

By: Harrison

H.B. No. 35

A BILL TO BE ENTITLED

1 AN ACT
2 relating to informed consent before provision of certain medical
3 treatments and exemptions from COVID-19 vaccination requirements.

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

5 SECTION 1. This Act shall be known as the Texas COVID-19
6 Vaccine Freedom Act.

7 SECTION 2. The legislature finds that:

8 (1) this state is responsible for ensuring that
9 individuals lawfully residing in this state have the right to
10 provide or withhold consent for any medical treatment;

11 (2) the decision in *Canterbury v. Spence*, 464 F.2d 772
12 (D.C. Cir. 1972), establishing the concept of informed consent, has
13 become a bedrock principle of the laws of this country and of each
14 state;

15 (3) the American Medical Association's Code of Medical
16 Ethics Opinion 2.1.1 recognizes the right of an individual to be
17 fully informed of a recommended medical treatment to allow the
18 individual to make an informed decision regarding the individual's
19 course of treatment, including whether to obtain or decline a
20 particular medical treatment;

21 (4) under 42 C.F.R. Section 482.13, a hospital is
22 required as a condition of participation in Medicare to have in
23 place a process for obtaining the informed consent of a patient
24 before providing treatment to the patient and to ensure "[~~t~~]he

1 patient or his or her representative (as allowed under State law)
2 has the right to make informed decisions regarding his or her care";

3 (5) the United States Supreme Court upheld mandatory
4 vaccination policies imposed by state and local governments to
5 combat smallpox in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905),
6 and acknowledged in *Pruneyard Shopping Center v. Robins*, 447 U.S.
7 74, 81 (1980), that a state may provide "individual liberties more
8 expansive than those conferred by the Federal Constitution";

9 (6) persons inside and outside this state have sought
10 or are seeking to compel or coerce individuals lawfully residing in
11 this state into obtaining a COVID-19 vaccine contrary to the
12 individuals' preferences;

13 (7) any attempt to compel or coerce an individual
14 lawfully residing in this state into obtaining a COVID-19 vaccine
15 contrary to the individual's preference is inconsistent with the
16 principles of informed consent; and

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

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

23 Sec. 161.0086. INFORMED CONSENT AND MEDICAL TREATMENT
24 EXEMPTIONS FOR COVID-19 VACCINATION. (a) In this section:

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

27 (2) "Health care facility" means a facility that is a

1 provider of services, as defined by Section 1861, Social Security
2 Act (42 U.S.C. Section 1395x).

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

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

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

18 (d) For purposes of this section:

19 (1) an individual lacks the capacity to provide
20 informed consent for a medical treatment involving the
21 administration of a COVID-19 vaccine if the individual has been
22 compelled or coerced into obtaining a COVID-19 vaccine contrary to
23 the individual's vaccination preference; and

24 (2) a health care provider who advises or recommends
25 the administration of a COVID-19 vaccine is not considered to have
26 compelled or coerced an individual into obtaining a COVID-19
27 vaccine based solely on that advice or recommendation.

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

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

10 (g) A health care provider who violates Subsection (c) is
11 liable to the individual who is the subject of the violation for
12 damages in an amount of not less than \$5,000. The prevailing party
13 in an action brought under this subsection may recover reasonable
14 expenses incurred as a result of the action, including court costs,
15 reasonable attorney's fees, investigation costs, witness fees, and
16 deposition expenses.

17 (h) A health care provider may assert an affirmative defense
18 to an action brought under Subsection (g) that the individual or an
19 individual legally authorized to consent on behalf of the
20 individual stated to the provider before the COVID-19 vaccine was
21 administered that the informed consent was voluntarily provided.

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

25 SECTION 5. If any provision of this Act or its application
26 to any person or circumstance is held invalid, the invalidity does
27 not affect other provisions or applications of this Act that can be

1 given effect without the invalid provision or application, and to
2 this end the provisions of this Act are declared severable.

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