

## 2022 Bill Draft: Provide COVID-19 Vaccine Exemptions

FOR AN ACT ENTITLED, An Act to provide statutory COVID-19 vaccine exemptions and to declare an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

**Section 1. That chapter 60-2 be amended with a NEW SECTION:**

An employer that requires an employee to receive immunization against COVID-19, as defined by § 21-68-1, as a condition of their employment, must allow an employee to claim any of the following exemptions, provided that the employee submits to the employer the appropriate form as prescribed by the Department of Health, or a substantially similar form provided by the employer, with any accompanying documentation that the exemption requires:

- (1) For a medical exemption, if the employee has a medical condition which advises against a COVID-19 immunization according to a certificate that is signed by a South Dakota physician:
  - (a) Licensed pursuant to chapter 36-4;
  - (b) Authorized to diagnose medical conditions;
  - (c) Who has examined the employee; and
  - (d) Who states that in the professional opinion of the physician, the employee has a medical contraindication or compelling medical reason that advises against the COVID-19 immunization;
- (2) For a religious exemption, if the employee submits a signed statement on a form to the employer stating:

I, [insert person's full name], dissent and object to receiving a COVID-19 vaccine on religious grounds, which includes moral or ethical beliefs or principles but not social, political, or economic philosophies or mere preference; or
- (3) For a natural immunity exemption, if the employee provides proof of a positive serum antibody test from a CLIA-certified laboratory that has received full approval by, or Emergency Use Authorization from, the U.S. Food and Drug Administration, showing the employee has specific antibodies against COVID-19 within one hundred eighty days of submitting the exemption. An employer may require an employee to resubmit the form and new antibody test for renewal of this exemption no more frequently than every one hundred

eighty days from the date of the prior positive test, provided that the employer is responsible for either providing the test or reimbursing the employee for the cost of the subsequent antibody test.

Any employer that conditions employment on COVID-19 immunization must notify applicants and employees of the exemptions provided in this section.

**Section 2. That chapter 60-2 be amended with a NEW SECTION:**

This Act does not:

- 1) Apply to the South Dakota National Guard;
- 2) Prevent the South Dakota National Guard from requiring a COVID-19 immunization in compliance with a valid and lawful command order that applies to a servicemember who may be subject to federal activation;
- 3) Require any employer to adopt a COVID-19 immunization policy;
- 4) Prohibit employers from adopting other exemptions or expanding the scope of the exemptions in Section 1 of this Act; or
- 5) Require an employer to make an accommodation that would impose an undue hardship to the employer.

**Section 3. That chapter 60-2 be amended with a NEW SECTION:**

An employee injured by a violation of this Act may apply for injunctive and declaratory relief, without bond, to restrain their employer from violating this Act. This relief is not exclusive of any other relief an employee may seek pursuant to other law.

**Section 4.** The provisions of this Act are repealed on June 30, 2023.

**Section 5.** Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.