

## CHAPTER 2021-272

### House Bill No. 1-B

An act relating to COVID-19 mandates; creating s. 381.00317, F.S.; prohibiting private employers from imposing a COVID-19 vaccination mandate for employees unless certain individual exemptions are made available; defining the term “COVID-19”; requiring employers to use certain forms for submission of employee exemption statements; specifying conditions for claiming exemptions; requiring the Department of Health to adopt certain rules; requiring an employer to exempt an employee from a vaccination upon submission of a completed exemption statement form; authorizing an employee to file a complaint with the Department of Legal Affairs; requiring the department to notify a noncompliant private employer and allow such employer the opportunity to cure a violation; providing a penalty; providing construction; authorizing an employee who is terminated to file a complaint with the department; requiring the department to investigate such complaints; providing requirements for such investigations; requiring the Attorney General to impose an administrative fine for such violations, with an exception; specifying factors that the Attorney General may consider in determining the amount of a fine; specifying that the Attorney General’s determination regarding a fine constitutes agency action; providing for the deposit of fine proceeds in the General Revenue Fund; specifying eligibility for reemployment assistance for an unlawfully terminated employee; authorizing the Department of Health, the Department of Legal Affairs, and the Department of Economic Opportunity to adopt emergency rules for specified purposes; specifying timeframes for the adoption of such rules; invalidating private employer COVID-19 vaccination mandates for a specified timeframe; specifying requirements for the emergency rules; providing that the emergency rules remain in effect until replaced; prohibiting an employer from imposing a specified policy; providing for expiration; creating s. 381.00319, F.S.; defining terms; prohibiting educational institutions and elected or appointed local officials from imposing COVID-19 vaccination mandates on students; providing a right of action to obtain a declaratory judgment and injunctive relief for violations; providing for attorney fees and court costs; providing for expiration; creating s. 112.0441, F.S.; defining terms; prohibiting educational institutions and governmental entities from imposing COVID-19 vaccination mandates for any employees; declaring null and void any ordinance, rule, or policy that imposes such mandates; specifying what constitutes a single violation; authorizing the Department of Health to impose a fine per violation; providing for deposit of fine proceeds in the General Revenue Fund; specifying eligibility for reemployment assistance for an unlawfully terminated employee; authorizing the Department of Health and the Department of Economic Opportunity to adopt emergency rules for specified purposes; specifying timeframes for the adoption of such rules; specifying requirements for the emergency rules; providing that the

emergency rules remain in effect until replaced; providing for expiration; directing the Chief Financial Officer to transfer a specified sum to an account within the Department of Legal Affairs Operating Trust Fund; providing an appropriation; providing for the transfer of remaining funds as of a specified date; amending s. 1002.20, F.S.; prohibiting district school boards, district school superintendents, elected or appointed local officials, and district school board employees from mandating facial coverings or restricting certain activities for students based on quarantine policies unless certain conditions are met; providing that parents may allow their children to wear facial coverings; providing applicability; providing a right of action to obtain a declaratory judgment and injunctive relief for violations; providing for attorney fees and court costs; prohibiting district school boards, district school superintendents, elected or appointed local officials, and school district employees from prohibiting employees from returning to work or subjecting employees to restrictions or disparate treatment under certain circumstances; providing for expiration; providing a directive to the Division of Law Revision; providing an effective date.

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 has examined the employee. The statement must provide that, in the professional opinion of the physician, physician assistant, or advanced practice registered nurse, COVID-19 vaccination is not in the best medical interest of the employee. The Department of Health shall adopt rules specifying circumstances that are considered an anticipated pregnancy, including, but not limited to, a

maximum timeframe within which one anticipates pregnancy for the purpose of claiming an exemption under this paragraph.

(b) To claim an exemption based on religious reasons, the employee must present to the employer an exemption statement indicating that the employee declines COVID-19 vaccination because of a sincerely held religious belief.

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

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

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

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

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

(4)(a) An employer who fails to comply with this section and terminates an employee based on a COVID-19 vaccination mandate commits a violation of this section. Termination includes the functional equivalent of termination. The terminated employee may file a complaint with the Department of Legal Affairs alleging that an exemption has not been offered or has been improperly applied or denied, resulting in the employee's termination. The Department of Legal Affairs shall conduct an investigation of the complaint filed by a terminated employee. The investigation, at a minimum, must determine whether the employer has imposed a COVID-19 vaccination mandate, whether the employee has submitted a proper exemption statement and complied with any specified condition, and whether the employee was terminated as a result of the COVID-19 vaccination mandate. If the

Attorney General finds that an employee has been improperly terminated, the Attorney General must impose an administrative fine not to exceed:

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

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

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

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

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

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

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

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

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

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

(d) Fines collected pursuant to this subsection must be deposited in the General Revenue Fund.

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

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

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

2. Notwithstanding any provision of chapter 443, work is not deemed suitable and benefits may not be denied under s. 443.101 to the terminated employee for refusing to accept new work if the terminated employee is

otherwise eligible and the position requires compliance with a COVID-19 vaccination mandate contrary to this section or s. 112.0441.

(6) Notwithstanding s. 120.74(4) and (5), the Department of Health, the Department of Legal Affairs, and the Department of Economic Opportunity are authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4) and this section. Such rulemaking must occur initially by filing emergency rules within 15 days after the effective date of this act. An employer COVID-19 vaccination mandate is deemed invalid until the Department of Health files its emergency rules or 15 days after the effective date of this act, whichever occurs first.

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

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

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

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

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

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

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

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

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

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

(8) This section expires June 1, 2023.

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

381.00319 Prohibition on COVID-19 vaccination mandates for students.

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

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

(b) “Educational institution” has the same meaning as in s. 112.0441(1).

(c) “Parent” has the same meaning as in s. 1000.21(5).

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

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

(4) This section expires June 1, 2023.

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

112.0441 Prohibition on public employee COVID-19 vaccination mandates.—

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

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

(b) “Educational institution” means an institution under the control of a district school board; a charter school; a state university; a developmental research school; a Florida College System institution; the Florida School for the Deaf and the Blind; and the Florida Virtual School.

(c) “Governmental entity” has the same meaning as in s. 768.38.

(2)(a) Notwithstanding any other law to the contrary, an educational institution or a governmental entity may not impose a COVID-19 vaccination mandate for any full-time, part-time, or contract employee. Any existing ordinance, rule, or policy imposing such mandate is null and void as of the effective date of this act.

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

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

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

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

2. Notwithstanding any provision of chapter 443, work is not deemed suitable and benefits may not be denied under s. 443.101 to the terminated employee for refusing to accept new work if the terminated employee is otherwise eligible and the position requires compliance with a COVID-19 vaccination mandate contrary to this section or s. 381.00317.

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

(5) This section expires June 1, 2023.

Section 4. The Chief Financial Officer shall immediately transfer \$5 million from the General Revenue Fund to a designated account within the Department of Legal Affairs Operating Trust Fund. For the 2021-2022 fiscal year, the nonrecurring sum of \$5 million is appropriated to the Department of Legal Affairs from the Operating Trust Fund for complaint and investigation activities and for taking legal action to stop the enforcement of COVID-19 vaccination mandates imposed by the Federal Government. Any moneys remaining in the designated account on June 1, 2023, must be transferred to the General Revenue Fund unallocated.

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

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

(3) HEALTH ISSUES.—

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

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

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

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

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

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

3. This paragraph expires June 1, 2023.

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

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

Approved by the Governor November 18, 2021.

Filed in Office Secretary of State November 18, 2021.