88R7215 LRM-D

By:  Kolkhorst S.B. No. 1024

A BILL TO BE ENTITLED

AN ACT

relating to preventative health care and public health; authorizing a civil penalty.

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

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

(a)  Except as provided by Subsection (c), each [~~Each~~] student shall be fully immunized against the diseases listed in Section 161.004, Health and Safety Code [~~diphtheria, rubeola, rubella, mumps, tetanus, and poliomyelitis, except as provided by Subsection (c)~~].

(b-1)  Each year, the Department of State Health Services shall prepare a list of the immunizations required [~~under this section~~] for admission to public schools [~~and of any additional immunizations the department recommends for school-age children~~]. The department shall prepare the list in English and Spanish and make the list available in a manner that permits a school district to easily post the list on the district's Internet website as required by Section 38.019.

(b-2)  An elementary or secondary school may not require 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.  Section 38.019(a), Education Code, is amended to read as follows:

(a)  A school district that maintains an Internet website shall 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 [~~by rules of the Department of State Health Services adopted under~~] Section 38.001; and

(B)  [~~any immunizations or vaccines recommended for public school students by the Department of State Health Services; and~~

[~~(C)~~]  health 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 Department of State Health Services Internet website that provides [~~where a person may obtain~~] information relating to the procedures for claiming an exemption from the immunization requirements of Section 38.001.

SECTION 3.  Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.91921 to read as follows:

Sec. 51.91921.  PROHIBITION ON PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION MANDATING COVID-19 VACCINATION FOR STUDENTS. (a) In this section:

(1)  "COVID-19" means the 2019 novel coronavirus disease, including any variant.

(2)  "Private or independent institution of higher education" has the meaning assigned by Section 61.003.

(b)  A private or independent institution of higher education may not require 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.  Section 51.933, Education Code, is amended by amending Subsections (b) and (b-1) and adding Subsection (b-2) to read as follows:

(b)  The executive commissioner of the Health and Human Services Commission may require a student at an institution of higher education who is pursing a course of study in a human or animal health profession to be immunized [~~immunizations~~] against the diseases listed in Subsection (a) and against hepatitis B, measles, rabies, and varicella, as applicable. The [~~additional diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession, and the~~] executive commissioner may require those immunizations for any students in times of an emergency or epidemic in a county where the commissioner of state health services has declared such an emergency or epidemic.

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

(b-2)  An institution of higher education may not require 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.  Sections 81.023(a) and (c), Health and Safety Code, are amended to read as follows:

(a)  The executive commissioner may recommend to the legislature immunizations to include on the list of immunizations required [~~department shall develop immunization requirements~~] for children under Section 161.004.

(c)  The department shall cooperate with the State Board of Education in [~~formulating and~~] implementing immunization requirements for students admitted to public or private primary or secondary schools.

SECTION 6.  Section 161.004(a), Health and Safety Code, is amended to read as follows:

(a)  Every child in the state shall be immunized against diphtheria, hepatitis A, hepatitis B, measles, meningococcal disease, mumps, pertussis, polio, rubella, tetanus, and varicella [~~vaccine preventable diseases caused by infectious agents~~] in accordance with the [~~immunization~~] schedule prescribed [~~adopted~~] in department rules. The executive commissioner may not require immunizations against any additional diseases for students admitted to a public or private primary or secondary school.

SECTION 7.  Subchapter A, Chapter 161, Health and Safety Code, is amended by adding Sections 161.0086 and 161.0087 to read as follows:

Sec. 161.0086.  ADVERSE EVENT REPORTING SYSTEM FOR VACCINES AND BOOSTER DOSES. (a) In this section, "health care practitioner" means an individual licensed or otherwise authorized by this state to administer vaccines.

(b)  The department shall establish and maintain on the department's Internet website a publicly accessible reporting system to track adverse events following the administration of a vaccine or booster dose of that vaccine. The reporting system must:

(1)  enable health care practitioners and other individuals to submit information in accordance with this section; and

(2)  be maintained separately from the immunization registry or any other statewide registry for tracking immunization information.

(c)  A health care practitioner who administers a vaccine or booster dose of that vaccine to a patient shall 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)  An individual who obtains a vaccine or booster dose of that vaccine may 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)  The appropriate licensing authority may 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)  The executive commissioner shall 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) In this section, "COVID-19" means the 2019 novel coronavirus disease, including any variant.

(b)  Notwithstanding any other law, including Chapter 81 of this code and Chapter 418, Government Code, a political subdivision of this state may not issue an order, adopt an ordinance, or otherwise require an individual to be vaccinated against COVID-19.

SECTION 8.  Chapter 161, Health and Safety Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. PROHIBITION ON MANDATED PREVENTATIVE CARE

Sec. 161.701.  PROHIBITION ON FACE MASK REQUIREMENT. (a) A governmental entity or a private entity that accepts any state money may not require a person to wear a face mask or covering to prevent the spread of a communicable disease.

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

(c)  Sovereign and governmental immunity to suit is waived and abolished to the extent of liability created by this section.

SECTION 9.  Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 174 to read as follows:

CHAPTER 174. PATIENT RIGHTS

Sec. 174.001.  DEFINITION. In this chapter, "health care facility" means a hospital, freestanding emergency medical care facility, urgent care or retail clinic, outpatient clinic, birthing center, ambulatory surgical center, or other facility that is licensed to provide health care services in this state.

Sec. 174.002.  PROHIBITED DISCRIMINATION BASED ON VACCINATION STATUS. A health care facility may not refuse 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) The commission:

(1)  may not provide Medicaid reimbursement to a health care facility that violates this chapter; and

(2)  shall disenroll the facility from participation as a Medicaid provider.

(b)  The executive commissioner may adopt rules as necessary to implement this section.

SECTION 10.  Chapter 21, Labor Code, is amended by adding Subchapter H-1 to read as follows:

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

Sec. 21.421.  DEFINITION. In this subchapter, "COVID-19" has the meaning assigned by Section 161.0087, Health and Safety Code.

Sec. 21.422.  PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) 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)  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)  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.  The following provisions are repealed:

(1)  Section 38.001(b), Education Code, as amended by Chapters 43 (H.B. 1098) and 94 (H.B. 1059), Acts of the 80th Legislature, Regular Session, 2007; and

(2)  Section 38.001(f), Education Code.

SECTION 12.  If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 13.  (a)  The changes in law made by this Act to Title 2, Education Code, apply beginning with the 2023-2024 school year.

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

SECTION 14.  Subchapter H-1, Chapter 21, Labor Code, as added by this Act, applies only to an unlawful employment practice that occurs on or after the effective date of this Act.

SECTION 15.  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.