

House Bill 1105
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

No equivalent provision.

SECTION 1. Section 38.001, Education Code, is amended by adding Subsection (b-2) to read as follows: [FA1(1)]
(a) [Deleted by FA1(2)]
(b-1) [Deleted by FA1(2)]
(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).

No equivalent provision.

Same as House version. SECTION 2. [Deleted by FA1(3)]

No equivalent provision.

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.

No equivalent provision.

SECTION 4. Section 51.933, Education Code, is amended by adding Subsection (b-2) to read as follows: [FA1(4)]
(b) [Deleted by FA1(5)]

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(b-1) [Deleted by FA1(5)]

(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.

No equivalent provision.

Same as House version. SECTION 5. [Deleted by FA1(6)]

No equivalent provision.

SECTION 6. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 81B to read as follows:

CHAPTER 81B. PROHIBITED CORONAVIRUS PREVENTATIVE MEASURES

Sec. 81B.001. DEFINITIONS. In this chapter:

(1) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(2) "Governmental entity" means this state, a local government entity as defined by Section 418.004, Government Code, or an agency of this state or a local government entity.

Sec. 81B.002. PROHIBITED FACE-COVERING MANDATE. Notwithstanding any other law, including Chapter 81 of this code and Chapter 418, Government Code, a governmental entity may not implement, order, or otherwise impose a mandate requiring a person to wear a face mask or other face covering to prevent the spread of COVID-19.

Sec. 81B.003. PROHIBITED VACCINE MANDATE. Notwithstanding any other law, including Chapter 81 of this code and Chapter 418, Government Code, a governmental entity may not implement, order, or otherwise impose a mandate requiring a person to be vaccinated against COVID-

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Sec. 81B.004. PROHIBITED CLOSURE MANDATE FOR PRIVATE BUSINESSES AND SCHOOLS. Notwithstanding any other law, including Chapter 81 of this code and Chapter 418, Government Code, a governmental entity may not implement, order, or otherwise impose a mandate requiring the closure of a private business, public school, open-enrollment charter school, or private school to prevent the spread of COVID-19.

No equivalent provision.

Same as House version. SECTION 7. [Deleted by FA1(7)]

No equivalent provision.

SECTION 8. 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. DEFINITIONS. In this chapter:

(1) "COVID-19" has the meaning assigned by Section 81B.001.

(2) "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 COVID-19 VACCINATION STATUS. (a) Except as provided by Subsection (b), 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 COVID-19.

(b) The prohibition under Subsection (a) does not apply to a

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hospital that requires a COVID-19 vaccination in relation to oncology or transplant care.

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.

No equivalent provision.

SECTION 9. 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 81B.001, Health and Safety Code.

Sec. 21.422. PROHIBITED DISCRIMINATION BASED ON COVID-19 VACCINATION STATUS. (a) Except as provided by Subsection (d), 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.

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(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.

(d) This section does not apply to:

(1) a health care facility, as defined by Section 224.001, Health and Safety Code, that:

(A) implements a policy or procedure to exempt from a required vaccination an individual described by this section who has a medical condition identified as a contraindication or precaution to the vaccination by the Centers for Disease Control and Prevention;

(B) establishes procedures that an exempt individual is required to follow to protect facility patients from exposure to disease, including the use of gloves, face masks, or other protective medical equipment, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients; and

(C) prohibits discrimination or retaliatory action against an exempt individual, except that the required use of protective medical equipment under Paragraph (B) is not considered a retaliatory action for purposes of this paragraph; or

(2) a private employer that:

(A) implements a policy or procedure to exempt from a required vaccination an individual described by this section based on reasons of conscience or because the individual has a medical condition identified as a contraindication or precaution to the vaccination by the Centers for Disease Control and Prevention;

(B) establishes procedures that an exempt individual is required to follow to protect employees and other individuals

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from exposure to disease, including the use of gloves, face masks, or other protective medical equipment, based on the level of risk the individual presents to employees and other individuals by the individual's routine and direct exposure to employees and other individuals; and
(C) prohibits discrimination or retaliatory action against an exempt individual, except that the required use of protective medical equipment under Paragraph (B) is not considered a retaliatory action for purposes of this paragraph.

SECTION 1. Section 551.003(33), Occupations Code, is amended to read as follows:

(33) "Practice of pharmacy" means:

(A) providing an act or service necessary to provide pharmaceutical care;

(B) interpreting or evaluating a prescription drug order or medication order;

(C) participating in drug or device selection as authorized by law, and participating in drug administration, drug regimen review, or drug or drug-related research;

(D) providing patient counseling;

(E) being responsible for:

(i) dispensing a prescription drug order or distributing a medication order;

(ii) compounding or labeling a drug or device, other than labeling by a manufacturer, repackager, or distributor of a nonprescription drug or commercially packaged prescription drug or device;

(iii) properly and safely storing a drug or device; or

(iv) maintaining proper records for a drug or device;

(F) performing for a patient a specific act of drug therapy

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management delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with Subtitle B; ~~or~~

(G) subject to Section 554.052(c-1), ordering or administering an immunization or vaccination to a patient who is at least three years of age; or

(H) if the patient is younger than three years of age and is referred to a pharmacist by a physician, administering an immunization or vaccination to a patient under a physician's written protocol.

SECTION 2. The heading to Section 554.004, Occupations Code, is amended to read as follows:

Sec. 554.004. ADMINISTRATION OF MEDICATION; ORDERING AND ADMINISTRATION OF IMMUNIZATION OR VACCINATION.

SECTION 3. Section 554.004(a), Occupations Code, is amended to read as follows:

(a) The board shall specify conditions under which a pharmacist may administer medication and order or administer ~~[-including]~~ an immunization or ~~[and]~~ vaccination. The conditions for ordering or administering an immunization or vaccination must ensure that:

~~(1) [a licensed health care provider authorized to administer the medication is not reasonably available to administer the medication;~~

~~[(2) failure to administer the medication, other than an immunization or vaccination, might result in a significant delay or interruption of a critical phase of drug therapy;~~

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SECTION 11. Same as House version.

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~~[(3)]~~ the pharmacist possesses the necessary skill, education, and certification as specified by the board to order or administer the immunization or vaccination ~~[medication]~~;

~~(2)~~ ~~[(4)]~~ within a reasonable time after administering an immunization or vaccination that is prescribed by a licensed health care provider ~~[medication]~~, the pharmacist notifies the licensed health care provider responsible for the patient's care that the immunization or vaccination ~~[medication]~~ was administered;

~~[(5)]~~ ~~the pharmacist may not administer medication to a patient at the patient's residence, except at a licensed nursing home or hospital;~~

~~[(6)]~~ ~~the pharmacist administers an immunization or vaccination under a physician's written protocol and meets the standards established by the board;~~ and

~~(3)~~ ~~[(7)]~~ the authority of a pharmacist to administer an immunization or vaccination ~~[medication]~~ may ~~[not]~~ be delegated to a certified pharmacy technician.

SECTION 4. Sections 554.052(a), (b), (c), and (c-1), Occupations Code, are amended to read as follows:

(a) The board by rule shall require a pharmacist to notify a physician who prescribes an immunization or vaccination not later than the 14th day ~~[within 24 hours]~~ after the date the pharmacist administers the immunization or vaccination.

(b) The board shall establish minimum education and continuing education standards for a pharmacist who orders or administers an immunization or vaccination. The standards must include federal Centers for Disease Control and Prevention training, basic life support training, and hands-on training in techniques for administering immunizations and

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vaccinations.

(c) Supervision by a physician is adequate if the delegating physician:

(1) is responsible for formulating or approving an order or protocol, including the physician's order, standing medical order, or standing delegation order, and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;

(2) ~~[except as provided by Subsection (c-1),]~~ has established a physician-patient relationship with each patient who is younger than three ~~[under 14]~~ years of age and referred the patient to the pharmacist;

(3) is geographically located to be easily accessible to the pharmacy where an immunization or vaccination is administered;

(4) receives, as appropriate, a periodic status report on the patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(c-1) A pharmacist may order or administer an immunization or [influenza] vaccination to a patient who is at least three ~~[over seven]~~ years of age without an established physician-patient relationship if the immunization or vaccination is:

(1) authorized or approved by the United States Food and Drug Administration or listed in the routine immunization schedule recommended by the federal Advisory Committee on Immunization Practices published by the federal Centers for Disease Control and Prevention; and

(2) ordered or administered in accordance with the federal Advisory Committee on Immunization Practices vaccine-specific recommendations.

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No equivalent provision.

Same as House version. SECTION 14. [Deleted by FA1(8)]

No equivalent provision.

SECTION 15. (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.

No equivalent provision.

SECTION 16. 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.

No equivalent provision.

SECTION 17. 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 5. This Act takes effect September 1, 2023.

SECTION 18. 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.