

BILL ANALYSIS

C.S.S.B. 7
By: Middleton
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to the U.S. Bureau of Labor Statistics, the COVID-19 pandemic disrupted business across the United States. Private employers were faced with the enormous task of navigating complex decisions based on evolving data and information, including decisions relating to COVID-19 vaccinations. According to an October 2021 survey conducted by the KFF COVID-19 Vaccine Monitor, one in four employees reported that their employer required them to get a COVID-19 vaccine. Meanwhile, the same survey found that over half of the employees surveyed were opposed to their employers implementing a vaccine requirement.

While the legislature passed S.B. 29, Acts of the 88th Legislature, Regular Session, to prevent governmental entities from requiring individuals to receive a COVID-19 vaccination, there is no such protection currently in law for employees of private employers. C.S.S.B. 7 seeks to better protect individuals' right to make their own medical decisions by prohibiting private employers from mandating that their employees or contractors receive the COVID-19 vaccine.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 7 amends the Health and Safety Code to prohibit an employer, defined for purposes of the bill as a person, other than a governmental entity, who employs one or more employees, from doing the following:

- adopting or enforcing a mandate requiring an employee, contractor, applicant for employment, or applicant for a contract position to be vaccinated against COVID-19 as a condition of employment or a contract position; or
- taking an adverse action against an employee, contractor, applicant for employment, or applicant for a contract position for a refusal to be vaccinated against COVID-19.

The bill defines "adverse action" as 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 and defines "COVID-19" as the 2019 novel coronavirus disease and any variants of the disease.

C.S.S.B. 7 authorizes a health care facility, health care provider, or physician to establish and enforce a reasonable policy that includes requiring the use of protective medical equipment by an individual who is an employee or contractor of the facility, provider, or physician and who

is not vaccinated against COVID-19 based on the level of risk the individual presents to patients from the individual's routine and direct exposure to patients. Establishing or enforcing such a policy is not considered an adverse action under the bill's provisions. The bill defines "health care facility" as a facility that is a provider of services, as defined by Section 1861 of the federal Social Security Act for purposes of the Medicare program, and defines "health care provider" and "physician" by reference to Civil Practice and Remedies Code provisions relating to medical liability.

C.S.S.B. 7 authorizes an employee, contractor, applicant for employment, or applicant for a contract position against whom an employer took an adverse action in violation of the bill's provisions to file a complaint with the Texas Workforce Commission (TWC) in the form and manner prescribed by TWC rules. The complaint must include the complainant's name, the employer's name, and the nature and description of any alleged adverse action the employer took against the complainant. The bill requires TWC, on receipt of such a complaint, to conduct an investigation to determine whether the employer took an adverse action against the complainant because of the complainant's refusal to be vaccinated against COVID-19. For a complaint against a health care facility, health care provider, or physician, TWC must consult with the Department of State Health Services in determining if an adopted policy regarding the use of protective medical equipment by employees or contractors who are not vaccinated against COVID-19 was reasonable.

C.S.S.B. 7 authorizes TWC, on receipt of a complaint, to request that the attorney general bring an action for injunctive relief against the employer to prevent further violations of the bill's provisions by the employer. The action must be filed in a district court in Travis County or the county in which the alleged adverse action occurred. In such an injunction, a court may include reasonable requirements to prevent further violations.

C.S.S.B. 7 requires TWC to impose on an employer who violates the bill's provisions an administrative penalty in an amount equal to \$10,000 for each violation, unless the employer takes one of the following corrective actions, as applicable:

- hires the applicant for employment or offers a contract to the applicant for a contract position; or
- reinstates the employee or contractor and provides the employee or contractor with back pay from the date the employer took the adverse action and makes every reasonable effort to reverse the effects of the adverse action, including reestablishing employee benefits for which the employee or contractor otherwise would have been eligible if the adverse action had not been taken.

If, following an investigation, TWC determines that the employer violated the bill's provisions, TWC may recover from the employer reasonable investigative costs incurred by TWC in conducting the investigation, regardless of whether the employer has taken one of the specified corrective actions.

C.S.S.B. 7 requires TWC to adopt rules as necessary to implement and enforce the bill's provisions.

C.S.S.B. 7 applies only to conduct or an adverse action that occurs on or after the bill's effective date. If any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and to this end the provisions of the bill are declared severable.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 7 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute omits a provision from the engrossed that required TWC to adopt rules prescribing the procedures for accepting complaints and conducting investigations under the bill's provisions.

The substitute includes a provision that was not in the engrossed requiring TWC to adopt rules as necessary to implement and enforce the bill's provisions.

Whereas the engrossed authorized TWC to impose an administrative penalty on an employer who violates the bill's provisions and does not take corrective action, the substitute requires TWC to do so. Additionally, the substitute changes the amount of the administrative penalty from an amount that is capped at \$10,000 for each violation, as in the engrossed, to an amount that is equal to \$10,000 for each violation.

The engrossed authorized a court, in an injunction issued against an employer, to include reasonable requirements to prevent further violations of the bill's provisions relating to injunctive relief, whereas the substitute authorizes a court, in such an injunction, to include reasonable requirements to prevent further violations of the bill's provisions generally.