Ch. 59, Title 67 with a new section, that prohibits certain acts of discrimination based on immunization status or the possession of an immunity passport. The bill makes it unlawful for State and Local Government to withhold or deny any person goods, services, licensing, education, health care access, privileges, advantages, or employment opportunities. It also makes it unlawful for an employer to refuse employment or discriminate in any way based on immunity passport or vaccination status.

The bill exempts schools and daycares pursuant to *existing* Idaho statutes.

A health care facility is allowed to make reasonable accommodation measures for an unvaccinated employee for health and safety reasons, but not to deny employment.

Licensed nursing homes are exempt if compliance would violate regulations from Medicare and Medicaid services.

FISCAL NOTE

This bill is not projected to impact the general fund nor that of local governments unless there is a violation of the statute, which would subject the government entities to discrimination lawsuits.

Contact:

Representative Bruce D. Skaug
(208) 332-1000