

BILL ANALYSIS

Senate Research Center
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S.B. 1024
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The COVID-19 public health emergency has been an unprecedented event wherein attempts to slow the spread of the virus prompted all levels of government to implement extensive restrictions and limitations on daily activities through lockdowns, masking mandates, and vaccination requirements.

Federal, state, and local public health officials touted facial masks and vaccination requirements as the exclusive way to stop the spread of 2019 novel coronavirus disease (COVID-19). Yet increasing evidence has called into question the efficacy of masking and vaccination. As more people question the guidance from public health officials, it is critical that Texas invests in tracking adverse impacts from COVID-related genetic vaccines and has independent means for analyzing their impacts.

S.B. 1024 seeks to solve these challenges by codifying protections in various executive orders to prohibit governmental entities from requiring individuals to wear masks or to mandate vaccination.

Additionally, S.B. 1024 seeks to establish a long-term repository in Texas for studying the side effects or adverse effects of vaccines by creating an adverse events registry at the Department of State Health Services. It also repeals the ability for DSHS to add vaccination requirements to the Texas School Immunization Schedule and it prohibits vaccines to be added to or removed from the schedule without legislative approval. Finally, it prohibits employers from requiring COVID-19 vaccines in the workplace.

Key Provisions:

- Prohibits COVID-19 vaccines and related booster shots from being added to the mandatory Texas school immunization schedule.
- Repeals the authority of the Department of State Health Services and the Health and Human Services from adding vaccines to the Texas school immunization schedule without the legislature's approval.
- Restricts the ability for schools to require that children be vaccinated against the 2019 novel coronavirus disease (COVID-19) or to require them to wear facial coverings and restricts schools from requiring teachers or parents to wear facial covering.
- Prohibits a political subdivision from requiring an individual to be vaccinated against COVID-19.
- Prohibits institutions of higher education including private or independent college or universities that include private non-profit institutions from mandating COVID-19 vaccinations for their students.
- Directs the Department of State Health Services to establish and maintain a publicly accessible reporting system to track adverse events from vaccines or boosters.

- Restricts governmental entities or a private entity that accepts any state funding from requiring a person to wear a facial mask or facial covering to prevent the spread of a communicable disease and imposes penalties for failing to comply.
- Prohibits a licensed health care facility from refusing to provide health care services to an individual based on the individual's vaccination status or post-transmission recovery of a communicable disease. It restricts the Health and Human Services Commission from providing Medicaid reimbursement to a health care facility that violates this rule.
- Prohibits employers from refusing to hire, discharge, or otherwise discriminate 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.

As proposed, S.B. 1024 amends current law relating to preventative health care and public health and authorizes a civil penalty.

RULEMAKING AUTHORITY

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

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 7 (Section 161.0086, Health and Safety Code) and SECTION 9 (Section 174.003, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Education Agency in SECTION 8 (Section 161.701, Health and Safety 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 requiring physicians to be responsible for reviewing the immunization history of every child examined or referring the child for immunization), to be fully immunized against the diseases listed in Section 161.004 (Statewide Immunization of Children), Health and Safety Code, rather than requiring students to be fully immunized against diphtheria, rubeola, rubella, mumps, tetanus, and poliomyelitis, except as provided by Subsection (c).

(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. Deletes existing text requiring DSHS to prepare a list of the 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 a list, in English and Spanish, of the immunizations required for admission to public school in accordance with, rather than by rules of DSHS adopted under, Section 38.001, and 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 a school district that maintains an Internet website to post

prominently on the website a list, in English and Spanish, of any immunizations or vaccines recommended for public school students by DSHS. Makes a nonsubstantive change.

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) 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 receive certain immunizations) and against hepatitis B, measles, rabies, and varicella, as applicable. Authorizes the executive commissioner to require those immunizations for any students in times of an emergency or epidemic in a county where the commissioner of the state health services has declared such an emergency or epidemic. Deletes 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. Makes nonsubstantive changes.

(b-1) Provides that a requirement under Subsection (b) for a student to be immunized against hepatitis B is authorized to apply only to students enrolled in a course of study that involves potential exposure to human or animal blood or bodily fluids. Deletes text providing that a rule adopted under Subsection (b) that requires a hepatitis B vaccination for students is authorized 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. Deletes text requiring DSHS to develop immunization requirements for children.

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

SECTION 6. 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, rather than vaccine preventable diseases caused by infectious agents, in accordance with the schedule prescribed in DSHS rules, rather than 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 7. Amends Subchapter A, Chapter 161, Health and Safety Code, by adding Sections 161.0086 and 161.0087, as follows:

Sec. 161.0086. ADVERSE EVENT REPORTING SYSTEM FOR VACCINES AND BOOSTER DOSES. (a) Defines "health care practitioner."

(b) Requires DSHS to establish and maintain on DSHS's Internet website a publicly accessible reporting system to track adverse events following the administration of a vaccine or booster dose of that vaccine. Requires that the reporting system enable health care practitioners and other individuals to submit information in accordance with this section, and be maintained separately from the immunization registry or any other statewide registry for tracking immunization information.

(c) Requires a health care practitioner who administers a vaccine or booster dose of that vaccine to a patient to submit to the reporting system information on any adverse event the patient experiences following the administration of the vaccine or booster dose, regardless of whether the vaccine or booster dose caused the adverse event.

(d) Authorizes an individual who obtains a vaccine or booster dose of that vaccine to report to the reporting system information on any adverse event the individual experiences following the administration of the vaccine or booster dose, regardless of whether the vaccine or booster dose caused the adverse event.

(e) Authorizes the appropriate licensing authority to impose disciplinary action, including an administrative penalty, on a health care practitioner who violates this section in the same manner and using the same procedures as the authority uses to impose disciplinary action on a health care practitioner who violates the authority's licensing or other regulatory laws or rules.

(f) Requires the executive commissioner to adopt rules necessary to implement this section, including rules to ensure that information accessible through the reporting system does not disclose personally identifiable information or information that is confidential under state or federal law.

Sec. 161.0087. PROHIBITION ON POLITICAL SUBDIVISIONS MANDATING COVID-19 VACCINATIONS. (a) Defines "COVID-19."

(b) Prohibits a political subdivision of this state, 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 issuing an order, adopting an ordinance, or otherwise requiring an individual to be vaccinated against COVID-19.

SECTION 8. Amends Chapter 161, Health and Safety Code, by adding Subchapter X, as follows:

SUBCHAPTER X. PROHIBITION ON MANDATED PREVENTATIVE CARE

Sec. 161.701. PROHIBITION ON FACE MASK REQUIREMENT. (a) Prohibits a governmental entity or a private entity that accepts any state money from requiring a person to wear a face mask or covering to prevent the spread of a communicable disease.

(b) Requires the Texas Education Agency to adopt rules to prohibit a private or public primary or secondary school from requiring a student, teacher, other school

employee, parent, or visitor to wear a face mask or covering to prevent the spread of a communicable disease.

Sec. 161.702. CIVIL PENALTY. (a) Provides that a governmental entity or private entity that violates Section 161.701 is subject to a civil penalty in an amount not to exceed \$2,000 per day for each violation.

(b) Authorizes the attorney general to sue to collect the penalty under this section and to recover reasonable expenses incurred in collecting the penalty, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(c) Waives and abolishes sovereign and governmental immunity to suit to the extent of liability created by this section.

SECTION 9. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 174, as follows:

CHAPTER 174. PATIENT RIGHTS

Sec. 174.001. DEFINITION. Defines "health care facility."

Sec. 174.002. PROHIBITED DISCRIMINATION BASED ON VACCINATION STATUS. Prohibits a health care facility from refusing to provide health care services to an individual based on the individual's vaccination status or post-transmission recovery of a communicable disease.

Sec. 174.003. MEDICAID REIMBURSEMENT PROHIBITED. (a) Prohibits the Health and Human Services Commission (HHSC) from providing Medicaid reimbursement to a health care facility that violates this chapter, and requires HHSC 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 10. 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 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.

SECTION 11. Repealers: Section 38.001(b) (relating to authorizing DSHS to modify or delete any immunization requirements against additional diseases as a requirement for certain school

admission), as amended by Chapters 43 (H.B. 1098) and 94 (H.B. 1059), Acts of the 80th Legislature, Regular Session, 2007, and Section 38.001(f) (relating to excluding a person who has not received the immunizations required in times of emergency or epidemic declared by the commissioner of public health), Education Code.

SECTION 12. 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 delay of implementation until such a waiver or authorization is granted.

SECTION 13. (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 14. Makes application of Subchapter H-1, Chapter 21, Labor Code, as added by this Act, prospective.

SECTION 15. Effective date: upon passage or September 1, 2023.