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Fiscal Note

Drafting Number: LLS 22-0049
Prime Sponsors: Rep. Van Beber; Soper

Date: February 28, 2022
Bill Status: House Business
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Bill Topic: **STANDARDS FOR IMMUNIZATION REQUIREMENTS**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill allows individuals who are required to receive an immunization for any purpose to claim an exemption in certain cases, and requires the Department of Public Health and Environment to post certain vaccine related data on its website. It will increase state and local expenditures and may increase state revenue beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$138,200 to the Department of Public Health and Environment. Costs for the Department of Personnel and Administration will be paid from the Risk Management Fund and do not require an appropriation.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 22-1201

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$138,200	\$136,991
	Reappropriated Funds	up to \$869,959	up to \$869,959
	Centrally Appropriated	\$34,289	\$37,233
	Total Expenditures	up to \$1,042,448	up to \$1,044,183
	Total FTE	3.1 FTE	3.3 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$20,730	\$20,549

Summary of Legislation

The bill allows individuals who are required to receive an immunization for any purpose to claim an exemption from the requirement if the:

- immunization has not been approved by or has only received emergency use authorization from the federal Food and Drug Administration (FDA);
- immunization manufacturer is not liable for injury or death caused by the immunization; or
- pivotal clinical trial the FDA relied on to approve the immunization did not evaluate the immunization's safety against a control group for at least one year after the immunization was first administered.

The bill requires the Department of Public Health and Environment (CDPHE) to post on its website:

- the criteria that must be met for an individual to claim an exemption from an immunization requirement; and
- for each immunization required: the injuries or diseases caused by the immunization and the rate at which each injury or disease occurs; and whether the risk of permanent disability or death from the required immunization has been proven to be less than the risk of permanent disability or death from the infection or disease the immunization is intended to prevent.

Background

Federal COVID-19 vaccination mandates. Under Centers for Medicare and Medicaid Services rule established November 2021, a range of health care providers receiving federal funding are to require their employees to be vaccinated, with exemptions allowed for medical and religious reasons. After state challenges, the U.S. Supreme Court lifted injunctions in mid-January, and the CMS is currently implementing the mandate. Two other mandates have been either blocked by the U.S. Supreme Court and withdrawn (the Occupational Safety and Health Administration's vaccine mandate for businesses with 100 or more employees) or are in state courts of appeal (the president's Executive Order requiring federal contractors to be vaccinated, in Georgia).¹

Colorado COVID-19 vaccination mandates.² State employees are currently required to attest vaccination status and, in some cases, required to undergo serial testing in lieu of vaccination. Departments that provide services for vulnerable or at-risk populations, populations living in congregate living settings, in-person programs, and public health laboratories—such as the Departments of Corrections, Human Services, and Public Health and Environment—may create additional, more restrictive safety measures and mandatory vaccination policies for employees in contact with these populations as directed by their department. In such cases, full vaccination can be required with no option for testing, although religious and medical exemptions and reasonable accommodation requests shall be addressed as required by law pursuant to the Equal Employment Opportunity Commission's vaccination guidance.³ Consequences for employees who do not comply with these mandatory vaccination policies may include corrective and/or disciplinary action up to and

¹ Explainer: Who must follow Biden's vaccine mandates? Associated Press, February 24, 2022: <https://apnews.com/article/coronavirus-pandemic-joe-biden-us-supreme-court-health-business-4b627f784e59e82e59ed66ed17cc8b67>

² Colorado Division of Human Resources, COVID-19 Vaccination and Serial Testing Requirements, revised February 28, 2022: https://drive.google.com/file/d/1jwZbZQjMonCdKAbBZ_h1TqhEDKm6AqLW/view

³ Equal Employment Opportunity Commission's vaccination guidance: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K>

including termination pursuant to the applicable State Personnel Board Rules and Director’s Administrative Procedures and Executive Order D 2021 132 Colorado’s Disaster Recovery Order.

State Revenue

To the extent that individuals file civil actions under the bill, filing fee revenue will increase. Court fee revenue is subject to TABOR.

State Expenditures

The bill increases state expenditures by up to \$869,959 per year in the Department of Personnel and Administration (DPA) beginning in FY 2022-23, and by \$172,489 in FY 2022-23 and \$174,224 in FY 2023-24 and ongoing in the CDPHE. DPA expenditures are paid from reappropriated funds from affected state agencies, and CDPHE expenditures are paid from the General Fund. Workload may also increase for trial courts in the Judicial Department. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 22-1201**

Cost Components	FY 2022-23	FY 2023-24
Department of Personnel and Administration		
Risk Management	\$639,004	\$639,004
Legal Services	\$230,955	\$230,955
FTE - Legal Services	1.3 FTE	1.3 FTE
DPA Subtotal	\$869,959	\$869,959
Department of Public Health and Environment		
Personal Services	\$123,100	\$134,291
Operating Expenses	\$2,700	\$2,700
Capital Outlay Costs	\$12,400	-
Centrally Appropriated Costs ¹	\$34,289	\$37,233
FTE - Personal Services	1.8 FTE	2.0 FTE
CDPHE Subtotal	\$172,489	\$174,224
Total	\$1,042,448	\$1,044,183
Total FTE	3.1 FTE	3.3 FTE

¹ Centrally appropriated costs are not included in the bill’s appropriation.

Department of Personnel and Administration. As discussed in the Background section, the state currently has certain COVID-19 vaccine mandates as required by federal and state policy. The bill requires employers to allow exemptions to the mandate; therefore, the fiscal note assumes that conflicting laws will result in increased litigation against the state, which will increase costs in the state's Risk Management Program, administered by the DPA. Cost estimates are based on the data and assumptions detailed below, and include legal defense costs and settlement payments. Costs will be paid using reappropriated funds in the Risk Management Fund and require no appropriation.

- **Data and assumptions.** Out of the state's 65,000 employees, 546 have applied for exemptions from a COVID-19 vaccination mandate. Applying the three-year average of employment-related claims to this number, it is anticipated that there will be up to nine additional employment-related claims.
- **Employment-related claims and legal services costs.** The fiscal note assumes that of the nine claims: one will settle at the Colorado Governmental Immunity Act cap, \$387,000, with legal services estimated at \$109,773; two will settle at an average amount, \$126,002, with legal services estimated at \$36,591 per case; and the remainder will result in litigation only at the Office of Risk Management's average cost of \$8,000 per case. As discussed below, actual costs may vary from these estimates, but are provided for informational purposes to describe the potential liability to the state from these types of claims.
- **Costs to be addressed through the annual budget process.** The state's actual costs will depend on a number of factors, including the number and complexity of cases, case outcomes, and the timing of cases and judgments. Depending on the number of cases annually, costs may vary from year to year or be spread out over a number of years. It is assumed that ongoing costs will be addressed through the annual budget process once more information on cases and settlements are known.

Public Health and Environment. The CDPHE requires 0.7 FTE Health Professional to review national data sources to determine associated injuries and long-term risks for vaccines; 1.0 FTE Policy Advisor to provide policy and legal analysis related to vaccine exemption rules; and 0.3 FTE Program Assistant for administrative support. Standard operating and capital outlay costs are included for each staff, and first year costs are prorated for the General Fund pay date shift.

Department of Labor and Employment. The Department of Labor and Employment is expected to have an increase in inquiries to its Division of Labor Standards and Statistics. These costs are expected to be absorbed in the first fiscal year, and addressed through the annual budget process if they are significant.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill will increase the amount of General Fund held in reserve by the amounts shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Local Government

Similar to the state, no impact is expected related to the current COVID-19 vaccine mandates imposed by county and municipal employers.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2022-23, the bill requires a General Fund appropriation of \$138,200 to the Department of Public Health and Environment and 1.8 FTE.

Departmental Difference

The CDPHE estimates that an additional 0.7 FTE Program Assistant will be required to provide program support at a cost of \$38,824 per year above the amounts included in the fiscal note. The fiscal note does not include a full 1.0 FTE Program Assistant, but rather includes 0.3 FTE as an appropriate ratio of administrative support to the staff required by the bill.

State and Local Government Contacts

Counties	Information Technology	Law
Municipalities	Personnel and Administration	Public Health and Environment