

BILL ANALYSIS

C.S.H.B. 3441
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Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to a CNBC article published in December 2020, federal legislation has allowed vaccine manufacturers to be exempted from liability in the event that a vaccine unintentionally causes harm to an individual. The bill author has informed the committee that this federal legislation may result in manufacturers of vaccines not having the incentives that other companies have for ensuring the safety and reliability of their products and that Texas should not allow companies who hold immunity from liability to attempt to persuade patients to utilize their product through certain forms of advertising. C.S.H.B. 3441 seeks to ensure that vaccine manufacturers who advertise their vaccine are required to pay actual damages, court costs, and reasonable attorney's fees to an individual who is found to have been harmed or injured by the vaccine advertised by the manufacturer.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3441 amends the Health and Safety Code to establish that, under the Texas Food, Drug, and Cosmetic Act, a vaccine manufacturer is liable to an individual if the manufacturer advertises a vaccine in Texas that then causes harm or injury to the individual.

C.S.H.B. 3441 authorizes an individual to bring an action under the bill's provisions not later than the third anniversary of the date the cause of action accrues. The bill requires a court to award a claimant who prevails in an action for such purposes actual damages and court costs and reasonable attorney's fees incurred in bringing the action. The bill applies only to a cause of action that accrues on or after the bill's effective date.

C.S.H.B. 3441 defines "advertise" as a media communication, including through television, radio, print, the Internet, digital or electronic media, product placement, promotion by an influencer in exchange for compensation, or other manner of paid promotion, a vaccine manufacturer purchases to promote the manufacturer's vaccine. The term does not include the following:

- any discussion between a health care provider and the provider's patient or written materials a health care provider provides to a patient concerning a vaccine; or

- any posters, decorations, or other materials or promotional items concerning a vaccine that are displayed in or made available by a health care facility, health care provider's office, or other clinical setting.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3441 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the introduced and the substitute establish that, under the Texas Food, Drug, and Cosmetic Act, a vaccine manufacturer is liable to an individual if the manufacturer advertises a vaccine in Texas that then causes harm or injury to the individual, the substitute includes a specification not in the introduced that the vaccine that then causes harm or injury to the individual is the advertised vaccine.

The substitute includes a provision not in the introduced that defines "advertise" for such purposes and establishes what is not included in the term.

The substitute also includes a provision not in the introduced authorizing an individual to bring an action under the bill's provisions not later than the third anniversary of the date the cause of action accrues.