By:  Middleton, Hall S.B. No. 177

(In the Senate - Filed November 14, 2022; February 15, 2023, read first time and referred to Committee on Health & Human Services; April 11, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 2; April 11, 2023, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Hall              X

Hancock           X

Hughes            X

LaMantia              X

Miles                 X

Sparks            X

COMMITTEE SUBSTITUTE FOR S.B. No. 177 By:  Sparks

A BILL TO BE ENTITLED

AN ACT

relating to informed consent before provision of certain medical treatments and exemptions from COVID-19 vaccination requirements.

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

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

SECTION 2.  The legislature finds that:

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

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

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

(4)  under 42 C.F.R. Section 482.13, a hospital is required as a condition of participation in Medicare to have in place a process for obtaining the informed consent of a patient before providing treatment to the patient and to ensure "[t]he patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care";

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

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

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

(8)  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 from the vaccination requirement for individuals with 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; and

(9)  Section 161.0086, Health and Safety Code, as added by this Act, prohibits any person from compelling or coercing an individual lawfully residing in this state into obtaining medical treatments involving the administration of a COVID-19 vaccine, except as otherwise provided by the final rule adopted by the Centers for Medicare and Medicaid Services and published at 86 Fed. Reg. 61555 (November 5, 2021).

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

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

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

(2)  "Health care facility" means a facility that is a provider of services, as defined by Section 1861, Social Security Act (42 U.S.C. Section 1395x).

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

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

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

(d)  For purposes of this section:

(1)  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 a COVID-19 vaccine contrary to the individual's vaccination preference; and

(2)  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 COVID-19 vaccine based solely on that advice or recommendation.

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

(f)  The prohibitions under Subsections (b), (c), and (e) apply only to the extent the prohibitions do not conflict with the final rule adopted by the Centers for Medicare and Medicaid Services and published at 86 Fed. Reg. 61555 (November 5, 2021).

(g)  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:

(1)  a sincerely held religious belief, observance, or practice that is incompatible with the administration of the vaccine; or

(2)  a recognized medical condition for which vaccines are contraindicated.

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

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

(j)  A health care provider may assert an affirmative defense to an action brought under Subsection (i) 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.

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

SECTION 5.  If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

SECTION 6.  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 September 1, 2023.

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