

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 284

INTRODUCER: Senator Polsky

SUBJECT: Fraudulent Proof of Vaccination

DATE: January 10, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 284 prohibits a person from counterfeiting, forging, altering, cloning, or possessing a certificate, card, or other physical or electronic medium that falsely indicates that the holder has been vaccinated against a specific disease, with the intent to defraud. A person who commits such a crime is guilty of a felony of the third degree, punishable by up to five years imprisonment and a \$5,000 fine.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive indeterminate” prison bed impact (unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2022.

**II. Present Situation:**

**Vaccinations**

The Advisory Committee on Immunizations Practices (ACIP) is comprised of medical and public health experts who develop recommendations on the use of vaccines in the United States.<sup>1</sup> The ACIP works with professional organizations such as the American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the American College of Physicians to develop annual childhood and adult

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<sup>1</sup> Centers for Disease Control and Prevention, Advisory Committee Immunizations Practices (ACIP), *General Committee-Related Information*, (last rev. Oct. 8, 2020), available at <https://www.cdc.gov/vaccines/acip/committee/index.html> (last visited December 17, 2021).

immunization schedules.<sup>2</sup> The Centers for Disease Control and Prevention (CDC) reviews the ACIP's recommendations; and once approved, publishes its official recommendations for immunizations of the U.S. population.<sup>3</sup>

The CDC also biannually publishes the "Health Information for International Travel," commonly called the Yellow Book (Book), as a reference for those who advise international travelers about health risks.<sup>4</sup> The Book includes the CDC's most current travel health guidelines, including pre-travel vaccine recommendations and destination-specific health advice.

### ***Florida Law on Vaccination***

Current law requires the Department of Health (DOH) to implement a program to prevent and control vaccine-preventable diseases, including the immunization of all children in this state and to develop an automated, electronic, and centralized registry of immunizations.<sup>5</sup> The DOH has established vaccine requirements for children to attend school, and provides that a child may be exempted from such requirements for religious or medical reasons.<sup>6</sup>

The DOH employs the Florida State Health Online Tracking System (SHOTS), a statewide, online immunization registry, to track immunization records.<sup>7</sup> All health care practitioners who administer vaccines to children aged 17 and younger, or to students aged 18-23, at a Florida college or university health care facility must report vaccinations to the SHOTS.<sup>8</sup> Vaccinations administered to other individuals may be voluntarily submitted to the SHOTS. A parent may exclude a child's record or a college student may exclude his or her vaccination record from the SHOTS by submitting an opt-out form to the DOH.<sup>9</sup> If immunization records are not available in SHOTS, a DOH-approved form may be used to verify immunization status.

### **Covid-19 Pandemic**

A pandemic is an outbreak of disease over multiple parts of the world. The most severe pandemic in recent history occurred in 1918 when a strain of the H1N1 influenza virus (H1N1) killed approximately 50 million people worldwide.<sup>10</sup> Prior to 2019, the most recent pandemic

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<sup>2</sup> Centers for Disease Control and Prevention, Advisory Committee on Immunization Practices (ACIP), *ACIP Recommendations*, (last rev. Nov. 8, 2021), available at <https://www.cdc.gov/vaccines/acip/recommendations.html> (last visited December 17, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> Centers for Disease Control and Prevention, *CDC Yellow Book 2020: Health Information for International Travel*, (last rev. July 18, 2019), available at <https://wwwnc.cdc.gov/travel/page/yellowbook-home-2020> (last visited December 17, 2021).

<sup>5</sup> Section 381.003(1)(e), F.S.

<sup>6</sup> See Department of Health, *Immunization Guidelines: Florida Schools, Childcare Facilities, and Family Daycare Homes*, (March 2013), incorporated by reference in rule 64D-3.046, F.A.C., available at <http://www.floridahealth.gov/programs-and-services/immunization/children-and-adolescents/documents/school-guide.pdf> (last visited December 17, 2021), and s. 1003.22(5), F.S.

<sup>7</sup> Department of Health, *Frequency Asked Questions*, available at <http://www.floridahealth.gov/programs-and-services/immunization/immunization-faq.html> (last visited December 17, 2021).

<sup>8</sup> Section 381.003(1)(e), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Centers for Disease Control and Prevention, *1918 Pandemic (H1N1 Virus)*, available at <https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html> (last visited December 17, 2021).

occurred in 2009 when a new strain of H1N1 caused the “swine flu,” killing between 151,700 and 575,400 people worldwide during the first year the virus circulated.<sup>11</sup>

Coronaviruses are a family of viruses that can cause upper-respiratory tract illnesses.<sup>12</sup> In December 2019, an outbreak of a new strain of coronavirus, called Severe Acute Respiratory Syndrome Coronavirus 2, emerged in China.<sup>13</sup> The disease caused by this strain of the coronavirus, coronavirus disease 2019 (COVID-19), quickly spread worldwide. COVID-19 causes a wide range of symptoms including fever, cough, difficulty breathing, fatigue, loss of taste or smell, sore throat, and congestion or runny nose.<sup>14</sup> Older adults and people with preexisting underlying medical conditions, such as lung disease or diabetes, are at higher risk of developing more serious COVID-19 complications.

The U.S. reported its first known death from COVID-19 in February 2020.<sup>15</sup> In March 2020, Florida reported both the state’s first known COVID-19 cases and deaths.<sup>16</sup> On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.<sup>17</sup> As of January 10, 2022, more than 59 million cases of COVID-19 have been diagnosed, and over 834,000 deaths have been attributed to COVID-19 in the United States.<sup>18</sup> In Florida, there have been more than 4.5 million cases and approximately 62,600 COVID-19 deaths.<sup>19</sup>

### ***Covid-19 Vaccines***

In response to the COVID-19 pandemic, the federal government initiated “Operation Warp Speed,” launching a partnership among the Department of Health and Human Services, the CDC, the National Institutes of Health, the Biomedical Advanced Research and Development Authority, and the Department of Defense, and began to strategize how to accelerate the

<sup>11</sup> Centers for Disease Control and Prevention, *2009 H1N1 Pandemic (H1N1pdm09 Virus)*, available at <https://www.cdc.gov/flu/pandemic-resources/2009-h1n1-pandemic.html> (last visited December 17, 2021).

<sup>12</sup> National Institute of Allergy and Infectious Diseases, *Coronaviruses*, available at <https://www.niaid.nih.gov/diseases-conditions/coronaviruses> (last visited December 17, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> Centers for Disease Control and Prevention, *Symptoms of Coronavirus*, available at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited December 17, 2021).

<sup>15</sup> Centers for Disease Control and Prevention, *CDC, Washington State Report First COVID-19 Death*, (Feb. 29, 2020), available at <https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html> (last visited December 17, 2021).

<sup>16</sup> Florida Department of Health, *Department of Health Announces Two Presumptive Positive COVID-19 Cases in Florida*, (March 1, 2020), available at <http://www.floridahealth.gov/newsroom/2020/03/030120-two-presumptive-positive-covid19-cases.pr.html> and *Department of Health Announces Important Updates Regarding COVID-19 in Florida – Two Confirmed Deaths Regarding COVID-19*, (March 6, 2020), available at <http://www.floridahealth.gov/newsroom/2020/03/030620-covid19.pr.html> (both websites last visited December 17, 2021).

<sup>17</sup> World Health Organization, *WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19*, (March 11, 2020), available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited December 17, 2021).

<sup>18</sup> Centers for Disease Control and Prevention, *United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction*, available at [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days) (last visited January 10, 2022).

<sup>19</sup> Florida Department of Health, *COVID-19 Weekly Situation Report (December 31, 2021 – January 6, 2022)* at p. 9, (Jan. 7, 2022), available at [http://www11.doh.state.fl.us/comm/partners/covid19\\_report\\_archive/covid19-data/covid19\\_data\\_latest.pdf](http://www11.doh.state.fl.us/comm/partners/covid19_report_archive/covid19-data/covid19_data_latest.pdf) (last visited January 10, 2022).

development, manufacture, and distribution of COVID-19 countermeasures, including vaccines, therapeutics, and diagnostics.<sup>20</sup>

The United States Food and Drug Administration (FDA) has granted emergency use authorization for the Pfizer-BioNTech, Moderna, and Janssen (commonly known as Johnson & Johnson) COVID-19 vaccines.<sup>21</sup> Emergency use authorization allows the FDA to facilitate the availability and use of medical countermeasures during public health emergencies.<sup>22</sup> On August 23, 2021, the FDA granted full approval of the Pfizer-BioNTech COVID-19 vaccine for individuals 16 years of age and older.<sup>23</sup> The FDA has granted emergency use authorization for the use of the Pfizer-BioNTech for individuals aged 5 through 15 years of age and the administration of a booster dose to people 18 years of age and older.<sup>24</sup> The FDA has also granted emergency use authorization for the administration of a booster dose of the Moderna and Johnson & Johnson COVID-19 vaccines.<sup>25</sup>

Upon administration of the COVID-19 vaccination, the health care provider issues a CDC COVID-19 Vaccination Record Card (vaccine card) to the individual receiving the vaccine. The vaccine card notes which vaccine was received, the date(s) the vaccine was administered, and where the vaccine was received.<sup>26</sup> In Florida, approximately 72 percent of the population aged 5 and older have been vaccinated.<sup>27</sup>

### COVID-19 Vaccination Mandates

Since the FDA's full approval of COVID-19 vaccinations, some employers have begun to mandate vaccination.<sup>28</sup> For example on August 6, 2021, United Airlines became the first major

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<sup>20</sup> U.S. Department of Health & Human Services, *Explaining Operation Warp Speed*, available at <https://www.nihb.org/covid-19/wp-content/uploads/2020/08/Fact-sheet-operation-warp-speed.pdf> (last visited December 17, 2021).

<sup>21</sup> U.S. Food and Drug Administration, *Learn More about COVID-19 Vaccines from the FDA*, (Dec. 9, 2021), available at <https://www.fda.gov/consumers/consumer-updates/learn-more-about-covid-19-vaccines-fda> (last visited December 17, 2021).

<sup>22</sup> U.S. Food and Drug Administration, *Emergency Use Authorization*, (Dec. 16, 2021), available at <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization> (last visited December 17, 2021). Medical countermeasures are FDA-regulated products (biologics, drugs, and devices) that may be used in the event of a potential public health emergency stemming a terrorist attack with a biological, chemical, or radiological/nuclear material, or a naturally occurring emerging disease. See U.S. Food and Drug Administration, *What are Medical Countermeasures?*, (May 26, 2021), available at <https://www.fda.gov/emergency-preparedness-and-response/about-mcmi/what-are-medical-countermeasures> (last visited December 17, 2021).

<sup>23</sup> U.S. Food and Drug Administration, *Comirnaty and Pfizer-BioNTech COVID-19 Vaccine*, (Dec. 16, 2021), available at <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/comirnaty-and-pfizer-biontech-covid-19-vaccine> (last visited December 17, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> U.S. Food and Drug Administration, *Coronavirus (COVID-19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID-19 Vaccines*, (Oct. 20, 2021), available at <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-additional-actions-use-booster-dose-covid-19-vaccines> (last visited December 17, 2021).

<sup>26</sup> Centers for Disease Control and Prevention, *Getting Your CDC COVID-19 Vaccination Record Card*, (Dec. 15, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccination-card.html> (last visited December 17, 2021).

<sup>27</sup> *Supra* note 19, at p. 1.

<sup>28</sup> NBC News, *From McDonald's to Goldman Sachs, Here are the Companies Mandating Vaccines for All or Some Employees* (Aug. 3, 2021), available at <https://www.nbcnews.com/business/business-news/here-are-companies-mandating-vaccines-all-or-some-employees-n1275808> (last visited December 17, 2021).

airline to announce a COVID-19 vaccination mandate for its employees.<sup>29</sup> The airline terminated more than 230 employees who have not complied with the mandate.<sup>30</sup> In response to employer COVID-19 vaccination mandates, some states have restricted the use of such mandates.<sup>31</sup>

### ***Vaccination Mandates for Federal Employees and Contractors***

On September 9, 2021, the President of the United States, Joe Biden, issued an Executive Order requiring COVID-19 vaccination for all federal employees.<sup>32</sup> All federal employees were required to be fully vaccinated by November 22, 2021, unless they were exempted or granted an extension.<sup>33</sup>

On September 9, 2021, President Biden also issued an Executive Order requiring that every new federal contract after October 15, 2021, include a requirement to impose a COVID-19 vaccination requirement on the employees of federal contractors.<sup>34</sup> This requirement is the subject of ongoing litigation.<sup>35</sup>

### ***Vaccination Mandates by the Occupational Safety and Health Administration***

The Occupational Safety and Health Administration (OSHA) is a regulatory agency within the United States Department of Labor, created “to ensure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education and assistance.”<sup>36</sup> The Occupational Safety and Health Act (OSH Act) regulates most private sector employers as well as certain public sector employers. The OSH Act applies to employees of an organization, and does not apply to self-employed workers, immediate family members of farm employers, volunteers, or unpaid students.<sup>37</sup> The OSHA is authorized to set emergency

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<sup>29</sup> United Airlines, *COVID-19 Vaccine Required for United Employees*, (Aug. 6, 2021) available at <https://www.united.com/en/us/newsroom/announcements/COVID-19-vaccine-required-for-United-employees> (last visited December 17, 2021).

<sup>30</sup> Fox Business, *United Airlines in The Process of Firing 232 Unvaccinated Employees*, (Oct. 13, 2021), available at <https://www.foxbusiness.com/lifestyle/united-airlines-firing-unvaccinated-employees> (last visited December 17, 2021).

<sup>31</sup> Littler, *COVID-19 Resources, Mandatory Employee Vaccines – Coming to A State Near You?*, (Dec. 16, 2021), available at <https://www.littler.com/publication-press/publication/mandatory-employee-vaccines-coming-state-near-you> (last visited December 17, 2021).

<sup>32</sup> Exec. Order No. 14043, *Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees* (Sept. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/> (last visited December 17, 2021).

<sup>33</sup> The White House, *Update on Implementation of COVID-19 Vaccination Requirement for Federal Employees*, (Nov. 24, 2021), available at <https://www.whitehouse.gov/omb/briefing-room/2021/11/24/update-on-implementation-of-covid-19-vaccination-requirement-for-federal-employees/> (last visited December 17, 2021).

<sup>34</sup> Exec. Order No. 14042, *Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors* (Sept. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/> (last visited December 17, 2021). See Safer Federal Workforce, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, (last rev. Nov. 10, 2021), available at [https://www.saferfederalworkforce.gov/downloads/Guidance%20for%20Federal%20Contractors\\_Safer%20Federal%20Workforce%20Task%20Force\\_20211110.pdf](https://www.saferfederalworkforce.gov/downloads/Guidance%20for%20Federal%20Contractors_Safer%20Federal%20Workforce%20Task%20Force_20211110.pdf) (last visited Nov. 10, 2021).

<sup>35</sup> See *Georgia v. Biden*, 2021 WL 5779939, (S.D. Ga. Dec. 7, 2021), which grants a motion for a temporary injunction enjoining the enforcement of the vaccine mandate for federal contractors and subcontractors in all covered contracts in any state or territory of the U.S.

<sup>36</sup> Occupational Health and Safety Administration (OSHA), United States Department of Labor, *About OSHA*, available at <https://www.osha.gov/aboutosha> (last visited December 17, 2021).

<sup>37</sup> OSHA, *All About OSHA*, pg. 8, available at [https://www.osha.gov/sites/default/files/publications/all\\_about\\_OSHA.pdf](https://www.osha.gov/sites/default/files/publications/all_about_OSHA.pdf) (last visited December 17, 2021).

temporary standards in certain limited circumstances which take effect immediately and are in effect until superseded by a permanent standard. The OSHA must determine that workers are in grave danger and that an emergency standard is needed to protect them. Then, the OSHA publishes the emergency temporary standard in the Federal Register, where it also serves as a proposed permanent standard. The validity of an emergency temporary standard may be challenged in an appropriate U.S. Court of Appeals.<sup>38</sup>

On November 5, 2021, the OSHA published an emergency temporary standard that requires every employer having 100 or more employees to implement a COVID-19 vaccination mandate.<sup>39</sup> All employers having 100 or more employees must ensure that their workforce is fully vaccinated or must require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work and to wear personal protective equipment. Employees may be exempt from the requirement due to religious beliefs or having a severe allergic reaction to the vaccine or its ingredients. These employers must also provide paid time off to employees who decide to be vaccinated, to allow the employee time to receive the vaccination and recover in the event of experiencing any short-term side effects from the shot. The penalty for violating the emergency temporary standard is a fine of up to \$14,000 per violation. The employer must comply with the emergency temporary standard by January 4, 2022. The OSHA estimated that the total cost per entity to comply with the emergency temporary standard is \$11,298 per entity, for an estimated total of nearly \$3 billion.<sup>40</sup> As of October 4, 2021, the OSHA estimated that 61.3 percent of covered employees are fully vaccinated.<sup>41</sup>

On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay the OSHA's temporary emergency standard and ordered the OSHA to take no steps to enforce the mandate until further order of the court.<sup>42</sup> On December 17, 2021, the U.S. Sixth Circuit Court of Appeals<sup>43</sup> granted OSHA's motion to dissolve the stay, thus reinstating the emergency temporary standard and requiring all employers having 100 or more employees to implement a vaccine mandate.<sup>44</sup> The Department of Labor extended the deadline for compliance with the emergency temporary standard until February 9, 2022, as long as "an employer is exercising

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<sup>38</sup> The OSHA, *OSHA Standards Development*, available at <https://www.osha.gov/laws-regs/standards-development> (last visited December 17, 2021).

<sup>39</sup> 86 Fed. Reg. 61402 (Nov. 5, 2021).

<sup>40</sup> *Id.* at Table IV.B.13., p. 61493.

<sup>41</sup> *Id.* at Table IV.B.6., p. 61471.

<sup>42</sup> *BST Holdings, LLC, et. al. v. Occupational Safety and Health Administration, U.S. Dep't of Labor*, 17 F.4th 604 (5th Cir. 2021).

<sup>43</sup> All pending challenges to the OSHA's temporary emergency standard will be heard by the U.S. 6th Circuit Court of Appeals in a consolidated fashion. See *In re: Occupational Safety and Health Administration, Interim Final Rule: COVID-19 Vaccination and Testing; Emergency Temporary Standard*, 86 Fed. Reg. 61402, Issued on November 4, 2021, MCP No. 165, (U.S. Judicial Panel on Multidistrict Litigation Nov. 16, 2021).

<sup>44</sup> *In re: Occupational Safety and Health Administration, Interim Final Rule: COVID-19 Vaccination and Testing; Emergency Temporary Standard*, 86 Fed. Reg. 61402, 2021 WL 5989357, (6th Cir. Dec. 17, 2021), also available at <https://www.opn.ca6.uscourts.gov/opinions.pdf/21a0287p-06.pdf> (last visited December 20, 2021). This litigation is ongoing and additional appeals have been filed. See Durkee, Alison, "Supreme Court Now Weighing Multiple Lawsuits Against Biden's Vaccine Mandate," FORBES (Dec. 20, 2021), available at <https://www.forbes.com/sites/alisondurkee/2021/12/20/supreme-court-now-weighing-multiple-lawsuits-against-bidens-vaccine-mandate/?sh=b40ac1418fa8> (last visited December 21, 2021).

reasonable, good faith efforts to come into compliance with the standard.”<sup>45</sup> The National Federation of Independent Business, as well as the State of Ohio, have filed applications with the U.S. Supreme Court requesting the court to issue a stay of OSHA’s temporary emergency standard. The cases have been consolidated and oral arguments were scheduled for January 7, 2022.<sup>46</sup>

### ***Vaccination Mandates on Healthcare Workers***

On November 5, 2021, the federal Centers for Medicare and Medicaid Services (CMS) published an interim final rule to require that a healthcare employer<sup>47</sup> participating in Medicare or Medicaid implement a COVID-19 vaccination mandate.<sup>48</sup> The vaccination mandate applies to employees, licensed practitioners, students and trainees, volunteers, and contractors (individuals who provide care, treatment, or other services for the provider and/or its residents, under contract or by other arrangement).<sup>49</sup> A person may be exempt from the requirement due to religious beliefs or having a severe allergic reaction to the vaccine or its ingredients. There are ongoing legal challenges to the interim final rule.<sup>50</sup>

### ***Other Vaccine Mandates***

Some states, as well as some local governments, have implemented policies requiring employees to be vaccinated; however, many allow weekly testing in lieu of vaccination.<sup>51</sup> Some local

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<sup>45</sup> U.S. Dep’t of Labor, *News Release: Statement from the US Department of Labor on the 6th Circuit Court of Appeals Dissolving the Stay of OSHA Emergency Temporary Standard on Vaccination and Testing*, (Dec. 18, 2021), available at <https://www.dol.gov/newsroom/releases/osha/osha20211218> (last visited December 20, 2021).

<sup>46</sup> *Ohio v. Dep’t of Labor, et. al.*, 2021 WL 6061694 (S.Ct. Dec. 22, 2021), and *Nat. Fed’n. of Indep. Bus., et. al. v. Dep’t of Labor, et. al.*, 2021 WL 6061696 (S.Ct. Dec. 22, 2021). See also, SCOTUSblog, *National Federal of Independent Business v. Department of Labor, Occupational Safety and Health Administration*, available at <https://www.scotusblog.com/case-files/cases/national-federation-of-independent-business-v-osha/> (last visited January 5, 2022).

<sup>47</sup> The following entities are included: ambulatory surgical centers (ASCs); hospices; psychiatric residential treatment facilities; programs of all-inclusive care for the elderly (PACE); hospitals; long term care facilities; intermediate care facilities for individuals with intellectual disabilities; home health agencies; comprehensive outpatient rehabilitation facilities; critical access hospitals; clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services; community mental health centers; home infusion therapy suppliers; rural health clinics; federally qualified health centers; and end-stage renal disease facilities.

<sup>48</sup> 86 Fed. Reg. 61555 (Nov. 5, 2021).

<sup>49</sup> The requirement does not apply to staff working remotely 100 percent of the time, or to staff providing offsite support services, if they have no direct contact with patients or other staff who are subject to the requirement. Similarly, it does not apply to one-time or infrequent non-health service providers or contractors who have no contact with patients or staff who are subject to the requirement.

<sup>50</sup> See *Florida v. Dep’t of Health and Human Services, et. al.*, 2021 WL 5416122 (N.D. Fla. Nov. 20, 2021), which denies the state’s motion for a preliminary injunction to enjoin the interim final rule mandating COVID-19 vaccines for covered healthcare staff. The decision was upheld by the 11th Circuit Court of Appeals in *Florida v. Dep’t of Health and Human Services, et. al.*, 2021 WL 5768796 (Dec. 6, 2021). See also *Louisiana v. Becerra*, 2021 WL 5913302 (5th Cir. Dec. 15, 2021), which partially reverses a nationwide injunction issued by a federal district court in Louisiana. The court limited the applicability of the injunction to the 14 states that brought the lawsuit in Louisiana (Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Oklahoma, South Carolina, Utah, West Virginia, Kentucky, and Ohio).

<sup>51</sup> See Kaiser Family Foundation, *State COVID-19 Data and Policy Actions*, (Dec. 14, 2021), available at <https://www.kff.org/report-section/state-covid-19-data-and-policy-actions-policy-actions/> (last visited December 17, 2021).

governments have also issued mandates for its private businesses to require proof of vaccination of its patrons, as well.<sup>52</sup>

Some countries have also begun to require individuals to show proof of vaccination or proof of recovery from a COVID-19 infection in order to gain entry.<sup>53</sup> Some businesses require such proof to obtain services or enter their facilities. Other than the school vaccination requirements, current Florida law does not require documentation of vaccination to enter any public building or obtain access to any government service.

### **Florida Ban on COVID-19 Vaccine Mandates**

In October 2021, the Legislature enacted a law that prohibits private employers from imposing a COVID-19 vaccine mandate on full-time, part-time, or contract employees, which does not provide individual exemptions that allow an employee to opt out of the mandate.<sup>54</sup> The law establishes a minimum of five exemptions that an employer must offer if it imposes a COVID-19 vaccine mandate:

- Medical reasons, including pregnancy or anticipated pregnancy;
- Religious beliefs;
- COVID-19 immunity;
- Agreement to comply with periodic testing; and
- Agreement to comply with employer-provided personal protective equipment.<sup>55</sup>

An employee may file a complaint with the Department of Legal Affairs (DLA) alleging that the employer is not offering a required exemption, has improperly applied the exemption, or has improperly denied the exemption to the employee. If the DLA investigates the complaint and finds that the allegation is valid, then the DLA must notify the employer of the determination and allow the employer the opportunity to cure the noncompliance.<sup>56</sup>

An employer may also be subject to fines if the employer institutes a vaccine mandate but fails to offer or properly apply the exemptions as provided in law, and terminates an employee based on its vaccine mandate. Upon receipt of a complaint alleging such conduct, the DLA must conduct an investigation to determine, at a minimum, whether:

- The employer imposed a COVID-19 vaccine mandate;
- The employee submitted a proper exemption statement and complied with any specified condition; and
- The employee was terminated as a result of the COVID-19 vaccine mandate.<sup>57</sup>

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<sup>52</sup> See Deslatte, Melinda and Rodriguez, Olga R., “More US Cities Requiring Proof of Vaccination to Go Places,” AP NEWS (Aug. 13, 2021), available at <https://apnews.com/article/joe-biden-business-health-coronavirus-pandemic-6ae309aff77864cb108fbf9a2dbcf449> (last visited December 17, 2021).

<sup>53</sup> See Whitmore, Geoff, “The Latest Vaccine Requirements for Travel,” FORBES, (Sept. 2, 2021), available at <https://www.forbes.com/sites/geoffwhitmore/2021/09/02/the-latest-vaccine-requirements-for-travel/?sh=575366afd4d6> (last visited December 17, 2021).

<sup>54</sup> Chapter 2021-272, s. 1, Laws of Fla, codified at s. 381.00317, F.S.

<sup>55</sup> *Id.* Employers must use forms adopted by the Department of Health for employees to submit exemption statements.

<sup>56</sup> Section 381.00317(3), F.S.

<sup>57</sup> Section 381.00317(4), F.S.

Upon a finding of an improper termination, the Attorney General must impose a fine of no more than \$10,000 per violation, if the employer has fewer than 100 employees and no more than \$50,000 per violation, if the employer has 100 or more employees.<sup>58</sup>

### ***Florida Ban on Vaccine Passports***

In April 2021, the Governor issued an executive order prohibiting government entities from issuing any standardized documentation to certify a person's COVID-19 vaccination status and prohibiting businesses from requiring customers or patrons to provide documentation of vaccine status.<sup>59</sup> The executive order remained in effect until June 26, 2021. In November 2021, the Legislature enacted a law that prohibits governmental entities from requiring documentation of COVID-19 vaccination or post-infection recovery to enter the government location or obtain government services.<sup>60</sup> The law also prohibits a business entity from requiring patrons or consumers and an educational institution from requiring students or residents to provide such documentation to access the location or service of the business or educational institution.<sup>61</sup> The law authorizes the DOH to impose a fine of up to \$5,000 per violation.

In spite of the law, some business and government entities adopted policies that required employees and consumers to provide proof of vaccination status. For example, Norwegian Cruise Lines adopted a policy requiring its passengers and crew members to be fully vaccinated.<sup>62</sup> Norwegian Cruise Lines filed a lawsuit challenging the validity of the law in July 2021, and in August 2021, the court granted Norwegian's motion for a preliminary injunction enjoining the state from enforcing the statute against Norwegian.<sup>63</sup> However, the DOH is investigating more than 100 other businesses and government entities for violating the law.<sup>64</sup>

### **Fraudulent Vaccination Cards**

In recent months, the number of reports of individuals selling fraudulent COVID-19 vaccination cards has risen.<sup>65</sup> The CDC and the Federal Bureau of Investigation have warned consumers that they should not buy fake vaccine cards, make their own cards, or fill in the blanks with false information.<sup>66</sup>

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<sup>58</sup> *Id.* The law provides factors that the Attorney General must consider in determining the amount of the fine to be imposed.

<sup>59</sup> Fla. Exec. Order No. 21-81 (April 2, 2021), available at [https://www.flgov.com/wp-content/uploads/orders/2021/EO\\_21-81.pdf](https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-81.pdf) (last visited December 17, 2021). The executive order was to remain in effect for the duration of Exec. Order No. 20-52, as extended. Exec. Order No. 20-52 was last extended for 60 days on April 27, 2021.

<sup>60</sup> Chapter 2021-272, Laws of Fla., codified at s. 381.00316, F.S.

<sup>61</sup> The law specifically excludes certain health care providers, certain health care clinics, behavior analysts, and radiological personnel from its provisions.

<sup>62</sup> Norwegian Cruise Lines, *Sail Safe*, available at <https://www.ncl.com/sail-safe> (last visited December 17, 2021).

<sup>63</sup> *Norwegian Cruise Line Holdings, LTD., v. Rivkees*, 2021 WL 3471585 (S.D. Fla. Aug. 8, 2021).

<sup>64</sup> Handleman, Jay, "Vaccine Rule Complaints Filed against Florida Arts Venues, Businesses, and Cruise Lines" SARASOTA HERALD-TRIBUNE (Oct. 13, 2021), available at <https://www.heraldtribune.com/story/news/2021/10/13/complaints-filed-against-florida-businesses-over-covid-vaccine-rules/8424191002/> (last visited December 17, 2021).

<sup>65</sup> For example, see Theisen, Tiffini, "Florida Couple Arrested, Cited \$8,000 for Fake Vaccinations for Hawaii Trip," ORLANDO SENTINEL, (Aug. 20, 2021), available at <https://www.orlandosentinel.com/coronavirus/os-ne-florida-couple-arrested-cited-8000-fake-vaccination-cards-travel-20210820-4mbs22h25vg13ndoxoavzwdwdou-story.html> (last visited December 17, 2021).

<sup>66</sup> *Supra* note 26, and the Federal Bureau of Investigation, *If You Make or Buy a Fake COVID-19 Vaccination Card, You Endanger Yourself and Those Around You, and You Are Breaking the Law*, (March 30, 2021), available at <https://www.ic3.gov/Media/Y2021/PSA210330> (last visited December 17, 2021).

The Florida Office of Attorney General requested that the online platforms, eBay, Shopify, and Twitter block the sale of fraudulent COVID-19 vaccination cards on their platforms.<sup>67</sup> The letter requested the platforms to:

- Monitor their platforms for ads or links selling blank or fraudulently completed vaccination cards;
- Promptly remove ads or links that are selling cards; and
- Preserve the records and information about the ads and the people who are selling the cards.

The letter was sent by the attorneys general of more than 40 U.S. states and territories.<sup>68</sup>

Current law makes it unlawful to knowingly and willfully make a materially false or misleading statement, or to knowingly and willfully disseminate false or misleading information regarding the availability of or access to a vaccine for COVID-19.<sup>69</sup> However, Florida law does not specifically prohibit the manufacture or possession of a fraudulent COVID-19 Vaccination card.

### ***Laws on Fraudulent Acts***

Individuals counterfeiting COVID-19 vaccinations, which bear the CDC's seal would be subject to prosecution under federal law. Federal law makes it illegal to:

- Falsely make, forge, counterfeit, mutilate, or alter the seal of any department or agency of the United States, or any facsimile thereof;
- Knowingly use, affix, or impress any such fraudulently made, forged, counterfeited, mutilated, or altered seal or facsimile thereof to or upon any certificate, instrument, commission, document, or paper of any deception; or
- With fraudulent intent, possess, sell, offer for sale, furnish, offer to furnish, give away, offer to give away, transport, offer to transport, import, or offer to import any such seal or facsimile thereof, knowing the same to have been falsely made, forged, counterfeited, mutilated, or altered.<sup>70</sup>

A person who is guilty of such an offense is subject to a fine, imprisonment of up to five years, or both.<sup>71</sup>

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact

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<sup>67</sup> Press Release, Office of Attorney General, *Attorney General Moody Asks Online Platforms to Block the Sale of Fake COVID-19 Vaccination Cards*, (Apr. 1, 2021), available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/D91915AFE34C23E5852586AA006C4CF8> (last visited December 17, 2021).

<sup>68</sup> The letter was sent by the attorneys general of Alaska, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Georgia, Guam, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, the U.S. Virgin Islands, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>69</sup> Section 817.504, F.S.

<sup>70</sup> 18 U.S.C. s. 506(a), and 18 USC s. 1017.

<sup>71</sup> *Id.*

from them for the purpose of inducing that person to act to his or her detriment.<sup>72</sup> Florida law does not specifically prohibit fraudulent vaccination documentation.

### **III. Effect of Proposed Changes:**

The bill creates s. 817.354, F.S., making it unlawful to counterfeit, forge, alter, clone, or possess a certificate, card, or other physical or electronic medium that falsely indicates that the holder has been vaccinated against a specific disease, with the intent to defraud. A person who commits such an act commits a felony of the third degree which is punishable by up to five years imprisonment and a fine of up to \$5,000.

The bill is effective October 1, 2022.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The bill appears to be exempt from the requirements of Art. VII., s. 18(d) of the Florida Constitution, relating to unfunded mandates.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None identified.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

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<sup>72</sup> Black's Law Dictionary (9th ed. 2009).

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (unquantifiable increase in prison beds).<sup>73</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 817.354 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>73</sup> The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.