BILL ANALYSIS

C.S.H.B. 81
By: Harrison
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many public and private entities within Texas such as the San Antonio Independent School District and Southwest Airlines have required or are attempting to require COVID-19 vaccinations of Texans against their will. Additionally, the federal government continues to mandate vaccinations of private citizens, including Texans through a Centers for Medicare & Medicaid Services regulation.

Forced COVID-19 vaccination is inconsistent with informed consent, which is a bedrock principle of federal and state law in all 50 states. The concept of informed consent makes clear that Texans have the right to be fully informed of the potential risks and benefits of a medical treatment, so that they may make the personal decision to decline or undergo the medical treatment.

C.S.H.B. 81, the Texas COVID-19 Vaccine Freedom Act, seeks to address this issue by requiring informed consent before the administration of a COVID-19 vaccine to an individual and by providing for administrative penalties and civil action against providers who violate this requirement.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 81 amends the Health and Safety Code to establish the following prohibitions with respect to COVID-19 vaccination:

- a prohibition against a person compelling or coercing an individual lawfully residing in Texas into obtaining a medical treatment involving the administration of any COVID-19 vaccine contrary to the individual's vaccination preference;
- a prohibition against a health care provider providing to an individual lawfully residing in Texas a medical treatment involving the administration of any COVID-19 vaccine, unless the provider obtains the individual's informed consent before administering the COVID-19 vaccine; and
- a prohibition against a person taking an adverse action or imposing a penalty of any kind against an individual lawfully residing in Texas for their refusal or failure to obtain a medical treatment involving the administration of a COVID-19 vaccine.

These prohibitions apply only to the extent they do not conflict with the final rule adopted by the federal Centers for Medicare and Medicaid Services (CMS) and published at 86 Fed. Reg. 61555 regarding COVID-19 vaccinations for Medicare- and Medicaid-certified health care providers and suppliers. The bill defines "COVID-19" as the 2019 novel coronavirus disease.

C.S.H.B. 81 exempts an individual employed by or providing services or receiving training in a health care facility that requires the individual to obtain a COVID-19 vaccination from the vaccination requirement if the individual requests orally or in writing an exemption in accordance with federal law based on a sincerely held religious belief, observance, or practice that is incompatible with the administration of the vaccine or based on a recognized medical condition for which vaccines are contraindicated. The bill defines "health care facility" as a facility that is a provider of services, as defined by the federal Social Security Act, which includes a hospital, critical access hospital, rural emergency hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or hospice program.

C.S.H.B. 81 establishes that 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 obtaining the COVID-19 vaccine contrary to their vaccination preference. The bill further establishes that a health care provider who advises or recommends the administration of a COVID-19 vaccine is not considered to have compelled or coerced an individual into obtaining a vaccine based solely on that advice or recommendation. The bill defines "health care provider" as an individual licensed or otherwise authorized by the state to administer vaccines.

C.S.H.B. 81 makes a health care provider who violates that prohibition against providing medical treatment involving the administration of a COVID-19 vaccine without obtaining informed consent liable to the individual who is the subject of the violation for a minimum of $5,000 in damages. The bill authorizes the prevailing party to recover reasonable expenses, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses, incurred as a result of the action for those damages. The bill authorizes a health care provider to assert an affirmative defense to such an action that the individual or an individual legally authorized to consent on behalf of the individual stated to the provider before the COVID-19 vaccine was administered that the informed consent was voluntarily provided.

C.S.H.B. 81 authorizes the attorney general to bring an action for injunctive relief against a person to prevent the person from violating the bill's provisions and authorizes a court to include in such an issued injunction reasonable requirements to prevent further violations of the bill's provisions.

C.S.H.B. 81 provides for the severability of its provisions and sets out legislative findings regarding the following:

- the state's responsibility for ensuring that individuals lawfully residing in Texas have the right to provide or withhold consent for any medical treatment;
- federal regulations, court decisions, and an American Medical Association opinion that, as applicable, provide for informed consent for a medical treatment, an individual's right to make their own medical decisions, and states to provide individual liberties more expansive than those conferred by the U.S. Constitution;
- how attempted compulsory COVID-19 vaccination has occurred or is occurring inside and outside of Texas and is contrary to and inconsistent with these principles;
- how federal regulations requiring an individual who works or receives training in a health care facility, including a hospital, to obtain a COVID-19 vaccine provide an exemption on the basis of a sincerely held religious belief, observance, or practice or due to a recognized medical condition for which vaccines are contraindicated; and
- the effect of the bill's provisions requiring informed consent for medical treatments involving COVID-19 vaccination.

C.S.H.B. 81 applies only to conduct that occurs on or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 81 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions absent from the introduced that do the following:

- establish that a health care provider who advises or recommends the administration of a COVID-19 vaccine is not considered to have coerced or compelled an individual solely on the basis of that advice or recommendation;
- establish that the prohibitions set out by the bill apply only to the extent they do not conflict with a certain final rule adopted by CMS;
- establish that an individual employed by or providing services or receiving training in a health care facility that requires the individual to obtain a COVID-19 vaccination is exempt from the vaccination requirement if the individual requests orally or in writing an exemption in accordance with federal law based on the following:
    - a sincerely held religious belief, observance, or practice that is incompatible with the administration of the vaccine; or
    - a recognized medical condition for which vaccines are contraindicated;
- define the term "health care facility"; and
- establish a legislative finding regarding certain federal vaccine requirements providing an exemption for individuals with sincerely held religious beliefs, observances, or practices that are incompatible with the administration of the vaccine or a recognized medical condition for which vaccines are contraindicated.

The substitute revises a legislative finding included in the introduced regarding the bill prohibiting a person from compelling or coercing an individual lawfully residing in Texas into obtaining medical treatments involving the administration of a COVID-19 vaccine to reflect the inclusion of that provision making the prohibitions applicable only insofar as they do not conflict with the final CMS rule.

Whereas the introduced authorized a claimant to recover reasonable expenses in bringing an action under the bill, the substitute clarifies that only the prevailing party is authorized to recover expenses as a result of the action. The substitute omits a provision that exempts such an action from certain Civil Practice and Remedies Code provisions establishing standards for recovery and factors precluding recovery of exemplary damages. The substitute includes a provision absent from the introduced authorizing a health care provider to assert an affirmative defense in such an action that the individual or an individual legally authorized to consent on the individual's behalf stated to the provider before the COVID-19 vaccine was administered that the requisite informed consent was voluntarily provided.

Whereas the caption of the introduced version read as relating to informed consent before the provision of certain medical treatments involving COVID-19 vaccination, the caption of the substitute instead reads as relating to informed consent before the provision of certain medical treatments and exemptions from COVID-19 vaccination requirements.