

By: Harrison

H.B. No. 81

A BILL TO BE ENTITLED

AN ACT

1
2 relating to informed consent before the provision of certain
3 medical treatments involving COVID-19 vaccination.

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

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

7 SECTION 2. The legislature finds that:

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

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

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

21 (4) under 42 C.F.R. Section 482.13, a hospital is
22 required as a condition of participation in Medicare to have in
23 place a process for obtaining the informed consent of a patient
24 before providing treatment to the patient and to ensure "[t]he

1 patient or his or her representative (as allowed under State law)
2 has the right to make informed decisions regarding his or her care";

3 (5) the United State Supreme Court upheld mandatory
4 vaccination policies imposed by state and local governments to
5 combat smallpox in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905),
6 and acknowledged in *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74,
7 81 (1980), that a state may provide "individual liberties more
8 expansive than those conferred by the Federal Constitution";

9 (6) persons inside and outside this state have sought
10 or are seeking to compel or coerce individuals lawfully residing in
11 this state into being vaccinated against COVID-19 contrary to the
12 individuals' preferences;

13 (7) any attempt to compel or coerce an individual
14 lawfully residing in this state into being vaccinated against
15 COVID-19 contrary to the individual's preference is inconsistent
16 with the principles of informed consent; and

17 (8) Section 161.0086, Health and Safety Code, as added
18 by this Act, prohibits any person from compelling or coercing an
19 individual lawfully residing in this state into obtaining medical
20 treatments involving the administration of a COVID-19 vaccine.

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

23 Sec. 161.0086. INFORMED CONSENT REQUIRED FOR MEDICAL
24 TREATMENTS INVOLVING COVID-19 VACCINATION. (a) In this section:

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

27 (2) "Health care provider" means an individual

1 licensed or otherwise authorized by this state to administer
2 vaccines.

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

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

15 (d) For purposes of this section, an individual lacks the
16 capacity to provide informed consent for a medical treatment
17 involving the administration of a COVID-19 vaccine if the
18 individual has been compelled or coerced into being vaccinated
19 against COVID-19 contrary to the individual's vaccination
20 preference.

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

25 (f) The attorney general may bring an action for injunctive
26 relief against a person to prevent the person from violating this
27 section. In an injunction issued under this subsection, a court may

1 include reasonable requirements to prevent further violations of
2 this section.

3 (g) A health care provider who violates Subsection (c) is
4 liable to the individual who is the subject of the violation for
5 damages in an amount of not less than \$5,000. In an action brought
6 under this subsection, a claimant may recover reasonable expenses
7 incurred in bringing the action, including court costs, reasonable
8 attorney's fees, investigation costs, witness fees, and deposition
9 expenses. Sections 41.003 and 41.004, Civil Practice and Remedies
10 Code, do not apply to an action brought under this subsection.

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

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

19 SECTION 6. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2023.