

Chairman Peterson, Vice Chair Cirino, Ranking Member Craig and members of the General Government Budget Committee, thank you for allowing me to submit this testimony as an interested party for HB 218.

The language we use to describe this bill matters. This is not an “anti-vaccine mandate” bill. It is an anti-vaccine passport bill. This bill codifies into law an employer’s or school’s ability to mandate *any* vaccine, drug, biological product, or genetic immunotherapy that is specifically based on mRNA or DNA technology. As I read this bill, this does not even give the right to employers or schools to mandate vaccines, drugs, or biological products based on more traditional methods—it only allows the mandating of mRNA and DNA based technology. And it allows that mandating for any reason and at any time.

Please read this excerpt from Sec. 3792.07 (Sec. 3792.05 regarding schools is almost identical in wording, emphasis mine):

“(B)(1) No employer shall require an employee to receive any of the following utilizing messenger ribonucleic acid, deoxyribonucleic acid, or any other genetic vaccine technology and for which the United States food and drug administration has not issued a biologics license or otherwise granted full approval: (a) A vaccine; (b) A drug; (c) A biological product; (d) A form of genetic immunotherapy.”

Employers and schools are prohibited from mandating any form of genetic technology unless *it has a biologics license or full approval*. Pfizer’s Comirnaty already has this biologics license—so this first section is meaningless in our current COVID-19 situation.

In fact, the only relevant section is (emphasis mine):

“(C) In the event an employer requires an employee to receive a vaccine, drug, biological product, or form of genetic immunotherapy utilizing messenger ribonucleic acid, deoxyribonucleic acid, or any other genetic vaccine technology and for which the United States food and drug administration has issued a biologics license or otherwise granted full approval...”

As one can see, contrary to the descriptions of this bill, it does not stop mandates—it allows them.

The bill goes on to state that if an employer or school mandates one of these products based on genetic technology, the employee or student has essentially two options, take the product, or apply for an exemption.

If one takes the product, they can choose one of two options (emphasis mine):

(a) Receiving the vaccine, drug, biological product, or form of genetic immunotherapy;

(b) Receiving a vaccine, drug, biological product, or form of genetic immunotherapy utilizing messenger ribonucleic acid, deoxyribonucleic acid, or any other genetic vaccine technology against the same disease that is available under an emergency use authorization.

Section 1b is important to understand clearly. If, as now, the product with a biologics license (Comirnaty) is not readily available, which seems to be the case, the employee can only satisfy this requirement with *another* genetic technology based product. This would exclude any

vaccines based on older, more established, technologies such as the Sinovac, Novavax or the BCG vaccine, or any other option not based in genetic technology.

The second option is to claim an exemption. There are three ways to do so:

- (a) Medical contraindications;
- (b) Natural immunity;
- (c) Reasons of personal conscience, including religious convictions.

The first and last exemptions are reasonable. The natural immunity option has significant problems. The language itself makes no sense and cannot be reasonably met.

The section states that (emphasis mine):

“...the employee has been tested for the presence of antibodies against the same disease *in a form or manner recognized by the medical community* and at the time of testing, *had antibodies in an amount at least equal to or greater than* those conferred by a vaccine, drug, biological product, or form of genetic immunotherapy utilizing messenger ribonucleic acid, deoxyribonucleic acid, or any other genetic vaccine technology that has been issued a biologics license or otherwise granted full approval.”

Who is “the medical community” that will determine the form or manner of testing allowed? As for antibodies in “an amount at least equal to or greater” to those derived from genetic technologies, what does that mean? Which antibodies? Are we counting total antibodies to just the S protein? Or can we include those against the E, M or N proteins or the spike subunits? What are we comparing it to? Some immunocompromised individuals on immunosuppressive drugs make few to no antibodies, while other individuals develop an extremely robust response. Which value is it that needs to be met or exceeded? We do not even know what threshold of antibodies protects against SARS-CoV-2, how can we determine what is appropriate? The vagueness of the language essentially removes natural immunity as a possible exemption.

Most importantly, although an employee or student may claim one of these exemptions, nothing in this bill restricts the employer or school as to the requirements that can be placed on the exempt employee or student except that the individual cannot be fired or expelled. All other forms of discrimination are permitted, and there are worse situations than being fired or expelled.

This section of the bill is also not limited to COVID. It applies to any disease that the employer or school wants to apply it to, so long as it is based in some form of genetic technology. Conceivably, if the pharmaceutical companies develop a drug that treats HIV with a form of genetic technology — not far-fetched theoretically — a business or school could mandate it, *even if it caused severe side effects with no benefits to most individuals*.

Nothing in this bill limits an employer or school from implementing such a mandate. As we are witnessing, particularly in the healthcare industry, students who have finished most of their education are suddenly no longer able to complete their final semesters due to lack of clinical availability. Even if those individuals have significant medical contraindications and do not plan

to work in a patient-facing position. They have paid their tuition, invested years of their lives, only to have it arbitrarily taken away. There is no restraint on employers or schools except the sunset clause which still leaves significant ambiguity when considering employment for the next three and a half years and that ambiguity benefits no one.

Although I support other provisions in this bill, such as the the language regarding the prevention of so-called vaccine passports and the protection from liability for individuals and businesses contained within Section 5 of this bill, due to the concerning language described above, I cannot support the current version of this bill.

Thank you for your consideration,

Kathryn Huwig