

February 9, 2022

The Honorable Fred Patton, Chairperson
House Committee on Judiciary
Statehouse, Room 582-N
Topeka, Kansas 66612

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2535 by Representative Fairchild, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2535 is respectfully submitted to your committee.

HB 2535 would establish the Individual Liberty Preservation Act. The bill would declare any federal COVID-19 vaccine requirement null, void, and unenforceable in Kansas and would prohibit any federal or State of Kansas official, agent, or employee from enforcing or attempting to enforce any COVID-19 vaccine requirement. The prohibition would also apply to any political subdivision of the state and employees of corporations providing services to the government of the United States. Violation of the Act would be a level seven, nonperson felony. The bill would allow a county or district attorney, or the Attorney General, to seek injunctive relief to enjoin any official, agent, or employee of the government of the United States or employee of a corporation providing services to the government of the United States from enforcing any federal COVID-19 vaccine requirement. HB 2535 would take effect upon publication in the *Kansas Register*.

The Office of the Attorney General reports that the state is already engaged in litigation seeking to block several COVID-19 vaccine mandates issued by the federal government. Enactment of HB 2535 could result in additional legal disputes, but the total fiscal effect cannot be estimated. Local law enforcement officials or county attorneys could face similar litigation and costs if they attempted to enforce provisions of the bill.

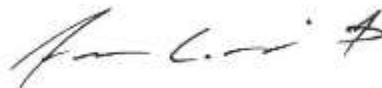
The Office of Judicial Administration states enactment of HB 2535 could increase the number of cases filed in district court because it creates a new crime under the Individual Liberty Preservation Act, makes state employees liable for damages, and allows the Attorney General or local prosecutors to seek court injunctions. This could result in more time spent by court

employees and judges processing and deciding these cases. Since the crimes carry a level seven, nonperson felony penalty, there could also be more supervision of offenders required to be performed by court services officers. The Office estimates enactment of the bill could result in the collection of docket fees and supervision fees assessed in those cases filed under the bill's provisions. According to the Office, a fiscal effect cannot be estimated.

The Kansas Department of Environment (KDHE) states that enactment of HB 2535 could cause the agency's Health Facilities Program to lose up to \$1,766,358 in federal funding for FY 2022 and be in violation of the Federal Social Security Act, Section 1864 agreement due to being unable to meet federal Centers for Medicare and Medicaid Services (CMS) requirements. For the Division of Health Care Finance, the bill could prevent KDHE from terminating a provider from participation in the Kansas Medicaid Program for failure to comply with CMS rules mandating that certain facility staff must be fully vaccinated against COVID-19 as a condition of the facility's continued participation in Medicare and Medicaid.

KDHE states that if the agency is barred from terminating a provider from the Medicaid program that has been determined ineligible for participation by CMS, the state would risk being required to pay claims to that provider with 100.0 percent state funding because federal financial participation would no longer be available for that provider. The agency is unable to estimate a fiscal effect. Any fiscal effect associated with HB 2535 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Willie Prescott, Office of the Attorney General
Vicki Jacobsen, Judiciary
Dan Thimmesch, Health & Environment