

By: Middleton

S.B. No. 754

A BILL TO BE ENTITLED

1 AN ACT
2 relating to informed consent requirements before the provision of
3 health care services.

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

5 SECTION 1. The legislature finds that:

6 (1) this state is responsible for ensuring individuals
7 lawfully residing in this state have the right to provide or
8 withhold consent for any health care service;

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

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

19 (4) under 42 C.F.R. Section 482.13, a hospital is
20 required as a condition of participation in Medicare to establish a
21 process for obtaining the informed consent of a patient before
22 providing a health care service to the patient and to ensure "[t]he
23 patient or his or her representative (as allowed under State law)
24 has the right to make informed decisions regarding his or her care";

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

7 (6) any attempt to compel or coerce an individual
8 lawfully residing in this state into obtaining a health care
9 service contrary to the individual's preference is inconsistent
10 with the principles of informed consent; and

11 (7) Chapter 174, Health and Safety Code, as added by
12 this Act, prohibits any person from compelling or coercing an
13 individual lawfully residing in this state into obtaining a health
14 care service, including the administration of vaccines.

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

17 CHAPTER 174. INFORMED CONSENT REQUIREMENTS FOR

18 HEALTH CARE SERVICES

19 Sec. 174.001. DEFINITIONS. In this chapter:

20 (1) "Health care facility" means a facility licensed,
21 certified, or otherwise authorized to provide health care services
22 in the ordinary course of business.

23 (2) "Health care practitioner" means an individual who
24 holds a license, certificate, or other authorization to engage in a
25 health care profession in this state.

26 (3) "Health care service" means a service a health
27 care practitioner or health care facility provides to an individual

1 to diagnose, prevent, treat, alleviate, cure, or heal a human
2 health condition, illness, injury, or disease. The term includes
3 the administration of a vaccine.

4 Sec. 174.002. EFFECT ON OTHER LAW. (a) To the extent of a
5 conflict between this chapter and other law, this chapter controls.

6 (b) The requirements provided by this chapter are in
7 addition to another applicable requirement for a health care
8 service provided by other law.

9 Sec. 174.003. PROHIBITED COERCION TO OBTAIN HEALTH CARE
10 SERVICE. A health care practitioner or another person may not
11 coerce or compel an individual lawfully residing in this state into
12 obtaining a health care service contrary to the individual's
13 preference.

14 Sec. 174.004. REQUIRED INFORMED CONSENT. (a) Except as
15 otherwise provided by other law, a health care practitioner may not
16 provide to an individual lawfully residing in this state a health
17 care service unless the practitioner obtains the informed consent
18 of the individual or a person authorized to consent on behalf of the
19 individual, including:

20 (1) a guardian in accordance with Chapter 1151,
21 Estates Code;

22 (2) an individual authorized to provide consent under
23 Section 32.001, Family Code;

24 (3) a parent in accordance with the rights and duties
25 described by Section 151.001, Family Code; and

26 (4) an agent under a medical power of attorney in
27 accordance with Chapter 166.

1 (b) For purposes of this section:

2 (1) an individual lacks the capacity to provide
3 informed consent for a health care service if the individual has
4 been coerced or compelled into obtaining the service; and

5 (2) a health care practitioner who advises or
6 recommends a health care service is not considered to have coerced
7 or compelled the individual into obtaining the service based solely
8 on that advice or recommendation.

9 Sec. 174.005. PROHIBITED ADVERSE ACTION. A person may not
10 take an adverse action or impose any penalty against an individual
11 lawfully residing in this state for the individual's refusal or
12 failure to obtain a health care service, including a refusal or
13 failure to receive immunization in accordance with state law.

14 Sec. 174.006. EXEMPTION FROM HEALTH CARE SERVICE
15 REQUIREMENTS FOR CERTAIN INDIVIDUALS IN HEALTH CARE FACILITIES. An
16 individual who is employed by, providing services in, or receiving
17 training in a health care facility that requires the individual to
18 obtain a health care service is exempt from the required service if
19 the individual requests orally or in writing an exemption based on:

20 (1) a sincerely held religious belief, observance, or
21 practice that is incompatible with the administration of the
22 service; or

23 (2) a recognized medical condition for which the
24 service is contraindicated.

25 Sec. 174.007. INJUNCTION. (a) The attorney general may
26 bring an action for injunctive relief against a person to prevent
27 the person from violating this chapter. In an order issuing an

1 injunction under this section, a court may include reasonable
2 requirements to prevent further violations of this chapter.

3 (b) The attorney general may recover court costs,
4 reasonable attorney's fees, investigation costs, witness fees, and
5 deposition expenses incurred in bringing an action under Subsection
6 (a).

7 Sec. 174.008. CIVIL LIABILITY. (a) A health care
8 practitioner who violates this chapter is liable to the individual
9 who is the subject of the violation for damages in an amount of not
10 less than \$5,000.

11 (b) The prevailing party in an action brought under this
12 section may recover reasonable expenses incurred as a result of the
13 action, including court costs, reasonable attorney's fees,
14 investigation costs, witness fees, and deposition expenses.

15 (c) A health care practitioner may assert as an affirmative
16 defense to an action brought under Subsection (a) that the
17 individual who is the subject of the violation on which the action
18 is based or a person legally authorized to consent on behalf of the
19 individual stated to the practitioner before the health care
20 service was administered that informed consent was voluntarily
21 provided.

22 SECTION 3. Chapter 174, Health and Safety Code, as added by
23 this Act, applies only to a health care service provided on or after
24 the effective date of this Act.

25 SECTION 4. If any provision of this Act or its application
26 to any person or circumstance is held invalid, the invalidity does
27 not affect other provisions or applications of this Act that can be

1 given effect without the invalid provision or application, and to
2 this end the provisions of this Act are declared severable.

3 SECTION 5. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2025.