87S31122 JG-D

By:  Harrison H.B. No. 168

A BILL TO BE ENTITLED

AN ACT

relating to informed consent before the provision of certain medical treatments involving COVID-19 vaccination.

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

SECTION 1.  This Act shall be known as the Texas COVID Vaccine Freedom Act.

SECTION 2.  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";

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

(6)  persons inside and outside this state have sought or are seeking to compel or coerce individuals lawfully residing in this state into being vaccinated against COVID-19 contrary to the individuals' preferences;

(7)  any attempt to compel or coerce an individual lawfully residing in this state into being vaccinated against COVID-19 contrary to the individual's preference is inconsistent with the principles of informed consent; and

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

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

Sec. 161.0086.  INFORMED CONSENT REQUIRED FOR MEDICAL TREATMENTS INVOLVING COVID-19 VACCINATION. (a) In this section:

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

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

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

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

(d)  For purposes of this section, an individual lacks the capacity to provide informed consent for a medical treatment involving the administration of a COVID-19 vaccine if the individual has been compelled or coerced into being vaccinated against COVID-19 contrary to the individual's vaccination preference.

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

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

(g)  A health care provider who violates Subsection (c) is liable to the individual who is the subject of the violation for damages in an amount of not less than $5,000. In an action brought under this subsection, a claimant may recover reasonable expenses incurred in bringing the action, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

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

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

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