

By: Cain

H.B. No. 84

A BILL TO BE ENTITLED

AN ACT

relating to informed consent before provision of certain medical treatments and exemptions from COVID-19 vaccination requirements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) this state is responsible for ensuring that individuals lawfully residing in this state have the right to provide or withhold consent for any medical treatment;

(2) the decision in *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir. 1972), establishing the concept of informed consent, has become a bedrock principle of the laws of this country and of each state;

(3) the American Medical Association's Code of Medical Ethics Opinion 2.1.1 recognizes the right of an individual to be fully informed of a recommended medical treatment to allow the individual to make an informed decision regarding the individual's course of treatment, including whether to obtain or decline a particular medical treatment;

(4) under 42 C.F.R. Section 482.13, a hospital is required as a condition of participation in Medicare to have in place a process for obtaining the informed consent of a patient before providing treatment to the patient and to ensure "[~~t~~]he patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care";

1 (5) the United States Supreme Court upheld mandatory  
2 vaccination policies imposed by state and local governments to  
3 combat smallpox in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905),  
4 and acknowledged in *Pruneyard Shopping Center v. Robins*, 447 U.S.  
5 74, 81 (1980), that a state may provide "individual liberties more  
6 expansive than those conferred by the Federal Constitution";

7 (6) persons inside and outside this state have sought  
8 or are seeking to compel or coerce individuals lawfully residing in  
9 this state into obtaining a COVID-19 vaccine contrary to the  
10 individuals' preferences;

11 (7) any attempt to compel or coerce an individual  
12 lawfully residing in this state into obtaining a COVID-19 vaccine  
13 contrary to the individual's preference is inconsistent with the  
14 principles of informed consent; and

15 (8) Section 161.0086, Health and Safety Code, as added  
16 by this Act, prohibits any person from compelling or coercing an  
17 individual lawfully residing in this state into obtaining medical  
18 treatments involving the administration of a COVID-19 vaccine.

19 SECTION 2. Subchapter A, Chapter 161, Health and Safety  
20 Code, is amended by adding Section 161.0086 to read as follows:

21 Sec. 161.0086. INFORMED CONSENT AND MEDICAL TREATMENT  
22 EXEMPTIONS FOR COVID-19 VACCINATION. (a) In this section:

23 (1) "COVID-19" means the 2019 novel coronavirus  
24 disease.

25 (2) "Health care facility" means a facility that is a  
26 provider of services, as defined by Section 1861, Social Security  
27 Act (42 U.S.C. Section 1395x).

1           (3) "Health care provider" means an individual  
2 licensed or otherwise authorized by this state to administer  
3 vaccines.

4           (b) A person may not compel or coerce an individual lawfully  
5 residing in this state into obtaining a medical treatment involving  
6 the administration of a COVID-19 vaccine, including a COVID-19  
7 vaccine approved or authorized by the United States Food and Drug  
8 Administration, contrary to the individual's vaccination  
9 preference.

10           (c) A health care provider may not provide to an individual  
11 lawfully residing in this state a medical treatment involving the  
12 administration of a COVID-19 vaccine, including a COVID-19 vaccine  
13 approved or authorized by the United States Food and Drug  
14 Administration, unless the provider obtains the individual's  
15 informed consent before administering the COVID-19 vaccine.

16           (d) For purposes of this section:

17                   (1) an individual lacks the capacity to provide  
18 informed consent for a medical treatment involving the  
19 administration of a COVID-19 vaccine if the individual has been  
20 compelled or coerced into obtaining a COVID-19 vaccine contrary to  
21 the individual's vaccination preference; and

22                   (2) a health care provider who advises or recommends  
23 the administration of a COVID-19 vaccine is not considered to have  
24 compelled or coerced an individual into obtaining a COVID-19  
25 vaccine based solely on that advice or recommendation.

26           (e) A person may not take an adverse action or impose a  
27 penalty of any kind against an individual lawfully residing in this

1 state for the individual's refusal or failure to obtain a medical  
2 treatment involving the administration of a COVID-19 vaccine.

3 (f) The attorney general may bring an action for injunctive  
4 relief against a person to prevent the person from violating this  
5 section. In an injunction issued under this subsection, a court may  
6 include reasonable requirements to prevent further violations of  
7 this section.

8 (g) A health care provider who violates Subsection (c) is  
9 liable to the individual who is the subject of the violation for  
10 damages in an amount of not less than \$5,000. The prevailing party  
11 in an action brought under this subsection may recover reasonable  
12 expenses incurred as a result of the action, including court costs,  
13 reasonable attorney's fees, investigation costs, witness fees, and  
14 deposition expenses.

15 (h) A health care provider may assert an affirmative defense  
16 to an action brought under Subsection (g) that the individual or an  
17 individual legally authorized to consent on behalf of the  
18 individual stated to the provider before the COVID-19 vaccine was  
19 administered that the informed consent was voluntarily provided.

20 SECTION 3. Section 161.0086, Health and Safety Code, as  
21 added by this Act, applies only to conduct that occurs on or after  
22 the effective date of this Act.

23 SECTION 4. If any provision of this Act or its application  
24 to any person or circumstance is held invalid, the invalidity does  
25 not affect other provisions or applications of this Act that can be  
26 given effect without the invalid provision or application, and to  
27 this end the provisions of this Act are declared severable.

1           SECTION 5. This Act takes effect immediately if it receives  
2 a vote of two-thirds of all the members elected to each house, as  
3 provided by Section 39, Article III, Texas Constitution. If this  
4 Act does not receive the vote necessary for immediate effect, this  
5 Act takes effect on the 91st day after the last day of the  
6 legislative session.