

1-1 By: Middleton, Hall S.B. No. 177
 1-2 (In the Senate - Filed November 14, 2022; February 15, 2023,
 1-3 read first time and referred to Committee on Health & Human Services;
 1-4 April 11, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 2; April 11, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15		X		
1-16		X		
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 177 By: Sparks

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to informed consent before provision of certain medical
 1-22 treatments and exemptions from COVID-19 vaccination requirements.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. This Act shall be known as the Texas COVID-19
 1-25 Vaccine Freedom Act.

1-26 SECTION 2. The legislature finds that:

1-27 (1) this state is responsible for ensuring that
 1-28 individuals lawfully residing in this state have the right to
 1-29 provide or withhold consent for any medical treatment;

1-30 (2) the decision in *Canterbury v. Spence*, 464 F.2d 772
 1-31 (D.C. Cir. 1972), establishing the concept of informed consent, has
 1-32 become a bedrock principle of the laws of this country and of each
 1-33 state;

1-34 (3) the American Medical Association's Code of Medical
 1-35 Ethics Opinion 2.1.1 recognizes the right of an individual to be
 1-36 fully informed of a recommended medical treatment to allow the
 1-37 individual to make an informed decision regarding the individual's
 1-38 course of treatment, including whether to obtain or decline a
 1-39 particular medical treatment;

1-40 (4) under 42 C.F.R. Section 482.13, a hospital is
 1-41 required as a condition of participation in Medicare to have in
 1-42 place a process for obtaining the informed consent of a patient
 1-43 before providing treatment to the patient and to ensure "[t]he
 1-44 patient or his or her representative (as allowed under State law)
 1-45 has the right to make informed decisions regarding his or her care";

1-46 (5) the United States Supreme Court upheld mandatory
 1-47 vaccination policies imposed by state and local governments to
 1-48 combat smallpox in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905),
 1-49 and acknowledged in *Pruneyard Shopping Center v. Robins*, 447 U.S.
 1-50 74, 81 (1980), that a state may provide "individual liberties more
 1-51 expansive than those conferred by the Federal Constitution";

1-52 (6) persons inside and outside this state have sought
 1-53 or are seeking to compel or coerce individuals lawfully residing in
 1-54 this state into obtaining a COVID-19 vaccine contrary to the
 1-55 individuals' preferences;

1-56 (7) any attempt to compel or coerce an individual
 1-57 lawfully residing in this state into obtaining a COVID-19 vaccine
 1-58 contrary to the individual's preference is inconsistent with the
 1-59 principles of informed consent;

1-60 (8) federal regulations requiring an individual who

2-1 works or receives training in a health care facility, including a
2-2 hospital, to obtain a COVID-19 vaccine provide an exemption from
2-3 the vaccination requirement for individuals with a sincerely held
2-4 religious belief, observance, or practice that is incompatible with
2-5 the administration of the vaccine or a recognized medical condition
2-6 for which vaccines are contraindicated; and

2-7 (9) Section 161.0086, Health and Safety Code, as added
2-8 by this Act, prohibits any person from compelling or coercing an
2-9 individual lawfully residing in this state into obtaining medical
2-10 treatments involving the administration of a COVID-19 vaccine,
2-11 except as otherwise provided by the final rule adopted by the
2-12 Centers for Medicare and Medicaid Services and published at 86 Fed.
2-13 Reg. 61555 (November 5, 2021).

2-14 SECTION 3. Subchapter A, Chapter 161, Health and Safety
2-15 Code, is amended by adding Section 161.0086 to read as follows:

2-16 Sec. 161.0086. INFORMED CONSENT AND MEDICAL TREATMENT
2-17 EXEMPTIONS FOR COVID-19 VACCINATION. (a) In this section:

2-18 (1) "COVID-19" means the 2019 novel coronavirus
2-19 disease.

2-20 (2) "Health care facility" means a facility that is a
2-21 provider of services, as defined by Section 1861, Social Security
2-22 Act (42 U.S.C. Section 1395x).

2-23 (3) "Health care provider" means an individual
2-24 licensed or otherwise authorized by this state to administer
2-25 vaccines.

2-26 (b) A person may not compel or coerce an individual lawfully
2-27 residing in this state into obtaining a medical treatment involving
2-28 the administration of a COVID-19 vaccine, including a COVID-19
2-29 vaccine approved or authorized by the United States Food and Drug
2-30 Administration, contrary to the individual's vaccination
2-31 preference.

2-32 (c) A health care provider may not provide to an individual
2-33 lawfully residing in this state a medical treatment involving the
2-34 administration of a COVID-19 vaccine, including a COVID-19 vaccine
2-35 approved or authorized by the United States Food and Drug
2-36 Administration, unless the provider obtains the individual's
2-37 informed consent before administering the COVID-19 vaccine.

2-38 (d) For purposes of this section:

2-39 (1) an individual lacks the capacity to provide
2-40 informed consent for a medical treatment involving the
2-41 administration of a COVID-19 vaccine if the individual has been
2-42 compelled or coerced into obtaining a COVID-19 vaccine contrary to
2-43 the individual's vaccination preference; and

2-44 (2) a health care provider who advises or recommends
2-45 the administration of a COVID-19 vaccine is not considered to have
2-46 compelled or coerced an individual into obtaining a COVID-19
2-47 vaccine based solely on that advice or recommendation.

2-48 (e) A person may not take an adverse action or impose a
2-49 penalty of any kind against an individual lawfully residing in this
2-50 state for the individual's refusal or failure to obtain a medical
2-51 treatment involving the administration of a COVID-19 vaccine.

2-52 (f) The prohibitions under Subsections (b), (c), and (e)
2-53 apply only to the extent the prohibitions do not conflict with the
2-54 final rule adopted by the Centers for Medicare and Medicaid
2-55 Services and published at 86 Fed. Reg. 61555 (November 5, 2021).

2-56 (g) An individual employed by or providing services or
2-57 receiving training in a health care facility that requires the
2-58 individual to obtain a COVID-19 vaccination is exempt from the
2-59 vaccination requirement if the individual requests orally or in
2-60 writing an exemption in accordance with federal law based on:

2-61 (1) a sincerely held religious belief, observance, or
2-62 practice that is incompatible with the administration of the
2-63 vaccine; or

2-64 (2) a recognized medical condition for which vaccines
2-65 are contraindicated.

2-66 (h) The attorney general may bring an action for injunctive
2-67 relief against a person to prevent the person from violating this
2-68 section. In an injunction issued under this subsection, a court may
2-69 include reasonable requirements to prevent further violations of

3-1 this section.

3-2 (i) A health care provider who violates Subsection (c) is
3-3 liable to the individual who is the subject of the violation for
3-4 damages in an amount of not less than \$5,000. The prevailing party
3-5 in an action brought under this subsection may recover reasonable
3-6 expenses incurred as a result of the action, including court costs,
3-7 reasonable attorney's fees, investigation costs, witness fees, and
3-8 deposition expenses.

3-9 (j) A health care provider may assert an affirmative defense
3-10 to an action brought under Subsection (i) that the individual or an
3-11 individual legally authorized to consent on behalf of the
3-12 individual stated to the provider before the COVID-19 vaccine was
3-13 administered that the informed consent was voluntarily provided.

3-14 SECTION 4. Section 161.0086, Health and Safety Code, as
3-15 added by this Act, applies only to conduct that occurs on or after
3-16 the effective date of this Act.

3-17 SECTION 5. If any provision of this Act or its application
3-18 to any person or circumstance is held invalid, the invalidity does
3-19 not affect other provisions or applications of this Act that can be
3-20 given effect without the invalid provision or application, and to
3-21 this end the provisions of this Act are declared severable.

3-22 SECTION 6. This Act takes effect immediately if it receives
3-23 a vote of two-thirds of all the members elected to each house, as
3-24 provided by Section 39, Article III, Texas Constitution. If this
3-25 Act does not receive the vote necessary for immediate effect, this
3-26 Act takes effect September 1, 2023.

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