

## HB0060S06 compared with HB0060S02

~~{deleted text}~~ shows text that was in HB0060S02 but was deleted in HB0060S06.

inserted text shows text that was not in HB0060S02 but was inserted into HB0060S06.

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~~{Representative Walt Brooks}~~Senator Lincoln Fillmore proposes the following substitute bill:

### VACCINE PASSPORT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Walt Brooks**

Senate Sponsor: Michael S. Kennedy

Cosponsors:	Dan N. Johnson	Adam Robertson
Nelson T. Abbott	<u>Marsha Judkins</u>	<u>Judy Weeks Rohner</u>
Cheryl K. Acton	Michael L. Kohler	Douglas V. Sagers
Carl R. Albrecht	Karianne Lisonbee	Mike Schultz
Kera Birkeland	Steven J. Lund	Travis M. Seegmiller
Brady Brammer	Phil Lyman	Rex P. Shipp
Jefferson S. Burton	A. Cory Maloy	V. Lowry Snow
Kay J. Christofferson	Jefferson Moss	Keven J. Stratton
Joel Ferry	Calvin R. Musselman	Mark A. Strong
Jon Hawkins	Michael J. Petersen	Christine F. Watkins
Ken Ivory	Val L. Peterson	Stephen L. Whyte

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~~{Ryan D. Wilcox~~

~~}LONG TITLE~~

### General Description:

This bill enacts a prohibition on the use of an individual's immunity status by places of public accommodation, governmental entities, and employers.

### Highlighted Provisions:

This bill:

- ▶ makes it unlawful for a place of public accommodation to discriminate against an individual based on the individual's immunity status;
- ▶ with certain exceptions, prohibits a governmental entity from requiring proof of immunity status;

~~{~~ ~~▶ with certain exceptions, makes it unlawful discrimination for an employer to require proof of immunity status; and~~

~~}~~ ▶ prohibits a governmental entity ~~{or employer }~~ from requiring an individual to receive a vaccine ~~{.}~~;

▶ requires an employer to exempt an employee or a prospective employee from a vaccine requirement if the employee or prospective employee submits a primary care provider's note stating that the employee or prospective employee was previously infected with the disease or condition;

▶ amends provisions related to recordkeeping;

▶ amends scope of provisions;

▶ prohibits an employer from keeping or maintaining a record or copy of an employee's test results, except as otherwise required by law; and

▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**63D-2-102**, as last amended by Laws of Utah 2021, Chapter 345

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63I-1-226, as last amended by Laws of Utah 2021, Chapters 13, 50, 64, 163, 182, 234, and 417

### ENACTS:

13-7-5, Utah Code Annotated 1953

26-68-103, Utah Code Annotated 1953

~~{34A-5-113}~~34-56-102, Utah Code Annotated 1953

34-56-201, Utah Code Annotated 1953

### RENUMBERS AND AMENDS:

34-56-101, (Renumbered from 26-68-201, as enacted by Laws of Utah 2021, Second Special Session, Chapter 9)

### REPEALS:

26-68-101, as enacted by Laws of Utah 2021, Chapter 182

26-68-102, as enacted by Laws of Utah 2021, Chapter 182

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 13-7-5 is enacted to read:

**13-7-5. Equal right in business establishments, places of public accommodation, and enterprises regulated by the state based on immunity status.**

(1) As used in this section, "immunity status" means an indication of whether an individual is immune to a disease, whether through vaccination or infection and recovery.

(2) All persons within the jurisdiction of this state are free and equal and are entitled to full and equal accommodations, advantages, facilities, privileges, goods, and services in all business establishments and in all places of public accommodation, and by all enterprises regulated by the state of every kind whatsoever, without discrimination on the basis of immunity status.

(3) Nothing in this section shall be construed to deny any person the right to regulate the operation of a business establishment or place of public accommodation or an enterprise regulated by the state in a manner which applies uniformly to all persons without regard to immunity status, or to deny any religious organization the right to regulate the operation and procedures of the religious organization's establishments.

(4) (a) The provisions in Section 13-7-4 shall apply to enforcement and violations of

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this section.

(b) Upon application to the attorney general by any person denied the rights guaranteed by this section, the attorney general shall investigate and seek to conciliate the matter.

Section 2. Section **26-68-103** is enacted to read:

### CHAPTER 68. ~~{COVID-19}~~VACCINE AND IMMUNITY PASSPORT RESTRICTIONS ACT

#### **26-68-103. Prohibition on requiring immunity passports or vaccination --**

##### **Exceptions.**

(1) As used in this section:

(a) "Governmental entity" means the same as that term is defined in Section 63D-2-102.

(b) "Immunity passport" means a document, digital record, or software application indicating that an individual is immune to a disease, whether through vaccination or infection and recovery.

(c) "Regulated entity" means an employer, as defined in Section 34A-6-103, that is subject to a regulation by the Centers for Medicare and Medicaid Services regarding a ~~{COVID-19}~~vaccine, unless the employer is:

(i) the state or a political subdivision of the state; and

(ii) not:

(~~{ii}~~A) ~~{not}~~ an academic medical center~~{,};~~ or

(B) a health care facility as defined in Section 26-21-2.

(d) "Vaccination status" means an indication of whether an individual has received one or more doses of a vaccine.

(2) A governmental entity may not:

(a) refuse, withhold from, or deny to an individual any local or state service, good, facility, advantage, privilege, license, educational opportunity, health care access, or employment opportunity based on the individual's vaccination status, including whether the individual has an immunity passport; or

(b) require any individual, directly or indirectly, to receive a vaccine.

(3) Subsection (2) does not apply to:

(a) a vaccination requirement by a degree-granting institution of higher education, if

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the vaccination requirement is implemented in accordance with Section 53B-2-113;

(b) a vaccination requirement by a school if the vaccination requirement is implemented in accordance with Title 53G, Chapter 9, Part 3, Immunization Requirements;

(c) a child care program as defined in Section 26-39-102 if the vaccination requirement is implemented in accordance with applicable provisions of state and federal law;

(d) a regulated entity if compliance with Subsection (2) would result in a violation of binding, mandatory regulations or requirements that affect the regulated entity's funding issued by the Centers for Medicare and Medicaid Services or the United States Centers for Disease Control and Prevention;

(e) a recommendation by a governmental entity that an employee receive a vaccine;

(f) a contract for goods or services entered into before May 4, 2022, if:

(i) application of this section would result in a substantial impairment of the contract;

and

(ii) the contract is not between an employer and the employer's employee;

(g) a federal contractor; or

(f)(g)(h) a governmental entity, as defined in Section 63D-2-102, with respect to an employee of the governmental entity if:

(i) (A) the employee has, as part of the employee's duties, direct exposure to human blood, human fecal matter, or other potentially infectious materials that may expose the employee to:

~~(A) hepatitis; or~~

~~(B) tuberculosis; hepatitis or tuberculosis; or~~

(B) the employee is acting in a public health or medical setting and required to receive vaccinations in order to perform the employee's assigned duties and responsibilities; and

(ii) the governmental entity allows the employee to decline vaccination if the employee submits to the governmental entity a written statement that receiving the vaccine would:

(A) be injurious to the health and well-being of the employee;

(B) conflict with a sincerely held religious belief, practice, or observance of the employee; or

(C) conflict with a sincerely held personal belief of the employee.

~~{26-68-201. Employee COVID-19 vaccination and testing.~~

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~~(1)~~ Section 3. Section 34-56-101, which is renumbered from Section 26-68-201 is renumbered and amended to read:

### CHAPTER 56. WORKPLACE HEALTH STATUS PROVISIONS

#### Part 1. General Provisions

##### ~~26-68-201~~. 34-56-101. Definitions.

~~(1)~~ As used in this ~~section~~ chapter:

~~(a)(i)~~ (1)(a) "Adverse action" means:

(i) an action that results in:

(A) the refusal to hire a potential employee; or

(B) the termination of employment, demotion, or reduction of wages of an employee~~;~~

~~(ii)~~; or

(ii) a governmental entity separating an employee from another employee solely because of the vaccination status of the employee.

~~(iii)~~ (b) "Adverse action" does not include~~;~~

~~(A)~~ (A) an employer's reassignment of an employee~~;~~ or, if the employee's vaccination status is not the only reason for the reassignment.

~~(B) the termination of an employee, if reassignment of the employee is not practical.~~

~~(b) "COVID-19 vaccine" means a substance that is:~~

~~(i) (A) approved for use by the United States Food and Drug Administration; or~~

~~(B) authorized for use by the United States Food and Drug Administration under an emergency use authorization under 21 U.S.C. Sec. 360bbb-3;~~

~~(ii) injected into or otherwise administered to an individual; and~~

~~(iii) intended to immunize an individual against COVID-19 as defined in Section 78B-4-517.~~

~~(c)~~ (2) "Employee" means an individual suffered or permitted to work by an employer.

~~(d)(i)~~ (3)(a) Except as provided in Subsection ~~(1)(d)(ii)~~ (3)(c), "employer" means the same as that term is defined in Section 34A-6-103.

(b) Except as provided in Subsection (3)(c), "employer" includes a federal contractor.

~~(ii)~~ (c) "Employer" does not include:

~~(A)~~ (i) a person that is subject to a regulation by the Centers for Medicare and

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Medicaid Services regarding a ~~[COVID-19 vaccine, unless the person is the state or a political subdivision of the state that is not an academic medical center]~~ vaccine, during the period that the regulation is in effect; or

~~[(B) a federal contractor.}~~

~~— (c) "Workplace"]~~

(ii) a health care provider, as defined in Section 78B-3-403, that is a participating provider for the Centers for Medicare and Medicaid Services.

(4) "Governmental entity" means the same as that term is defined in Section 34A-6-103.

~~— (2) Except as provided in Subsection (6), an employer who requires an employee or prospective employee to receive or show proof that the employee or prospective employee has received a COVID-19 vaccine shall relieve the employee or prospective employee of the requirement if the employee or prospective employee submits to the employer a statement that receiving a COVID-19 vaccine would:~~

~~— (a) be injurious to the health and well-being of the employee or prospective employee;~~

~~— (b) conflict with a sincerely held religious belief, practice, or observance of the employee or prospective employee; or~~

~~— (c) conflict with a sincerely held personal belief of the employee or prospective employee.~~

~~— (3) Except as provided in Subsection (6), an employer shall pay for all COVID-19 testing an employee receives in relation to or as a condition of the employee's presence at the workplace.~~

~~— (4) Except as provided in Subsection (6), an employer may not take an adverse action against an employee because of an act the employee makes in accordance with this section.~~

~~— (5) (a) An employer may not keep or maintain a record or copy of an employee's proof of vaccination, unless:~~

~~— (i) otherwise required by law;~~

~~— (ii) an established business practice or industry standard requires otherwise; or~~

~~— (iii) the provisions of this section do not apply as described in Subsection (6)(a).~~

~~— (b) Subsection (5)(a) does not prohibit an employer from recording whether an employee is vaccinated.~~

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~~(6) (a) The provisions of this section do not apply to a contract for goods or services entered into before November 5, 2021, unless the contract is between an employer and the employer's employee.~~

~~(b) An employer may require an employee or prospective employee to receive or show proof that the employee or prospective employee has received a COVID-19 vaccination without providing the relief described in Subsection (2), if the employer:~~

~~(i) employs fewer than 15 employees; and~~

~~(ii) establishes a nexus between the requirement and the employee's assigned duties and responsibilities.~~

~~Section 3. Section 34A-5-113 is enacted to read:~~

~~**34A-5-113. Prohibition on requiring immunity passports and discrimination based on immunity status - Exceptions.**~~

~~(1) As used in this section:~~

~~(a) "Employer" means, notwithstanding Section 34A-5-102:~~

~~(i) the state;~~

~~(ii) a county, city, town, or school district in the state; and~~

~~(iii) a person, including a public utility, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.~~

~~(b) "Immunity passport" means a document, digital record, or software application indicating that an individual is immune to a disease, whether through vaccination or infection and recovery.~~

~~(c) "Regulated entity" means an employer, as defined in Section 34A-6-103, that is subject to a regulation by the Centers for Medicare and Medicaid Services regarding a COVID-19 vaccine, unless the employer is:~~

~~(i) the state or a political subdivision of the state; and~~

~~(ii) not an academic medical center.~~

~~(d) "School" means the same as that term is defined in Section 53G-9-301.~~

~~(e) 63D-2-102.~~

(5) "Nurse practitioner" means an individual who is licensed to practice as an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice Act.



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(6) "Physician" means an individual licensed to practice as a physician or osteopath under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(7) "Physician assistant" means an individual who is licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.

(8) "Primary care provider" means a nurse practitioner, physician, or physician assistant.

(9) "Vaccination status" means an indication of whether an individual has received one or more doses of a vaccine.

~~[(c)]~~ ~~(2) It is a discriminatory or prohibited employment practice for an employer, on the basis of an individual's vaccination status or whether the individual has an immunity passport, to:~~

~~— (a) refuse employment to an individual;~~

~~— (b) bar an individual from employment; or~~

~~— (c) discriminate against an individual in compensation or in a term, condition, or privilege of employment.~~

~~(3) Subsection (2) does not apply to:~~

~~(a) a vaccination requirement by a child care program as~~ 10) "Workplace" means the same as that term is defined in Section ~~{26-39-102 if the vaccination requirement is implemented in accordance with applicable provisions of state and federal law;~~

~~(b) a regulated entity if compliance with Subsection (2) would result in a violation of binding, mandatory regulations or requirements that affect the regulated entity's funding issued by the Centers for Medicare and Medicaid Services or the United States Centers for Disease Control and Prevention;~~

~~(c) a recommendation by an employer that an employee receive a vaccine;~~

~~(d) a contract for goods or services entered into before May 4, 2022, if:~~

~~(i) application of this section would result in a substantial impairment of the contract;~~  
and

~~(ii) the contract is not between an employer and the employer's employee; or~~

~~(c) a governmental entity, as defined in Section 63D-2-102, with respect to~~  
an 34A-6-103.

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~~[(2) Except as provided in Subsection (6), an employer who requires an employee or prospective employee to receive or show proof that the employee or prospective employee has received a COVID-19 vaccine shall relieve the employee or prospective employee of the governmental entity if:~~

~~—— (i) the employee has, as part of the employee's duties, direct exposure to human blood, human fecal matter, or other potentially infectious materials that may expose the employee to:~~

~~—— (A) hepatitis; or~~

~~—— (B) tuberculosis; and~~

~~—— (ii) the governmental entity allows the employee to decline vaccination if the requirement if the employee or prospective employee submits to the governmental entity a written employer~~

~~[a statement that receiving the a COVID-19 vaccine would:]~~

~~{ } [ (A) a ] be injurious to the health and well-being of the employee or prospective employee; ]~~

~~{ } [ (B) b ] conflict with a sincerely held religious belief, practice, or observance of the employee; or~~

~~—— } or prospective employee; or ]~~

~~[(c) conflict with a sincerely held personal belief of the employee or prospective employee.]~~

~~[(3) Except as provided in Subsection (6), an employer shall pay for all COVID-19 testing an employee receives in relation to or as a condition of the employee's presence at the workplace:]~~

~~[(4) Except as provided in Subsection (6), an employer may not take an adverse action against an employee because of an act the employee makes in accordance with this section.]~~

~~[(5) (a) An employer may not keep or maintain a record or copy of an employee's proof of vaccination, unless:]~~

~~[(i) otherwise required by law;]~~

~~[(ii) an established business practice or industry standard requires otherwise; or]~~

~~[(iii) the provisions of this section do not apply as described in Subsection (6)(a).]~~

~~[(b) Subsection (5)(a) does not prohibit an employer from recording whether an employee is vaccinated.]~~

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~~[(6) (a) The provisions of this section do not apply to a contract for goods or services entered into before November 5, 2021, unless the contract is between an employer and the employer's employee.]~~

~~[(b) An employer may require an employee or prospective employee to receive or show proof that the employee or prospective employee has received a COVID-19 vaccination without providing the relief described in Subsection (2), if the employer:]~~

~~[(i) employs fewer than 15 employees; and]~~

~~[(ii) establishes a nexus between the requirement and the employee's assigned duties and responsibilities:]~~

Section 4. Section 34-56-102 is enacted to read:

### 34-56-102. Scope.

If a requirement imposed on an employer under this chapter substantially impairs the fulfillment of a contract entered into before May 4, 2022, to which the employer is a party, the requirement does not apply to the employer with respect to that contract.

Section 5. Section 34-56-201 is enacted to read:

### Part 2. Vaccinations, Recordkeeping, and Testing

#### 34-56-201. Employee vaccination, recordkeeping, and testing provisions.

(1) (a) Except as provided in Subsection (1)(b), an employer who requires an employee or prospective employee to receive or show proof that the employee or prospective employee has received a vaccine shall exempt the employee or prospective employee from the requirement if the employee or prospective employee submits to the employer:

(i) a statement that receiving a vaccine would:

(A) be injurious to the health and well-being of the employee or prospective employee;

(B) conflict with a sincerely held religious belief, practice, or observance of the employee or prospective employee; or

(C) conflict with a sincerely held personal belief of the employee or prospective employee; or

(ii) a letter from the employee or prospective employee's primary care provider stating that the employee or prospective employee was previously infected by the infectious agent or disease.

(b) An employer may require an employee or prospective employee to receive or show

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proof that the employee or prospective employee has received a vaccine without providing an exemption described in Subsection (1)(a), if:

(i) (A) the employer establishes a nexus between the requirement and the employee's assigned duties and responsibilities; or

(B) the employer identifies an external requirement for vaccination that is not imposed by the employer and is related to the employee's duties and responsibilities; and

(ii) reassignment of the employee is not practical.

(c) (i) An employer may not keep or maintain a record or copy of an employee's proof of vaccination, unless otherwise required:

(A) by law; or

(B) under an established business practice or industry standard.

(ii) Subsection (1)(c)(i) does not prohibit an employer from verbally asking an employee to voluntarily disclose whether the employee is vaccinated.

(2) (a) An employer shall pay for all testing of an employee for a disease or condition if the employee is required to receive the testing in relation to or as a condition of the employee's presence at the workplace.

(b) An employer may not keep or maintain a record or copy of an employee's test results under Subsection (2)(a), unless otherwise required by law.

(3) An employer may not take an adverse action against an employee because of an act the employee makes in accordance with this chapter.

Section ~~{4}~~6. Section **63D-2-102** is amended to read:

### **63D-2-102. Definitions.**

As used in this chapter:

(1) (a) "Collect" means the gathering of personally identifiable information:

(i) from a user of a governmental website; or

(ii) about a user of the governmental website.

(b) "Collect" includes use of any identifying code linked to a user of a governmental website.

(2) "Court website" means a website on the Internet that is operated by or on behalf of any court created in Title 78A, Chapter 1, Judiciary.

(3) "Governmental entity" means:

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- (a) an executive branch agency as defined in Section 63A-16-102;
  - (b) the legislative branch;
  - (c) the judicial branch;
  - (d) the State Board of Education;
  - (e) the Utah Board of Higher Education;
  - (f) an institution of higher education as defined in Section 53B-1-102; and
  - (g) a political subdivision of the state:
    - (i) as defined in Section 17B-1-102; and
    - (ii) including a school district.
- (4) (a) "Governmental website" means a website on the Internet that is operated by or on behalf of a governmental entity.
- (b) "Governmental website" includes a court website.
- (5) "Governmental website operator" means a governmental entity or person acting on behalf of the governmental entity that:
- (a) operates a governmental website; and
  - (b) collects or maintains personally identifiable information from or about a user of that website.
- (6) "Personally identifiable information" means information that identifies:
- (a) a user by:
    - (i) name;
    - (ii) account number;
    - (iii) physical address;
    - (iv) email address;
    - (v) telephone number;
    - (vi) Social Security number;
    - (vii) credit card information; or
    - (viii) bank account information;
  - (b) a user as having requested or obtained specific materials or services from a governmental website;
  - (c) Internet sites visited by a user; or
  - (d) any of the contents of a user's data-storage device.

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(7) "User" means a person who accesses a governmental website.

Section ~~5~~7. Section **63I-1-226** is amended to read:

### **63I-1-226. Repeal dates, Title 26.**

- (1) Subsection 26-1-7(1)(f), related to the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.
- (2) Subsection 26-1-7(1)(h), related to the Primary Care Grant Committee, is repealed July 1, 2025.
- (3) Section 26-1-7.5, which creates the Utah Health Advisory Council, is repealed July 1, 2025.
- (4) Section 26-1-40 is repealed July 1, 2022.
- (5) Section 26-1-41 is repealed July 1, 2026.
- (6) Section 26-7-10 is repealed July 1, 2025.
- (7) Subsection 26-7-11(5), regarding reports to the Legislature, is repealed July 1, 2028.
- (8) Section 26-7-14 is repealed December 31, 2027.
- (9) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2025.
- (10) Subsection 26-10-6(5), which creates the Newborn Hearing Screening Committee, is repealed July 1, 2026.
- (11) Section 26-10b-106, which creates the Primary Care Grant Committee, is repealed July 1, 2025.
- (12) Subsection 26-15c-104(3), relating to a limitation on the number of microenterprise home kitchen permits that may be issued, is repealed on July 1, 2022.
- (13) Subsection 26-18-2.6(9), which addresses reimbursement for dental hygienists, is repealed July 1, 2028.
- (14) Section 26-18-27 is repealed July 1, 2025.
- (15) Title 26, Chapter 18, Part 2, Drug Utilization Review Board, is repealed July 1, 2027.
- (16) Subsection 26-18-418(2), the language that states "and the Behavioral Health Crisis Response Commission created in Section 63C-18-202" is repealed July 1, 2023.
- (17) Section 26-33a-117 is repealed on December 31, 2023.

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(18) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.

(19) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2024.

(20) Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act, is repealed July 1, 2024.

(21) Title 26, Chapter 36d, Hospital Provider Assessment Act, is repealed July 1, 2024.

(22) Section 26-39-201, which creates the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.

(23) Section 26-40-104, which creates the Utah Children's Health Insurance Program Advisory Council, is repealed July 1, 2025.

(24) Section 26-50-202, which creates the Traumatic Brain Injury Advisory Committee, is repealed July 1, 2025.

(25) Title 26, Chapter 54, Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund, is repealed January 1, 2025.

(26) Title 26, Chapter 63, Nurse Home Visiting Pay-for-Success Program, is repealed July 1, 2026.

(27) Title 26, Chapter 66, Early Childhood Utah Advisory Council, is repealed July 1, 2026.

~~[(28) Title 26, Chapter 68, COVID-19 Vaccine Restrictions Act, is repealed July 1, 2024.]~~

Section ~~68~~8. **Repealer.**

This bill repeals:

Section **26-68-101, Title.**

Section **26-68-102, Governmental entities prohibited from requiring a COVID-19 vaccine.**