

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 1105  
By: Price et al. (Kolkhorst)  
Health & Human Services  
5/19/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

With the forthcoming expiration of the federal Public Readiness and Emergency Preparedness Act, it is imperative for Texas to establish a framework for pharmacists to provide a convenient and accessible means for obtaining immunizations and vaccinations. H.B. 1105 seeks to address this by increasing immunization and vaccination access statewide and improving the overall health of Texans by authorizing a pharmacist to order and administer authorized and approved immunizations and vaccinations under certain circumstances. H.B. 1105 amends the definition of "Practice of Pharmacy" in Section 551.003(33), Occupations Code, to include ordering an immunization or vaccination to a patient who is at least three years of age, without an established physician-patient relationship under certain circumstances; or if the patient is younger than three years of age and is referred to a pharmacist by a physician.

(Original Author's/Sponsor's Statement of Intent)

Changes in the Committee Substitute:

The bill prohibits governmental entities from requiring individuals to wear masks or mandate vaccinations. These entities include schools, counties, cities, higher education institutions, and public hospitals.

It also prohibits COVID-19 vaccines and related booster shots from being added to the mandatory Texas school immunization schedule and restricts the authority of the Department of State Health Services and the Health and Human Services Commission (HHSC) from adding vaccines to the Texas school immunization schedule without the legislature's approval.

It also prohibits a licensed healthcare facility from refusing to provide healthcare services to an individual based on the individual's vaccination status or post-transmission recovery of COVID-19, unless the facility is treating patients for oncology or organ transplants. It restricts HHSC from providing Medicaid reimbursement to a healthcare facility that violates this rule.

Finally, it prohibits employers from refusing to hire, discharging, or otherwise discriminating against an individual because the individual has not been vaccinated against COVID-19. It further would prohibit a labor organization from excluding or discriminating on the same basis. Private employers that implement a policy or procedure to exempt individuals for reasons of conscience, or because the individual has a medical condition, and establish procedures that unvaccinated staff must follow to protect other employees from exposure, are exempt from this provision.

Certain healthcare facilities that implement a policy or procedure to exempt individuals because the individual has a medical condition, and establish procedures that unvaccinated staff must follow to protect other employees from exposure, are exempt from this provision. No employers may discriminate or retaliate against an exempt employee.

C.S.H.B. 1105 amends current law relating to preventative health care and public health, including prohibited immunization and face-covering requirements, private business or school closures, and the ordering and administration of immunizations by a pharmacist.

## **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Department of State Health Services is rescinded in SECTION 2 (Section 38.019, Education Code) of this bill.

Rulemaking authority previously granted to the Department of State Health Services is modified in SECTION 7 (Section 161.004, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 4 (Section 51.933, Education Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 8 (Section 174.003, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas State Board of Pharmacy is modified in SECTION 13 (Section 554.052, Occupations Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 38.001, Education Code, by amending Subsections (a) and (b-1) and adding Subsection (b-2), as follows:

(a) Requires each student, except as provided by Subsection (c) (relating to providing that immunization is not required for a person's admission to any elementary or secondary school if the person applying for admission takes certain actions), to be fully immunized against the diseases listed in Section 161.004 (Statewide Immunization of Children), Health and Safety Code, rather than diphtheria, rubeola, rubella, mumps, tetanus, and poliomyelitis.

(b-1) Requires the Department of State Health Services (DSHS), each year, to prepare a list of the immunizations required for admission to public schools, rather than immunizations required under Section 38.001 (Immunization; Requirements; Exceptions) for admission to public schools and of any additional immunizations DSHS recommends for school-age children.

(b-2) Prohibits an elementary or secondary school from requiring a student, as a condition of the student's admission to or continued enrollment in the school, to be vaccinated against the 2019 novel coronavirus disease (COVID-19).

SECTION 2. Amends Section 38.019(a), Education Code, as follows:

(a) Requires a school district that maintains an Internet website to post prominently on the website:

(1) a list, in English and Spanish, of:

(A) the immunizations required for admission to public school in accordance with Section 38.001, rather than required for admission to public school by rules of DSHS adopted under Section 38.001; and

(B) clinics in the district that offer the influenza vaccine, to the extent those clinics are known to the district; and

(2) a link to the page on the DSHS Internet website that provides information, rather than where a person is authorized to obtain information, relating to the procedures for claiming an exemption from the immunization requirements of Section 38.001.

Deletes existing text requiring that the list required to be posted prominently on a school district's Internet website include any immunizations or vaccines recommended for public school students by DSHS.

SECTION 3. Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.91921, as follows:

Sec. 51.91921. PROHIBITION ON PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION MANDATING COVID-19 VACCINATION FOR STUDENTS. (a) Defines "COVID-19" and "private or independent institution of higher education."

(b) Prohibits a private or independent institution of higher education from requiring a student, as a condition of the student's admission to or continued enrollment in the institution, to be vaccinated against COVID-19.

SECTION 4. Amends Section 51.933, Education Code, by amending Subsections (b) and (b-1) and adding Subsection (b-2), as follows:

(b) Authorizes the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) to require a student at an institution of higher education who is pursuing a course of study in a human or animal health profession to be immunized against the diseases listed in Subsection (a) (relating to authorizing an institution of higher education to require applicants for admission to be immunized against diphtheria, rubeola, rubella, mumps, tetanus, and poliomyelitis) and against hepatitis B, measles, rabies, and varicella, as applicable. Deletes existing text authorizing the executive commissioner to require immunizations against additional diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession.

(b-1) Authorizes a requirement under Subsection (b) for a student to be immunized against hepatitis B, rather than a rule adopted under Subsection (b) that requires a hepatitis B vaccination for students, to apply only to students enrolled in a course of study that involves potential exposure to human or animal blood or bodily fluids.

(b-2) Prohibits an institution of higher education from requiring a student, as a condition of the student's admission to or continued enrollment in the institution, to be vaccinated against COVID-19 as defined by Section 51.91921.

SECTION 5. Amends Sections 81.023(a) and (c), Health and Safety Code, as follows:

(a) Authorizes the executive commissioner to recommend to the legislature immunizations to include on the list of immunizations required for children under Section 161.004 (Statewide Immunization of Children). Deletes existing text requiring DSHS to develop immunization requirements for children.

(c) Requires DSHS to cooperate with the State Board of Education in implementing, rather than formulating and implementing, immunization requirements for students admitted to public or private primary or secondary schools.

SECTION 6. Amends Subtitle D, Title 2, Health and Safety Code, by adding Chapter 81B, as follows:

#### CHAPTER 81B. PROHIBITED CORONAVIRUS PREVENTATIVE MEASURES

Sec. 81B.001. DEFINITIONS. Defines "COVID-19" and "governmental entity."

Sec. 81B.002. PROHIBITED FACE-COVERING MANDATE. Prohibits a governmental entity, notwithstanding any other law, including Chapter 81 (Communicable Diseases; Public Health Disasters; Public Health Emergencies) of this code and Chapter 418

(Emergency Management), Government Code, from implementing, ordering, or otherwise imposing a mandate requiring a person to wear a face mask or other face covering to prevent the spread of COVID-19.

Sec. 81B.003. PROHIBITED VACCINE MANDATE. Prohibits a governmental entity, notwithstanding any other law, including Chapter 81 of this code and Chapter 418, Government Code, from implementing, ordering, or otherwise imposing a mandate requiring a person to be vaccinated against COVID-19.

Sec. 81B.004. PROHIBITED CLOSURE MANDATE FOR PRIVATE BUSINESSES AND SCHOOLS. Prohibits a governmental entity, notwithstanding any other law, including Chapter 81 of this code and Chapter 418, Government Code, from implementing, ordering, or otherwise imposing a mandate requiring the closure of a private business, public school, open-enrollment charter school, or private school to prevent the spread of COVID-19.

SECTION 7. Amends Section 161.004(a), Health and Safety Code, as follows:

(a) Requires every child in the state to be immunized against diphtheria, hepatitis A, hepatitis B, measles, meningococcal disease, mumps, pertussis, polio, rubella, tetanus, and varicella in accordance with the schedule prescribed in DSHS rules, rather than vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted in DSHS rules. Prohibits the executive commissioner from requiring immunizations against any additional diseases for students admitted to a public or private primary or secondary school.

SECTION 8. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 174, as follows:

#### CHAPTER 174. PATIENT RIGHTS

Sec. 174.001. DEFINITIONS. Defines "COVID-19" and "health care facility."

Sec. 174.002. PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) Prohibits a health care facility, except as provided by Subsection (b), from refusing to provide health care services to an individual based on the individual's vaccination status or post-transmission recovery of COVID-19.

(b) Provides that the prohibition under Subsection (a) does not apply to a hospital that requires a COVID-19 vaccination in relation to oncology or transplant care.

Sec. 174.003. MEDICAID REIMBURSEMENT PROHIBITED. (a) Provides that HHSC:

(1) is prohibited from providing Medicaid reimbursement to a health care facility that violates this chapter; and

(2) is required to disenroll the facility from participation as a Medicaid provider.

(b) Authorizes the executive commissioner to adopt rules as necessary to implement this section.

SECTION 9. Amends Chapter 21, Labor Code, by adding Subchapter H-1, as follows:

#### SUBCHAPTER H-1. DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS

Sec. 21.421. DEFINITION. Defines "COVID-19."

Sec. 21.422. PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) Provides that an employer commits, except as provided by Subsection (d), 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 been vaccinated against COVID-19.

(b) Provides that 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 been vaccinated against COVID-19.

(c) Provides that 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 been vaccinated against COVID-19.

(d) Provides that this section does not apply to:

(1) a health care facility, as defined by Section 224.001 (Definitions), Health and Safety Code, that:

(A) implements a policy or procedure to exempt from a required vaccination an individual described by this section who has a medical condition identified as a contraindication or precaution to the vaccination by the Centers for Disease Control and Prevention;

(B) establishes procedures that an exempt individual is required to follow to protect facility patients from exposure to disease, including the use of gloves, face masks, or other protective medical equipment, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients; and

(C) prohibits discrimination or retaliatory action against an exempt individual, except that the required use of protective medical equipment under Paragraph (B) is not considered a retaliatory action for purposes of this paragraph; or

(2) a private employer that:

(A) implements a policy or procedure to exempt from a required vaccination an individual described by this section based on reasons of conscience or because the individual has a medical condition identified as a contraindication or precaution to the vaccination by the Centers for Disease Control and Prevention;

(B) establishes procedures that an exempt individual is required to follow to protect employees and other individuals from exposure to disease, including the use of gloves, face masks, or other protective medical equipment, based on the level of risk the individual presents to employees and other individuals by the individual's routine and direct exposure to employees and other individuals; and

(C) prohibits discrimination or retaliatory action against an exempt individual, except that the required use of protective medical equipment under Paragraph (B) is not considered a retaliatory action for purposes of this paragraph.

SECTION 10. Amends Section 551.003(33), Occupations Code, to redefine "practice of pharmacy."

SECTION 11. Amends the heading to Section 554.004, Occupations Code, to read as follows:

Sec. 554.004. ADMINISTRATION OF MEDICATION; ORDERING AND ADMINISTRATION OF IMMUNIZATION OR VACCINATION.

SECTION 12. Amends Section 554.004(a), Occupations Code, as follows:

(a) Requires the Texas State Board of Pharmacy (TSBP) to specify conditions under which a pharmacist is authorized to administer medication and order or administer an immunization or vaccination. Requires that the conditions for ordering or administering an immunization or vaccination ensure that:

(1) the pharmacist possesses the necessary skill, education, and certification as specified by TSBP to order or administer the immunization or vaccination;

(2) within a reasonable time after administering an immunization or vaccination that is prescribed by a licensed health care provider, the pharmacist notifies the licensed health care provider responsible for the patient's care that the immunization or vaccination was administered;

(3) the authority of a pharmacist to administer an immunization or vaccination is authorized to be delegated to a certified pharmacy technician.

Deletes existing text requiring that the conditions adopted by TSBP under which a pharmacist is authorized to administer medication, including an immunization and vaccine, ensure that certain requirements are met with regards to patient safety.

SECTION 13. Amends Sections 554.052(a), (b), (c), and (c-1), Occupations Code, as follows:

(a) Requires TSBP by rule to require a pharmacist to notify a physician who prescribes an immunization or vaccination not later than the 14th day, rather than within 24 hours, after the date the pharmacist administers the immunization or vaccination.

(b) Requires TSBP to establish minimum education and continuing education standards for a pharmacist who orders or administers an immunization or vaccination. Requires that the standards include federal Centers for Disease Control and Prevention training, basic life support training, and hands-on training in techniques for administering immunizations and vaccinations.

(c) Provides that supervision by a physician is adequate if the delegating physician:

(1) makes no changes to this subdivision;

(2) has established a physician-patient relationship with each patient who is younger than three years of age and referred the patient to the pharmacist; and

(3)-(5) makes no changes to these subdivisions.

Deletes existing text providing that supervision by a physician is adequate if the delegating physician, except as provided by Subsection (c-1), has established a physician-patient relationship with each patient under 14 years of age and referred the patient to the pharmacist.

(c-1) Authorizes a pharmacist to order or administer an immunization or vaccination, rather than influenza vaccination, to a patient who is at least three years of age, rather than seven years of age, without an established physician-patient relationship if the immunization or vaccination is:

(1) authorized or approved by the United States Food and Drug Administration or listed in the routine immunization schedule recommended by the federal Advisory Committee on Immunization Practices published by the federal Centers for Disease Control and Prevention; and

(2) ordered or administered in accordance with the federal Advisory Committee on Immunization Practices vaccine-specific recommendations.

SECTION 14. Repealer: Section 38.001(b) (relating to authorizing DSHS to modify or delete any of the immunizations or to require immunizations against additional diseases as a requirement for admission to any elementary or secondary school), Education Code, as amended by Chapters 43 (H.B. 1098) and 94 (H.B. 1059), Acts of the 80th Legislature, Regular Session, 2007.

SECTION 15. (a) Provides that the changes in law made by this Act to Title 2, Education Code, apply beginning with the 2023–2024 school year.

(b) Provides that the changes in law made by this Act to Title 3, Education Code, apply beginning with the 2023–2024 academic year.

SECTION 16. Makes application of Subchapter H-1, Chapter 21, Labor Code, as added by this Act, prospective.

SECTION 17. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 18. Effective date: upon passage or September 1, 2023.