

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 1/20/22

To: Joint Standing Committee on Health & Human Services

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### **LD 867 An Act to Prohibit Mandatory COVID-19 Vaccinations for 5 Years to Allow for Safety Testing and Investigations into Reproductive Harm (EMERGENCY)**

**SUMMARY:** This bill prohibits mandatory vaccinations for COVID-19 for healthcare workers for 5 years from the date of the vaccine's first emergency use authorization by the United States Food and Drug Administration in order to allow for safety testing and investigations into reproductive harm. This bill has an emergency preamble.

#### **DRAFTING NOTES:**

1. **5-year moratorium** – The five-year moratorium imposed by the bill extends from the date of the vaccine's first emergency use authorization (EUA) by the FDA. The FDA fully approved the Pfizer vaccine for people age 16 and older on August 23, 2021.<sup>1</sup> Other manufacturers' vaccines and the Pfizer vaccine for other age groups remain under EUA.
2. **Federal preemption-** The federal government has taken a number of measures to mandate vaccination for certain groups, which may preempt any state ban on vaccination mandates imposed by this bill. See the attached page for a brief review of federal mandate efforts.

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<sup>1</sup> US Food and Drug Administration News Release. *FDA Approves First COVID-19 Vaccine*. August 23, 2021. Available Online at: <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>.

## AMENDMENTS

Representative Quint, the bill sponsor, has submitted a proposed amendment to the committee. The amendment replaces the bill. It changes the title to remove the 5-year limitation on prohibition of mandatory COVID-19 vaccines for healthcare workers and requirement for safety testing and investigations into reproductive harm. It amends the emergency preamble and replaces the 5-year prohibition of state-mandated COVID-19 vaccinations with a prohibition on state-mandated COVID-19 vaccinations for healthcare workers.

Drafting Notes for Amendment:

1. **Federal preemption.** While the drafting question regarding the 5-year moratorium is eliminated by this amendment, the issue of federal preemption remains.
2. **Scope.** There is some ambiguity in the scope of the prohibition. The term “mandatory vaccination” would appear to apply to all state mandated vaccinations for healthcare providers. Is the intent that this prohibition apply to, for example, conditions of licensing for certain professions or to conditions of employment for state employees or contractors?
3. **Health emergencies.** Is the intent that this prohibition apply during a [health emergency](#) or an [extreme public health emergency](#)?

## ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

- Medical Exemptions: A summary and history of the statutory language around medical exemptions for immunizations was requested.

22 MRSA §802, sub-§4-B reads as follows

**4-B. Exemptions to immunization.** *Employees are exempt from immunization otherwise required by this subchapter or by rules adopted by the department pursuant to this section under the following circumstances.*

*A. A medical exemption is available to an employee who provides a written statement from a licensed physician, nurse practitioner or physician assistant that, in the physician's, nurse practitioner's or physician assistant's professional judgment, immunization against one or more diseases may be medically inadvisable.*

*C. An exemption is available to an individual who declines hepatitis B vaccine, as provided for by the relevant law and regulations of the federal Department of Labor, Occupational Health and Safety Administration.*

This subsection was enacted by [PL 1989 c.487](#). The original statutory language required hospitals and other health care facilities to require that employees be vaccinated for specified diseases. The medical exemption language allowed for “a physician's written statement that immunization against one or more of the diseases may be medically inadvisable.” No further details are provided in statute regarding the interpretation of “medically inadvisable,” and this language has remained in place. This subsection was last amended by [PL 2019 c. 154](#). That bill expanded the medical providers authorized to write a medical exemption to include nurse practitioners and physician assistants. The bill also eliminated paragraph B, which allowed for religious exemptions.

## **OTHER INFORMATION**

### **Federal COVID-19 Vaccine Mandates**

The federal government has instituted a number of vaccine mandates, several of which have already been litigated. A brief description of the major mandates is below.

- **Military members**

- Source of mandate/description: [Secretary of Defense Memorandum](#) (August 24, 2021). Active duty members without an approved exemption are required to be fully vaccinated by Dec. 15, 2021 and Reserve and National Guard units are expected to be fully vaccinated by June 30, 2022.
- Status: In effect
- **Federal employees**
  - Source of mandate/description: [Executive Order 14042](#) (September 9, 2021). This executive order requires executive departments and agencies ensure that employees are vaccinated by January 18, 2022, unless exempted.
  - Status: In effect
- **Federal contractors**
  - Source of mandate/description: [Executive Order 14042](#) (September 9, 2021). This executive order requires federal contractors to ensure that employees are vaccinated by January 18, 2022, unless exempted.
  - Status: On December 7, 2021, the US District Court for the Southern District of Georgia issued a preliminary injunction blocking implementation of the mandate as regards federal contractors. On December 17, the 11<sup>th</sup> Circuit denied a request by the federal government to stay the injunction. Litigation is ongoing.
- **Private employees of companies with 100 or more employees**
  - Source of mandate/description: [OSHA Emergency Temporary Standard on Vaccines and Testing](#) (November 4, 2021). This emergency standard released by OSHA requires employers with 100 or more

employees to develop, implement and enforce a mandatory COVID-19 vaccination policy, unless they adopt a policy requiring employees to choose to either be vaccinated or undergo regular COVID-19 testing and wear a face covering at work.

- Status: On November 30, 2021, the US Court of Appeals for the Fifth Circuit issued a temporary stay blocking implementation of the mandate. The stay was lifted by the United States Court of Appeals for the Sixth Circuit on December 17, 2021. The US Supreme Court heard oral arguments on *National Federation of Independent Business v. Department of Labor*, on January 7. On January 12, it ruled against the federal government and blocked the Biden administration from enforcing the mandate.

- **Certain health care workers**

- Source of mandate/description: [CMS Omnibus COVID-19 Health Care Vaccination Interim Final Rule](#) (November 5, 2021). This interim final rule requires certain CMS funded facilities to ensure that workers are vaccinated against COVID-19. Excluded from the requirement are assisted living facilities, group homes, home and community based services and physician's offices.
- Status: On November 29, 2021, the US District Court for the Eastern District of Missouri issued a preliminary injunction against implementation and enforcement in 10 states. One day later, the US District Court for the Western District of Louisiana issued a preliminary injunction covering all other states. The US Supreme Court heard oral arguments on *Biden v. Missouri*, on January 7. On January 12, it ruled in favor of the federal government, allowing the mandate to remain in place.

**FISCAL IMPACT:** There is a preliminary fiscal impact statement on the original bill. The preliminary fiscal indicates no fiscal impact.

