

By: Corte

H.B. No. 2840

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the right to refuse certain immunizations and medical  
3 treatment.

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

5 SECTION 1. The legislature finds that people and  
6 organizations hold different beliefs about whether immunizations  
7 are necessary, safe, or morally acceptable for individuals. The  
8 right to informed consent for a medical procedure that carries the  
9 risk of injury or death is a human right. Individual inviolability  
10 and the right to self determination supersede the interest of the  
11 state in deriving benefits from the individual. It is the public  
12 policy of the State of Texas to promote immunization while  
13 respecting and protecting the right to informed consent and the  
14 right to act in accordance with conscience of all persons who refuse  
15 to obtain an immunization by reason of their refusal to act contrary  
16 to their religious beliefs, conscience, or conscientious  
17 convictions.

18 SECTION 2. Section 38.001, Education Code, is amended by  
19 amending Subsection (c) and adding Subsection (f) to read as  
20 follows:

21 (c) Immunization is not required for a person's admission to  
22 any elementary or secondary school if the person applying for  
23 admission:

24 (1) submits to the admitting official:

1 (A) an affidavit or a certificate signed by a  
2 physician who is duly registered and licensed to practice medicine  
3 in the United States, in which it is stated that, in the physician's  
4 opinion, the immunization required could [~~would~~] be injurious to  
5 the health and well-being of the applicant or any member of the  
6 applicant's family or household; or

7 (B) an affidavit signed by the applicant or, if a  
8 minor, by the applicant's parent or guardian stating that the  
9 applicant declines immunization for reasons of conscience or  
10 because of a religious belief [~~conflicts with the tenets and~~  
11 ~~practice of a recognized church or religious denomination of which~~  
12 ~~the applicant is an adherent or member, except that this exemption~~  
13 ~~does not apply in times of emergency or epidemic declared by the~~  
14 ~~commissioner of public health~~]; or

15 (2) is a member of the armed forces of the United  
16 States and is on active duty.

17 (f) A person who has not received the immunizations required  
18 by this section for reasons of conscience or because of the person's  
19 religious beliefs may be excluded from school in times of emergency  
20 or epidemic declared by the commissioner of public health.

21 SECTION 3. Section 51.933(d), Education Code, is amended to  
22 read as follows:

23 (d) No form of immunization is required for a person's  
24 admission to an institution of higher education if the person  
25 applying for admission:

26 (1) submits to the admitting official:

27 (A) an affidavit or a certificate signed by a

1 physician who is duly registered and licensed to practice medicine  
2 within the United States in which it is stated that, in the  
3 physician's opinion, the immunization required could [~~would~~] be  
4 injurious to the health and well-being of the applicant or any  
5 member of the applicant's family or household; or

6 (B) an affidavit signed by the applicant or, if a  
7 minor, by the applicant's parent or guardian stating that the  
8 applicant declines immunization for reasons of conscience or  
9 because of a religious belief [~~conflicts with the tenets and~~  
10 ~~practice of a recognized church or religious denomination of which~~  
11 ~~the applicant is an adherent or member~~]; or

12 (2) is a member of the armed forces of the United  
13 States and is on active duty.

14 SECTION 4. Section 81.009, Health and Safety Code, is  
15 amended to read as follows:

16 Sec. 81.009. EXEMPTION FROM MEDICAL TREATMENT. (a) This  
17 chapter does not authorize or require the medical treatment or  
18 immunization of an individual if the individual or, in the case of a  
19 child, the parent, managing conservator, or guardian of the child  
20 refuses treatment or immunization for the following reasons:

21 (1) the medical treatment or immunization is medically  
22 contraindicated based on the opinion of a physician licensed by any  
23 state in the United States who has examined the individual; or

24 (2) the individual or, in the case of a child, the  
25 parent, managing conservator, or guardian of the child states that  
26 the medical treatment or immunization is being declined for reasons  
27 of conscience or because of a religious belief [~~who chooses~~

1 ~~treatment by prayer or spiritual means as part of the tenets and~~  
2 ~~practices of a recognized church of which the individual is an~~  
3 ~~adherent or member].~~

4 (b) An [However, the] individual who refuses medical  
5 treatment or immunization may be humanely isolated or quarantined  
6 in the least restrictive means practicable either at home if the  
7 individual does not have a confirmed case of a communicable disease  
8 or in an appropriate facility and shall obey the rules, orders, and  
9 instructions of the department or health authority while in  
10 isolation or quarantine.

11 ~~[(b) An exemption from medical treatment under this section~~  
12 ~~does not apply during an emergency or an area quarantine or after~~  
13 ~~the issuance by the governor of an executive order or a proclamation~~  
14 ~~under Chapter 418, Government Code (Texas Disaster Act of 1975).]~~

15 SECTION 5. Section 81.087, Health and Safety Code, is  
16 amended by amending Subsection (a) and adding Subsection (a-1) to  
17 read as follows:

18 (a) Except as provided by Subsection (a-1), a [A] person  
19 commits an offense if the person knowingly refuses to perform or  
20 allow the performance of certain control measures ordered by a  
21 health authority or the department under Sections 81.083-81.086.

22 (a-1) If the control measure requires medical treatment or  
23 immunization of the individual and the individual or, in the case of  
24 a child, the parent, managing conservator, or guardian of the child  
25 claims an exemption for medical, religious, or conscientious  
26 reasons as provided by Section 81.009, the person commits an  
27 offense only if the person refuses to follow an order by a health

1 authority or the department for isolation or quarantine.

2 SECTION 6. Section 161.001(d), Health and Safety Code, is  
3 amended to read as follows:

4 (d) This section does not apply to:

5 (1) a negligent act in administering the vaccine or  
6 immunizing agent; or

7 (2) a health care provider who fails to follow the  
8 requirements of 42 U.S.C. Sections 300aa-25 and 300aa-26 in  
9 administering a vaccine or immunizing agent.

10 SECTION 7. Section 161.004(d), Health and Safety Code, is  
11 amended to read as follows:

12 (d) A child is exempt from an immunization required by this  
13 section if:

14 (1) [~~immunization conflicts with the tenets of an~~  
15 ~~organized religion to which~~] a parent, managing conservator, or  
16 guardian states that the immunization is being declined for reasons  
17 of conscience or because of a religious belief [~~belongs~~]; or

18 (2) the immunization is medically contraindicated  
19 based on the opinion of [~~an examination of the child by~~] a physician  
20 licensed by any state in the United States who has examined the  
21 child.

22 SECTION 8. Section 42.043(d), Human Resources Code, is  
23 amended to read as follows:

24 (d) No immunization may be required for admission to a  
25 facility regulated under this chapter if a person applying for a  
26 child's admission submits one of the following affidavits:

27 (1) an affidavit signed by a licensed physician

1 stating that the immunization could [~~would~~] be injurious to the  
2 health and well-being of the child or a member of the child's family  
3 or household; or

4 (2) an affidavit signed by the child's parent or  
5 guardian stating that the applicant declines immunization for  
6 reasons of conscience or because of a religious belief [~~conflicts~~  
7 ~~with the tenets and practices of a recognized religious~~  
8 ~~organization of which the applicant is an adherent or a member~~].

9 SECTION 9. (a) The change in law made by this Act to Section  
10 81.087, Health and Safety Code, applies only to an offense  
11 committed on or after the effective date of this Act. For purposes  
12 of this section, an offense is committed before the effective date  
13 of this Act if any element of the offense occurs before that date.

14 (b) An offense committed before the effective date of this  
15 Act is governed by the law in effect when the offense was committed,  
16 and the former law is continued in effect for that purpose.

17 SECTION 10. The change in law made by this Act to Section  
18 161.001, Health and Safety Code, applies only to a cause of action  
19 that accrues on or after the effective date of this Act. An action  
20 that accrued before the effective date of this Act is governed by  
21 the law applicable to the action immediately before the effective  
22 date of this Act, and that law is continued in effect for that  
23 purpose.

24 SECTION 11. This Act takes effect September 1, 2003.