

By: Middleton, et al.

S.B. No. 7

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting a private employer from adopting or enforcing certain COVID-19 vaccine mandates; authorizing an administrative penalty.

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

SECTION 1. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 81D to read as follows:

CHAPTER 81D. PROHIBITED CORONAVIRUS VACCINE MANDATES BY PRIVATE EMPLOYER

Sec. 81D.001. DEFINITIONS. In this chapter:

(1) "Adverse action" means an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, applicant for employment, or applicant for a contract position.

(2) "Commission" means the Texas Workforce Commission.

(3) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(4) "Employer" means a person, other than a governmental entity, who employs one or more employees.

Sec. 81D.002. EMPLOYER CORONAVIRUS VACCINE MANDATES PROHIBITED. An employer may not adopt or enforce a mandate requiring an employee, contractor, applicant for employment, or

1 applicant for a contract position to be vaccinated against COVID-19
2 as a condition of employment or a contract position.

3 Sec. 81D.003. PROHIBITED ADVERSE ACTION BY EMPLOYER. An
4 employer may not take an adverse action against an employee,
5 contractor, applicant for employment, or applicant for a contract
6 position for a refusal to be vaccinated against COVID-19.

7 Sec. 81D.0035. ADVERSE ACTION EXCEPTION FOR CERTAIN HEALTH
8 CARE FACILITIES, HEALTH CARE PROVIDERS, AND PHYSICIANS. (a) In
9 this section:

10 (1) "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 (2) "Health care provider" and "physician" have the
14 meanings assigned by Section 74.001, Civil Practice and Remedies
15 Code.

16 (b) A health care facility, health care provider, or
17 physician may establish and enforce a reasonable policy including
18 requiring the use of protective medical equipment by an individual
19 who is an employee or contractor of the facility, provider, or
20 physician and who is not vaccinated against COVID-19 based on the
21 level of risk the individual presents to patients from the
22 individual's routine and direct exposure to patients.

23 (c) Establishing or enforcing a policy described by
24 Subsection (b) is not considered an adverse action under this
25 chapter.

26 Sec. 81D.004. COMPLAINT; INVESTIGATION. (a) An employee,
27 contractor, applicant for employment, or applicant for a contract

1 position against whom an employer took an adverse action in
2 violation of this chapter may file a complaint with the commission
3 in the form and manner prescribed by commission rules.

4 (b) A complaint filed with the commission must include the
5 following information:

6 (1) the name of the complainant;

7 (2) the name of the employer; and

8 (3) the nature and description of any alleged adverse
9 action the employer took against the complainant.

10 (c) On receipt of a complaint under Subsection (a), the
11 commission shall conduct an investigation to determine whether the
12 employer took an adverse action against the complainant because of
13 the complainant's refusal to be vaccinated against COVID-19. For a
14 complaint against a health care facility, health care provider, or
15 physician the commission shall consult with the Department of State
16 Health Services in determining if a policy adopted under Section
17 81D.0035 was reasonable.

18 (d) The commission shall adopt rules prescribing the
19 procedures for accepting complaints and conducting investigations
20 under this section.

21 Sec. 81D.005. INJUNCTIVE RELIEF. (a) On receipt of a
22 complaint filed under Section 81D.004, the commission may request
23 that the attorney general bring an action for injunctive relief
24 against the employer to prevent further violations of this chapter
25 by the employer. The action must be filed in a district court in:

26 (1) Travis County; or

27 (2) the county in which the alleged adverse action

1 occurred.

2 (b) In an injunction issued under Subsection (a), a court
3 may include reasonable requirements to prevent further violations
4 of this section.

5 Sec. 81D.006. ADMINISTRATIVE PENALTY. (a) The commission
6 may impose on an employer who violates this chapter an
7 administrative penalty of not more than \$10,000 for each violation,
8 unless the employer, as applicable:

9 (1) hires the applicant for employment or offers a
10 contract to the applicant for a contract position; or

11 (2) reinstates the employee or contractor and provides
12 the employee or contractor with back pay from the date the employer
13 took the adverse action and makes every reasonable effort to
14 reverse the effects of the adverse action, including reestablishing
15 employee benefits for which the employee or contractor otherwise
16 would have been eligible if the adverse action had not been taken.

17 (b) If, following an investigation under Section 81D.004,
18 the commission determines that the employer violated this chapter,
19 the commission may recover from the employer reasonable
20 investigative costs incurred by the commission in conducting the
21 investigation, regardless of whether the employer has taken an
22 action described by Subsection (a)(1) or (2).

23 SECTION 2. The change in law made by this Act applies only
24 to conduct or an adverse action that occurs on or after the
25 effective date of this Act.

26 SECTION 3. If any provision of this Act or its application
27 to any person or circumstance is held invalid, the invalidity does

1 not affect other provisions or applications of this Act that can be
2 given effect without the invalid provision or application, and to
3 this end the provisions of this Act are declared severable.

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