

By: Spiller

H.B. No. 91

A BILL TO BE ENTITLED

1 AN ACT
2 relating to informed consent before provision of certain medical
3 treatments and exemptions from COVID-19 vaccination requirements.

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

5 SECTION 1. This Act shall be known as the Texas COVID-19
6 Vaccine Freedom Act.

7 SECTION 2. The legislature finds that:

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

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

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

21 (4) under 42 C.F.R. Section 482.13, a hospital is
22 required as a condition of participation in Medicare to have in
23 place a process for obtaining the informed consent of a patient
24 before providing treatment to the patient and to ensure "[t]he

1 patient or his or her representative (as allowed under State law)
2 has the right to make informed decisions regarding his or her care";

3 (5) the United States Supreme Court upheld mandatory
4 vaccination policies imposed by state and local governments to
5 combat smallpox in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905),
6 and acknowledged in *Pruneyard Shopping Center v. Robins*, 447 U.S.
7 74, 81 (1980), that a state may provide "individual liberties more
8 expansive than those conferred by the Federal Constitution";

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

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

17 (8) federal regulations requiring an individual who
18 works or receives training in a health care facility, including a
19 hospital, to obtain a COVID-19 vaccine provide an exemption from
20 the vaccination requirement for individuals with a sincerely held
21 religious belief, observance, or practice that is incompatible with
22 the administration of the vaccine or a recognized medical condition
23 for which vaccines are contraindicated; and

24 (9) Section 161.0086, Health and Safety Code, as added
25 by this Act, prohibits any person from compelling or coercing an
26 individual lawfully residing in this state into obtaining medical
27 treatments involving the administration of a COVID-19 vaccine,

1 except as otherwise provided by the final rule adopted by the
2 Centers for Medicare and Medicaid Services and published at 86 Fed.
3 Reg. 61555 (November 5, 2021).

4 SECTION 3. Subchapter A, Chapter 161, Health and Safety
5 Code, is amended by adding Section 161.0086 to read as follows:

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

8 (1) "COVID-19" means the 2019 novel coronavirus
9 disease.

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

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

16 (b) A person may not compel or coerce an individual lawfully
17 residing in this state into obtaining a medical treatment involving
18 the administration of a COVID-19 vaccine, including a COVID-19
19 vaccine approved or authorized by the United States Food and Drug
20 Administration, if obtaining the vaccine is contrary to the
21 individual's vaccination preference.

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

1 (d) For purposes of this section:

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

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

11 (e) A person may not take an adverse action or impose a
12 penalty of any kind against an individual lawfully residing in this
13 state for the individual's refusal or failure to obtain a medical
14 treatment involving the administration of a COVID-19 vaccine.

15 (f) The prohibitions under Subsections (b), (c), and (e)
16 apply only to the extent the prohibitions do not conflict with the
17 final rule adopted by the Centers for Medicare and Medicaid
18 Services and published at 86 Fed. Reg. 61555 (November 5, 2021).

19 (g) An individual employed by or providing services or
20 receiving training in a health care facility that requires the
21 individual to obtain a COVID-19 vaccination is exempt from the
22 vaccination requirement if the individual requests orally or in
23 writing an exemption in accordance with federal law based on:

24 (1) a sincerely held religious belief, observance, or
25 practice that is incompatible with the administration of the
26 vaccine; or

27 (2) a recognized medical condition for which vaccines

1 are contraindicated.

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

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

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

19 SECTION 4. Section 161.0086, Health and Safety Code, as
20 added by this Act, applies only to conduct that occurs on or after
21 the effective date of this Act.

22 SECTION 5. If any provision of this Act or its application
23 to any person or circumstance is held invalid, the invalidity does
24 not affect other provisions or applications of this Act that can be
25 given effect without the invalid provision or application, and to
26 this end the provisions of this Act are declared severable.

27 SECTION 6. This Act takes effect immediately if it receives

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