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2021B Legislature

1  
 2 An act relating to COVID-19 mandates; creating s.  
 3 381.00317, F.S.; prohibiting private employers from  
 4 imposing a COVID-19 vaccination mandate for employees  
 5 unless certain individual exemptions are made  
 6 available; defining the term "COVID-19"; requiring  
 7 employers to use certain forms for submission of  
 8 employee exemption statements; specifying conditions  
 9 for claiming exemptions; requiring the Department of  
 10 Health to adopt certain rules; requiring an employer  
 11 to exempt an employee from a vaccination upon  
 12 submission of a completed exemption statement form;  
 13 authorizing an employee to file a complaint with the  
 14 Department of Legal Affairs; requiring the department  
 15 to notify a noncompliant private employer and allow  
 16 such employer the opportunity to cure a violation;  
 17 providing a penalty; providing construction;  
 18 authorizing an employee who is terminated to file a  
 19 complaint with the department; requiring the  
 20 department to investigate such complaints; providing  
 21 requirements for such investigations; requiring the  
 22 Attorney General to impose an administrative fine for  
 23 such violations, with an exception; specifying factors  
 24 that the Attorney General may consider in determining  
 25 the amount of a fine; specifying that the Attorney

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26 | General's determination regarding a fine constitutes  
 27 | agency action; providing for the deposit of fine  
 28 | proceeds in the General Revenue Fund; specifying  
 29 | eligibility for reemployment assistance for an  
 30 | unlawfully terminated employee; authorizing the  
 31 | Department of Health, the Department of Legal Affairs,  
 32 | and the Department of Economic Opportunity to adopt  
 33 | emergency rules for specified purposes; specifying  
 34 | timeframes for the adoption of such rules;  
 35 | invalidating private employer COVID-19 vaccination  
 36 | mandates for a specified timeframe; specifying  
 37 | requirements for the emergency rules; providing that  
 38 | the emergency rules remain in effect until replaced;  
 39 | prohibiting an employer from imposing a specified  
 40 | policy; providing for expiration; creating s.  
 41 | 381.00319, F.S.; defining terms; prohibiting  
 42 | educational institutions and elected or appointed  
 43 | local officials from imposing COVID-19 vaccination  
 44 | mandates on students; providing a right of action to  
 45 | obtain a declaratory judgment and injunctive relief  
 46 | for violations; providing for attorney fees and court  
 47 | costs; providing for expiration; creating s. 112.0441,  
 48 | F.S.; defining terms; prohibiting educational  
 49 | institutions and governmental entities from imposing  
 50 | COVID-19 vaccination mandates for any employees;

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51 declaring null and void any ordinance, rule, or policy  
 52 that imposes such mandates; specifying what  
 53 constitutes a single violation; authorizing the  
 54 Department of Health to impose a fine per violation;  
 55 providing for deposit of fine proceeds in the General  
 56 Revenue Fund; specifying eligibility for reemployment  
 57 assistance for an unlawfully terminated employee;  
 58 authorizing the Department of Health and the  
 59 Department of Economic Opportunity to adopt emergency  
 60 rules for specified purposes; specifying timeframes  
 61 for the adoption of such rules; specifying  
 62 requirements for the emergency rules; providing that  
 63 the emergency rules remain in effect until replaced;  
 64 providing for expiration; directing the Chief  
 65 Financial Officer to transfer a specified sum to an  
 66 account within the Department of Legal Affairs  
 67 Operating Trust Fund; providing an appropriation;  
 68 providing for the transfer of remaining funds as of a  
 69 specified date; amending s. 1002.20, F.S.; prohibiting  
 70 district school boards, district school  
 71 superintendents, elected or appointed local officials,  
 72 and district school board employees from mandating  
 73 facial coverings or restricting certain activities for  
 74 students based on quarantine policies unless certain  
 75 conditions are met; providing that parents may allow

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76 their children to wear facial coverings; providing  
 77 applicability; providing a right of action to obtain a  
 78 declaratory judgment and injunctive relief for  
 79 violations; providing for attorney fees and court  
 80 costs; prohibiting district school boards, district  
 81 school superintendents, elected or appointed local  
 82 officials, and school district employees from  
 83 prohibiting employees from returning to work or  
 84 subjecting employees to restrictions or disparate  
 85 treatment under certain circumstances; providing for  
 86 expiration; providing a directive to the Division of  
 87 Law Revision; providing an effective date.

88

89 Be It Enacted by the Legislature of the State of Florida:

90

91 Section 1. Section 381.00317, Florida Statutes, is created  
 92 to read:

93 381.00317 Private employer COVID-19 vaccination mandates  
 94 prohibited.-

95 (1) A private employer may not impose a COVID-19  
 96 vaccination mandate for any full-time, part-time, or contract  
 97 employee without providing individual exemptions that allow an  
 98 employee to opt out of such requirement on the basis of medical  
 99 reasons, including, but not limited to, pregnancy or anticipated  
 100 pregnancy; religious reasons; COVID-19 immunity; periodic

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101 testing; and the use of employer-provided personal protective  
102 equipment. For purposes of this section, the term "COVID-19"  
103 means the novel coronavirus identified as SARS-CoV-2; any  
104 disease caused by SARS-CoV-2, its viral fragments, or a virus  
105 mutating therefrom; and all conditions associated with the  
106 disease which are caused by SARS-CoV-2, its viral fragments, or  
107 a virus mutating therefrom. Employers shall use forms adopted by  
108 the Department of Health, or substantially similar forms, for  
109 employees to submit exemption statements.

110 (a) To claim an exemption based on medical reasons,  
111 including, but not limited to, pregnancy or anticipated  
112 pregnancy, the employee must present to the employer an  
113 exemption statement, dated and signed by a physician or a  
114 physician assistant who holds a valid, active license under  
115 chapter 458 or chapter 459, or an advanced practice registered  
116 nurse who holds a valid, active license under chapter 464, who  
117 has examined the employee. The statement must provide that, in  
118 the professional opinion of the physician, physician assistant,  
119 or advanced practice registered nurse, COVID-19 vaccination is  
120 not in the best medical interest of the employee. The Department  
121 of Health shall adopt rules specifying circumstances that are  
122 considered an anticipated pregnancy, including, but not limited  
123 to, a maximum timeframe within which one anticipates pregnancy  
124 for the purpose of claiming an exemption under this paragraph.

125 (b) To claim an exemption based on religious reasons, the

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126 employee must present to the employer an exemption statement  
127 indicating that the employee declines COVID-19 vaccination  
128 because of a sincerely held religious belief.

129 (c) To claim an exemption based on COVID-19 immunity, the  
130 employee must present to the employer an exemption statement  
131 demonstrating competent medical evidence that the employee has  
132 immunity to COVID-19, documented by the results of a valid  
133 laboratory test performed on the employee. The Department of  
134 Health shall adopt a standard for demonstrating competent  
135 medical evidence of such immunity.

136 (d) To claim an exemption based on periodic testing, the  
137 employee must present to the employer an exemption statement  
138 indicating that the employee agrees to comply with regular  
139 testing for the presence of COVID-19 at no cost to the employee.

140 (e) To claim an exemption based on employer-provided  
141 personal protective equipment, the employee must present to the  
142 employer an exemption statement indicating that the employee  
143 agrees to comply with the employer's reasonable written  
144 requirement to use employer-provided personal protective  
145 equipment when in the presence of other employees or other  
146 persons.

147 (2) If an employer receives a completed exemption  
148 statement authorized by subsection (1), the employer must allow  
149 the employee to opt out of the employer's COVID-19 vaccination  
150 mandate.

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151       (3) An employee may file a complaint with the Department  
 152 of Legal Affairs alleging that an exemption has not been offered  
 153 or has been improperly applied or denied in violation of this  
 154 section. If the department investigates and finds that the  
 155 exemption was not offered or was improperly applied or denied,  
 156 it must notify the employer of its determination and allow the  
 157 employer the opportunity to cure the noncompliance.

158       (4) (a) An employer who fails to comply with this section  
 159 and terminates an employee based on a COVID-19 vaccination  
 160 mandate commits a violation of this section. Termination  
 161 includes the functional equivalent of termination. The  
 162 terminated employee may file a complaint with the Department of  
 163 Legal Affairs alleging that an exemption has not been offered or  
 164 has been improperly applied or denied, resulting in the  
 165 employee's termination. The Department of Legal Affairs shall  
 166 conduct an investigation of the complaint filed by a terminated  
 167 employee. The investigation, at a minimum, must determine  
 168 whether the employer has imposed a COVID-19 vaccination mandate,  
 169 whether the employee has submitted a proper exemption statement  
 170 and complied with any specified condition, and whether the  
 171 employee was terminated as a result of the COVID-19 vaccination  
 172 mandate. If the Attorney General finds that an employee has been  
 173 improperly terminated, the Attorney General must impose an  
 174 administrative fine not to exceed:

175       1. For an employer with fewer than 100 employees, \$10,000

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176 per violation of this subsection.

177 2. For an employer with 100 or more employees, \$50,000 per  
 178 violation of this subsection.

179  
 180 However, the Attorney General may not impose a fine on an  
 181 employer that reinstates, prior to the issuance of a final  
 182 order, a terminated employee with back pay to the date that the  
 183 complaint was received by the department under this subsection.

184 (b) In determining the amount of fine to be levied for a  
 185 violation, the Attorney General may consider any of the  
 186 following factors:

187 1. Whether the employer knowingly and willfully violated  
 188 this section.

189 2. Whether the employer has shown good faith in attempting  
 190 to comply with this section.

191 3. Whether the employer has taken action to correct the  
 192 violation.

193 4. Whether the employer has previously been assessed a  
 194 fine for violating this section.

195 5. Any other mitigating or aggravating factor that  
 196 fairness or due process requires.

197 (c) The decision of the Attorney General under this  
 198 subsection constitutes agency action for purposes of chapter  
 199 120.

200 (d) Fines collected pursuant to this subsection must be



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201 deposited in the General Revenue Fund.

202 (5)(a) If an employer fails to comply with subsections (1)  
 203 and (2) and terminates an employee based on the employee's  
 204 noncompliance with a COVID-19 vaccination mandate, the  
 205 terminated employee may be eligible for reemployment assistance  
 206 under chapter 443 in addition to any other remedy available to  
 207 the employee.

208 (b) If an employee is terminated for refusing to comply  
 209 with a COVID-19 vaccination mandate and the employer did not  
 210 offer and properly apply the exemptions required under this  
 211 section:

212 1. Such refusal may not be deemed misconduct for the  
 213 purpose of reemployment assistance under chapter 443.

214 2. Notwithstanding any provision of chapter 443, work is  
 215 not deemed suitable and benefits may not be denied under s.  
 216 443.101 to the terminated employee for refusing to accept new  
 217 work if the terminated employee is otherwise eligible and the  
 218 position requires compliance with a COVID-19 vaccination mandate  
 219 contrary to this section or s. 112.0441.

220 (6) Notwithstanding s. 120.74(4) and (5), the Department  
 221 of Health, the Department of Legal Affairs, and the Department  
 222 of Economic Opportunity are authorized, and all conditions are  
 223 deemed met, to adopt emergency rules pursuant to s. 120.54(4)  
 224 and this section. Such rulemaking must occur initially by filing  
 225 emergency rules within 15 days after the effective date of this

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226 act. An employer COVID-19 vaccination mandate is deemed invalid  
 227 until the Department of Health files its emergency rules or 15  
 228 days after the effective date of this act, whichever occurs  
 229 first.

230 (a) The Department of Health shall adopt emergency rules  
 231 to specify requirements for the frequency and methods of testing  
 232 which may be used by employers, to establish standards for  
 233 competent medical evidence that the employee has immunity to  
 234 COVID-19, to specify circumstances that are considered an  
 235 anticipated pregnancy, and to create the following:

236 1. A form for use by a physician, a physician assistant,  
 237 or an advanced practice registered nurse to document an  
 238 exemption based on medical reasons, including, but not limited  
 239 to, pregnancy or anticipated pregnancy.

240 2. A form for use by an employee to document an exemption  
 241 based on religious reasons.

242 3. A form for use by an employee to document an exemption  
 243 based on COVID-19 immunity. Such form must include the  
 244 laboratory criteria for proof of immunity for the virus that  
 245 causes COVID-19.

246 4. A form for use by an employee to document an exemption  
 247 based on periodic testing. Such form must include the required  
 248 frequency of testing and acceptable tests that may be used.

249 5. A form for use by an employee to document an exemption  
 250 based on employer-provided personal protective equipment.

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251 (b) The Department of Economic Opportunity shall adopt  
 252 emergency rules to implement subsection (5).

253 (c) The Department of Legal Affairs shall adopt emergency  
 254 rules to implement subsections (3) and (4), including  
 255 prescribing the complaint and notification processes and  
 256 specifying the functional equivalent of termination.

257  
 258 Notwithstanding s. 120.54(4)(c), emergency rules adopted  
 259 pursuant to this subsection remain in effect until replaced by  
 260 rules adopted under regular rulemaking. The Department of  
 261 Health, the Department of Legal Affairs, and the Department of  
 262 Economic Opportunity shall begin rulemaking under s. 120.54(2)  
 263 and (3) immediately after filing the emergency rules.

264 (7) An employer may not impose a policy that prohibits an  
 265 employee from choosing to receive a COVID-19 vaccination.

266 (8) This section expires June 1, 2023.

267 Section 2. Section 381.00319, Florida Statutes, is created  
 268 to read:

269 381.00319 Prohibition on COVID-19 vaccination mandates for  
 270 students.—

271 (1) For purposes of this section, the term:

272 (a) "COVID-19" has the same meaning as in s. 381.00317(1).

273 (b) "Educational institution" has the same meaning as in  
 274 s. 112.0441(1).

275 (c) "Parent" has the same meaning as in s. 1000.21(5).

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276 (2) Notwithstanding any other law to the contrary, an  
 277 educational institution or elected or appointed local official  
 278 may not impose a COVID-19 vaccination mandate for any student.

279 (3) A parent of a student, a student who is an emancipated  
 280 minor, or a student who is 18 years of age or older may bring an  
 281 action against the educational institution to obtain a  
 282 declaratory judgment that an act or practice violates this  
 283 section and to seek injunctive relief. A prevailing parent or  
 284 student, as applicable, must be awarded reasonable attorney fees  
 285 and court costs.

286 (4) This section expires June 1, 2023.

287 Section 3. Section 112.0441, Florida Statutes, is created  
 288 to read:

289 112.0441 Prohibition on public employee COVID-19  
 290 vaccination mandates.-

291 (1) For purposes of this section, the term:

292 (a) "COVID-19" has the same meaning as in s. 381.00317(1).

293 (b) "Educational institution" means an institution under  
 294 the control of a district school board; a charter school; a  
 295 state university; a developmental research school; a Florida  
 296 College System institution; the Florida School for the Deaf and  
 297 the Blind; and the Florida Virtual School.

298 (c) "Governmental entity" has the same meaning as in s.  
 299 768.38.

300 (2) (a) Notwithstanding any other law to the contrary, an

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301 educational institution or a governmental entity may not impose  
302 a COVID-19 vaccination mandate for any full-time, part-time, or  
303 contract employee. Any existing ordinance, rule, or policy  
304 imposing such mandate is null and void as of the effective date  
305 of this act.

306 (b) An educational institution or a governmental entity  
307 that imposes a COVID-19 vaccination mandate for any full-time,  
308 part-time, or contract employee commits a violation of this  
309 section for each employee subject to the employer's COVID-19  
310 vaccination mandate. The Department of Health may impose a fine  
311 not to exceed \$5,000 per violation. Fines collected pursuant to  
312 this subsection must be deposited in the General Revenue Fund.

313 (3)(a) If an educational institution or a governmental  
314 entity fails to comply with subsection (2) and terminates an  
315 employee based on the employee's noncompliance with a COVID-19  
316 vaccination mandate, the terminated employee may be eligible for  
317 reemployment assistance under chapter 443 in addition to any  
318 other remedy available to the employee.

319 (b) If an employee is terminated by an educational  
320 institution or a governmental entity for refusing to comply with  
321 any COVID-19 vaccination mandate:

322 1. Such refusal may not be deemed misconduct for the  
323 purpose of reemployment assistance under chapter 443.

324 2. Notwithstanding any provision of chapter 443, work is  
325 not deemed suitable and benefits may not be denied under s.

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326 443.101 to the terminated employee for refusing to accept new  
 327 work if the terminated employee is otherwise eligible and the  
 328 position requires compliance with a COVID-19 vaccination mandate  
 329 contrary to this section or s. 381.00317.

330 (4) Notwithstanding s. 120.74(4) and (5), the Department  
 331 of Health and the Department of Economic Opportunity are  
 332 authorized, and all conditions are deemed met, to adopt  
 333 emergency rules pursuant to s. 120.54(4) to implement this  
 334 section. Such rulemaking must occur initially by filing  
 335 emergency rules within 15 days after the effective date of this  
 336 act. Notwithstanding s. 120.54(4)(c), emergency rules adopted  
 337 pursuant to this subsection remain in effect until replaced by  
 338 rules adopted under regular rulemaking. The Department of Health  
 339 and the Department of Economic Opportunity shall begin  
 340 rulemaking under s. 120.54(2) and (3) immediately after filing  
 341 the emergency rules.

342 (5) This section expires June 1, 2023.

343 Section 4. The Chief Financial Officer shall immediately  
 344 transfer \$5 million from the General Revenue Fund to a  
 345 designated account within the Department of Legal Affairs  
 346 Operating Trust Fund. For the 2021-2022 fiscal year, the  
 347 nonrecurring sum of \$5 million is appropriated to the Department  
 348 of Legal Affairs from the Operating Trust Fund for complaint and  
 349 investigation activities and for taking legal action to stop the  
 350 enforcement of COVID-19 vaccination mandates imposed by the

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351 Federal Government. Any moneys remaining in the designated  
 352 account on June 1, 2023, must be transferred to the General  
 353 Revenue Fund unallocated.

354 Section 5. Paragraph (n) is added to subsection (3) of  
 355 section 1002.20, Florida Statutes, to read:

356 1002.20 K-12 student and parent rights.—Parents of public  
 357 school students must receive accurate and timely information  
 358 regarding their child's academic progress and must be informed  
 359 of ways they can help their child to succeed in school. K-12  
 360 students and their parents are afforded numerous statutory  
 361 rights including, but not limited to, the following:

362 (3) HEALTH ISSUES.—

363 (n) Face covering mandates and quarantine mandates in  
 364 response to COVID-19.—

365 1. A district school board, a district school  
 366 superintendent, an elected or appointed local official, or any  
 367 district school board employee may not:

368 a. Require a student to wear a face mask, a face shield,  
 369 or any other facial covering that fits over the mouth or nose.  
 370 However, a parent, at the parent's sole discretion, may allow  
 371 his or her child to wear a face mask, a face shield, or any  
 372 other facial covering that fits over the mouth or nose. This  
 373 prohibition does not apply to safety equipment required as part  
 374 of a course of study consistent with occupational or laboratory  
 375 safety requirements.

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376 b. Prohibit a student from attending school or school-  
377 sponsored activities, prohibit a student from being on school  
378 property, or subject a student to restrictions or disparate  
379 treatment, based on an exposure to COVID-19, so long as the  
380 student remains asymptomatic and has not received a positive  
381 test for COVID-19 as defined in s. 381.00317(1).

382  
383 A parent of a student, a student who is an emancipated minor, or  
384 a student who is 18 years of age or older may bring an action  
385 against the school district to obtain a declaratory judgment  
386 that an act or practice violates this subparagraph and to seek  
387 injunctive relief. A prevailing parent or student, as  
388 applicable, must be awarded reasonable attorney fees and court  
389 costs.

390 2. A district school board, a district school  
391 superintendent, an elected or appointed local official, or any  
392 school district employee may not prohibit an employee from  
393 returning to work or subject an employee to restrictions or  
394 disparate treatment based on an exposure to COVID-19 so long as  
395 the employee remains asymptomatic and has not received a  
396 positive test for COVID-19 as defined in s. 381.00317(1).

397 3. This paragraph expires June 1, 2023.

398 Section 6. The Division of Law Revision is directed to  
399 replace the phrase "the effective date of this act" wherever it  
400 occurs in this act with the date the act becomes a law.



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401           Section 7.   This act shall take effect upon becoming a law.