



2022 South Dakota Legislature

Senate Bill 211

SENATE COMMERCE AND ENERGY ENGROSSED

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 **An Act to provide statutory COVID-19 vaccine exemptions and to declare an**
 2 **emergency.**

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

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

5 An employer that requires an employee to receive immunization against COVID-
 6 19, as defined by § 21-68-1, as a condition of their employment, must allow an employee
 7 to claim any of the following exemptions, provided that the employee submits to the
 8 employer the appropriate form as prescribed by the Department of Health, or a
 9 substantially similar form provided by the employer, with any accompanying
 10 documentation that the exemption requires:

11 (1) For a medical exemption, if the employee has a medical condition which advises
 12 against a COVID-19 immunization according to a certificate that is signed by a
 13 South Dakota medical professional:

14 (a) Licensed pursuant to chapter 36-4, 36-4A, or 36-9A;

15 (b) Authorized to diagnose medical conditions;

16 (c) Who has examined the employee, and

17 (d) Who states that in the professional opinion of the medical professional, the
 18 employee has a medical contraindication or compelling medical reason that
 19 advises against the COVID-19 immunization;

20 (2) For a religious exemption, if the employee submits a signed statement on a form
 21 to the employer stating:

22 I, [insert person's full name], dissent and object to receiving a COVID-19
 23 vaccine on religious grounds, which includes moral or ethical beliefs or
 24 principles but not social, political, or economic philosophies or mere preference;
 25 or

1 (3) For a natural immunity exemption, if the employee provides proof of a positive
2 serum antibody test from a CLIA-certified laboratory that has received full approval
3 by, or Emergency Use Authorization from, the U.S. Food and Drug Administration,
4 showing the employee has specific antibodies against COVID-19 within one
5 hundred eighty days of submitting the exemption. An employer may require an
6 employee to resubmit the form and a new antibody test for renewal of this
7 exemption no more frequently than every one hundred eighty days from the date
8 of the prior positive test, provided that the employer is responsible for either
9 providing the test or reimbursing the employee for the cost of the subsequent
10 antibody test.

11 Any employer that conditions employment on COVID-19 immunization must notify
12 applicants and employees of the exemptions provided in this section. Nothing in this
13 section requires a medical professional to provide a medical exemption certificate or
14 provide an order for an antibody test.

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

16 This Act does not:

- 17 (1) Apply to the South Dakota National Guard;
18 (2) Prevent the South Dakota National Guard from requiring a COVID-19 immunization
19 in compliance with a valid and lawful command order that applies to a
20 servicemember who may be subject to federal activation;
21 (3) Apply to a health care provider, facility, or supplier if compliance would result in a
22 violation of regulations issued by the Centers for Medicare and Medicaid Services
23 or the Center for Disease Control and Prevention;
24 (4) Require any employer to adopt a COVID-19 immunization policy;
25 (5) Prohibit employers from adopting other exemptions or expanding the scope of the
26 exemptions in section 1 of this Act; or
27 (6) Require an employer to make an accommodation that would impose an undue
28 hardship to the employer.

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

30 An employee who suffers an adverse employment action by a violation of this Act
31 may apply for injunctive and declaratory relief, without bond, to restrain their employer
32 from violating this Act. This relief is not exclusive of any other relief an employee may
33 seek pursuant to other law.

- 1 **Section 4.** The provisions of this Act are repealed on June 30, 2023.
- 2 **Section 5.** Whereas, this Act is necessary for the immediate preservation of the public peace,
- 3 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force
- 4 and effect from and after its passage and approval.