

By Senator Burgess

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1 A bill to be entitled
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
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

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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;
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

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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
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.

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

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

381.00317 Private employer COVID-19 vaccination mandates prohibited.-

(1) A private employer may not impose a COVID-19 vaccination mandate for any full-time, part-time, or contract employee without providing individual exemptions that allow an employee to opt out of such requirement on the basis of medical reasons, including, but not limited to, pregnancy or anticipated pregnancy; religious reasons; COVID-19 immunity; periodic testing; and the use of employer-provided personal protective equipment. For purposes of this section, the term "COVID-19" means the novel coronavirus identified as SARS-CoV-2; any disease caused by SARS-CoV-2, its viral fragments, or a virus mutating therefrom; and all conditions associated with the disease which are caused by SARS-CoV-2, its viral fragments, or a virus mutating therefrom. Employers shall use forms adopted by the Department of Health, or substantially similar forms, for employees to submit exemption statements.

(a) To claim an exemption based on medical reasons, including, but not limited to, pregnancy or anticipated pregnancy, the employee must present to the employer an exemption statement, dated and signed by a physician or a physician assistant who holds a valid, active license under chapter 458 or chapter 459, or an advanced practice registered nurse who holds a valid, active license under chapter 464, who

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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
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

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146 persons.

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

151 (3) An employee may file a complaint with the Department of
152 Legal Affairs alleging that an exemption has not been offered or
153 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:

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175 1. For an employer with fewer than 100 employees, \$10,000
176 per violation of this subsection.

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

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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 fine
194 for violating this section.

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

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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 of
221 Health, the Department of Legal Affairs, and the Department of
222 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
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 to
231 specify requirements for the frequency and methods of testing
232 which may be used by employers, to establish standards for

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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, or
237 an advanced practice registered nurse to document an exemption
238 based on medical reasons, including, but not limited to,
239 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.

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

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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 s.
 274 112.0441(1).

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

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.-

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- 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
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

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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.
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 of
331 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

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349 investigation activities and for taking legal action to stop the
350 enforcement of COVID-19 vaccination mandates imposed by the
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, or
369 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.

376 b. Prohibit a student from attending school or school-
377 sponsored activities, prohibit a student from being on school

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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).

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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.

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