88S30430 SRA-F

By:  Hall S.B. No. 41

A BILL TO BE ENTITLED

AN ACT

relating to prohibited vaccination status discrimination and requirements for COVID-19 vaccines; authorizing administrative penalties.

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

ARTICLE 1. PROHIBITED COVID-19 VACCINATION STATUS DISCRIMINATION

SECTION 1.01.  Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 122 to read as follows:

CHAPTER 122. PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS

Sec. 122.001.  DEFINITIONS. In this chapter:

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

(2)  "Public accommodation" means a disposition, service, financial aid, or benefit provided to members of the public.

Sec. 122.002.  DISCRIMINATION PROHIBITED. A person may not discriminate against or refuse to provide a public accommodation to an individual based on the individual's COVID-19 vaccination status by:

(1)  providing to the individual a public accommodation that is different or provided in a different manner than the accommodation provided or manner of providing the accommodation to other members of the public;

(2)  subjecting the individual to segregation or separate treatment in any matter related to providing the public accommodation to the individual;

(3)  restricting in any way the individual's enjoyment of a public accommodation in a manner that distinguishes the individual's enjoyment from the enjoyment of other members of the public;

(4)  treating the individual differently from other members of the public in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition that individuals must satisfy before a public accommodation is provided; or

(5)  denying the individual an opportunity to participate in a program in a manner that differs from the manner the opportunity is provided to other members of the public.

Sec. 122.003.  COMPLAINT; EQUITABLE RELIEF. (a) A person may file a complaint with the attorney general if the person asserts facts supporting an allegation that another person has violated Section 122.002. The person filing the complaint must include a sworn affidavit stating that, to the person's knowledge, all of the facts asserted in the complaint are true and correct.

(b)  If the attorney general determines that a complaint filed under Subsection (a) is valid, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the person against whom relief is sought resides to compel the person to comply with Section 122.002.

Sec. 122.004.  EFFECT ON OTHER LAW. This chapter prevails to the extent of a conflict between this chapter and any other law.

SECTION 1.02.  Subchapter A, Chapter 161, Health and Safety Code, is amended by adding Sections 161.0057 and 161.0086 to read as follows:

Sec. 161.0057.  LONG-TERM CARE FACILITY: PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) In this section:

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

(2)  "Long-term care facility" means a facility licensed or regulated under Chapter 242, 247, or 252.

(b)  A long-term care facility may not refuse to provide services to a resident based on the resident's COVID-19 vaccination status.

(c)  A long-term care facility that violates this section is ineligible to receive state money for services provided to residents.

(d)  A violation of this section is a violation of the long-term care facility's applicable licensing law and subjects the facility to disciplinary action and the imposition of administrative penalties under that law.

(e)  This section prevails to the extent of a conflict between this section and any other law.

Sec. 161.0086.  PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) In this section, "COVID-19" means the 2019 novel coronavirus disease.

(b)  A health care provider or health care facility may not refuse to provide a health care service to a patient because the patient has not received a COVID-19 vaccine.

(c)  A health care facility providing clinical experience to satisfy a student's degree requirements may not discriminate against a student or prohibit admission, enrollment, or employment as a student, intern, or resident based on the student's COVID-19 vaccination status.

(d)  Notwithstanding any other law, a health care provider or health care facility that violates this section is ineligible to receive state money for health care services provided to patients.

(e)  A violation of this section is a violation of the health care provider's or health care facility's applicable licensing law and subjects the facility or provider to disciplinary action and the imposition of administrative penalties under that law.

(f)  This section prevails to the extent of a conflict between this section and any other law.

SECTION 1.03.  Chapter 544, Insurance Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. COVID-19 VACCINATION STATUS

Sec. 544.701.  DEFINITIONS. In this subchapter:

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

(2)  "Health benefit plan issuer" means an issuer, administrator, or sponsor of a health benefit plan described by Section 544.702.

(3)  "Participating provider" means a health care provider who has contracted with a health benefit plan issuer to provide services to enrollees.

Sec. 544.702.  APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including a group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage or similar coverage document that is offered by:

(1)  an insurance company;

(2)  a group hospital service corporation operating under Chapter 842;

(3)  a health maintenance organization operating under Chapter 843;

(4)  an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5)  a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6)  a stipulated premium company operating under Chapter 884;

(7)  a fraternal benefit society operating under Chapter 885;

(8)  a Lloyd's plan operating under Chapter 941; or

(9)  an exchange operating under Chapter 942.

(b)  Notwithstanding any other law, this subchapter applies to:

(1)  a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2)  a standard health benefit plan issued under Chapter 1507;

(3)  a basic coverage plan under Chapter 1551;

(4)  a basic plan under Chapter 1575;

(5)  a primary care coverage plan under Chapter 1579;

(6)  a plan providing basic coverage under Chapter 1601;

(7)  health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(8)  the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code;

(9)  the child health plan program under Chapter 62, Health and Safety Code;

(10)  a regional or local health care program operated under Section 75.104, Health and Safety Code;

(11)  a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code;

(12)  county employee group health benefits provided under Chapter 157, Local Government Code; and

(13)  health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.

(c)  This subchapter applies to a life insurance company that:

(1)  issues or delivers a life insurance policy in this state; or

(2)  is organized under the laws of this state.

Sec. 544.703.  PROHIBITED DISCRIMINATION AGAINST INDIVIDUAL. A group health benefit plan issuer or a life insurance company may not use an individual's COVID-19 vaccination status to:

(1)  reject, deny, limit, cancel, refuse to renew, or increase the premiums for coverage of the individual under a plan offered by the issuer or company;

(2)  limit the amount, extent, or kind of coverage available to the individual; or

(3)  otherwise adversely affect the individual's eligibility for coverage.

Sec. 544.704.  PROHIBITED DISCRIMINATION IN GROUP PLAN RATING. The COVID-19 vaccination status of individuals covered under a group health benefit plan that provides coverage in this state may not be used as a factor in the rating of the plan.

Sec. 544.705.  PROHIBITED DISCRIMINATION AGAINST PARTICIPATING PROVIDER. (a) A health benefit plan issuer may not use the COVID-19 vaccination status of a health care provider's patients as a qualification or requirement for contracting with the provider or as a basis for terminating a contract with the provider.

(b)  A health benefit plan issuer may not use the COVID-19 vaccination status of enrollees as a factor in providing a financial incentive or assessing a financial or other penalty against a participating provider.

Sec. 544.706.  EFFECT ON OTHER LAW. This subchapter prevails to the extent of a conflict between this subchapter and any other law.

SECTION 1.04.  Chapter 21, Labor Code, is amended by adding Subchapter H-1 to read as follows:

SUBCHAPTER H-1. VACCINATION STATUS DISCRIMINATION

Sec. 21.421.  PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) In this subchapter, "COVID-19" means the 2019 novel coronavirus disease.

(b)  An employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to the compensation or the terms, conditions, or privileges of employment because the individual has not received a COVID-19 vaccine.

(c)  A labor organization commits an unlawful employment practice if the labor organization excludes or expels from membership or otherwise discriminates against an individual because the individual has not received a COVID-19 vaccine.

(d)  An employment agency commits an unlawful employment practice if the employment agency classifies or refers for employment, fails or refuses to refer for employment, or otherwise discriminates against an individual because the individual has not received a COVID-19 vaccine.

(e)  An employer, labor organization, or employment agency commits an unlawful employment practice if the employer, labor organization, or employment agency limits, segregates, or classifies an employee, member, or applicant for employment or membership in a way that would deprive or tend to deprive the employee, member, or applicant of employment opportunities or otherwise adversely affect the status of the employee, member, or applicant because the employee, member, or applicant has not received a COVID-19 vaccine.

Sec. 21.422.  EFFECT ON OTHER LAW. This subchapter prevails to the extent of a conflict between this subchapter and any other law.

SECTION 1.05.  Title 2, Occupations Code, is amended by adding Chapter 61 to read as follows:

CHAPTER 61. VACCINATION STATUS DISCRIMINATION

Sec. 61.001.  PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) In this chapter, "COVID-19" means the 2019 novel coronavirus disease.

(b)  A licensing authority may not deny an application for an occupational license, suspend, revoke, or refuse to renew an occupational license, or take any other disciplinary action against an individual based on:

(1)  the individual's COVID-19 vaccination status; or

(2)  the individual's refusal to receive a COVID-19 vaccine.

Sec. 61.002.  EFFECT ON OTHER LAW. This chapter prevails to the extent of a conflict between this chapter and any other law.

SECTION 1.06.  Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 103A to read as follows:

CHAPTER 103A. RIGHT TO OBJECT TO COVID-19 VACCINATIONS

Sec. 103A.001.  DEFINITION. In this chapter, "COVID-19" means the 2019 novel coronavirus disease.

Sec. 103A.002.  RIGHT TO OBJECT. A hospital or other health care facility may not require as a condition of employment that an employee, including a physician, nurse, or staff member, receive a COVID-19 vaccine.

Sec. 103A.003.  DISCRIMINATION PROHIBITED. (a) A hospital or other health care facility may not discriminate against an employee, including a physician, nurse, or staff member, or an applicant who refuses to receive a COVID-19 vaccine.

(b)  An educational institution may not discriminate against an applicant for admission or employment as a student, intern, or resident based on:

(1)  the applicant's vaccination status with respect to a COVID-19 vaccine; or

(2)  the applicant's refusal to receive a COVID-19 vaccine.

Sec. 103A.004.  REMEDIES. A person aggrieved by a violation of this chapter may bring an action against a hospital, other health care facility, or educational institution that administers a hospital or other health care facility in a district court in the county where the hospital, facility, or institution is located for:

(1)  an injunction against any further violation;

(2)  appropriate equitable relief, including:

(A)  admission or reinstatement of employment; and

(B)  back pay and 10 percent interest on the back pay; and

(3)  any other relief necessary to ensure compliance with this chapter.

Sec. 103A.005.  EFFECT ON OTHER LAW. This chapter prevails to the extent of a conflict between this chapter and any other law.

SECTION 1.07.  Subchapter A, Chapter 521, Transportation Code, is amended by adding Section 521.016 to read as follows:

Sec. 521.016.  PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) In this section, "COVID-19" means the 2019 novel coronavirus disease.

(b)  The department may not use an individual's COVID-19 vaccination status as a requirement for the issuance or renewal of a driver's license, election identification certificate, or personal identification certificate.

(c)  The department may not discriminate against, deny services or access to, or otherwise penalize any individual for not receiving a COVID-19 vaccine or not providing proof of receiving a COVID-19 vaccine.

(d)  This section prevails to the extent of a conflict between this section and any other law.

ARTICLE 2. PROHIBITED COVID-19 VACCINATION REQUIREMENTS

SECTION 2.01.  Section 38.001(b), Education Code, as amended by Chapters 43 (H.B. 1098) and 94 (H.B. 1059), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(b)  Subject to Subsections (b-1), (b-2), and (c), the executive commissioner of the Health and Human Services Commission may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school.

SECTION 2.02.  Section 38.001, Education Code, is amended by adding Subsection (b-2) to read as follows:

(b-2)  A student may not be required, as a condition of the student's admission to any elementary or secondary school, to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

SECTION 2.03.  Section 51.933, Education Code, is amended by amending Subsection (b) and adding Subsection (b-2) to read as follows:

(b)  Except as provided by Subsection (b-2), the [~~The~~] executive commissioner of the Health and Human Services Commission may require immunizations against the diseases listed in Subsection (a) and additional diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession, and the executive commissioner may require those immunizations for any students in times of an emergency or epidemic in a county where the commissioner of state health services has declared such an emergency or epidemic.

(b-2)  An applicant for admission may not be required to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

SECTION 2.04.  Section 81.023, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d)  The department, in developing immunization requirements under this section, may not require a child to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

SECTION 2.05.  Section 81.082, Health and Safety Code, is amended by adding Subsection (c-2) to read as follows:

(c-2)  In administering a control measure under this subchapter, the department or a health authority may not require an individual to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

SECTION 2.06.  Section 161.004(f), Health and Safety Code, is amended to read as follows:

(f)  The executive commissioner shall adopt rules that are necessary to administer this section. In adopting the rules, the executive commissioner may not require a child to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

SECTION 2.07.  Section 161.005, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e)  The department, the executive commissioner, a facility, or a physician may not require a child to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

SECTION 2.08.  Section 224.002, Health and Safety Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  The policy may not require a covered individual to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

SECTION 2.09.  Section 42.043, Human Resources Code, is amended by adding Subsection (c-1) to read as follows:

(c-1)  Notwithstanding Subsections (b) and (c), a child may not be required to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

SECTION 2.10.  Section 42.04305, Human Resources Code, is amended by adding Subsection (c-1) to read as follows:

(c-1)  The policy may not require a facility employee to receive a vaccine for the 2019 novel coronavirus disease (COVID-19).

ARTICLE 3. TRANSITION AND EFFECTIVE DATE

SECTION 3.01.  Each facility subject to Chapter 224, Health and Safety Code, as amended by this Act, or Section 42.04305, Human Resources Code, as amended by this Act, shall modify the facility's vaccine-preventable disease policy to conform with the changes in law made by this Act not later than March 1, 2024.

SECTION 3.02.  (a) Subchapter O, Chapter 544, Insurance Code, as added by this Act, applies only to a health benefit plan or insurance policy delivered, issued for delivery, or renewed on or after March 1, 2024.

(b)  Section 544.705, Insurance Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act.

SECTION 3.03.  (a) The changes in law made by this Act to Title 2, Education Code, apply starting with the 2024-2025 school year.

(b)  The changes in law made by this Act to Title 3, Education Code, apply starting with the 2024-2025 academic year.

SECTION 3.04.  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.