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S.B. 169
(I_134_0718-5)
134th General Assembly

Bill Analysis

Version: As Pending in Senate Health

Primary Sponsor: Sen. Brenner

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SUMMARY

- Prohibits a person, political subdivision, public official, or state agency from mandating the administration of a COVID-19 vaccine.
- Prohibits adults and minors from being required to be vaccinated against COVID-19 unless the individual, or the individual's parent or legal guardian, chooses to be vaccinated or have the vaccine administered.
- Prohibits a person, political subdivision, public official, or state agency from requiring an individual to show proof of having been vaccinated against or recovered from COVID-19, or providing the individual's COVID-19 vaccination or recovery history or status.
- Specifies that it is an unlawful discriminatory practice for a person to deny any individual the full and equal enjoyment of goods, services, privileges, advantages, facilities, and public spaces on the basis of their COVID-19 vaccination or immunity status.
- Prohibits an employer from taking an adverse employment action against an individual based on the individual's COVID-19 vaccination status or history.
- Specifies that an employee is liable if the employee develops an adverse reaction to a COVID-19 vaccination.
- Declares that the bill is an emergency measure, thereby making it effective immediately.

DETAILED ANALYSIS

Prohibition against mandatory COVID-19 vaccination

The bill prohibits a person, political subdivision, public official, or state agency from mandating – directly or indirectly – the administration of a COVID-19 vaccine.¹ For purposes of this prohibition, the bill defines the following:²

- Political subdivision means a county, township, municipal corporation, school district, board of health, or other body corporate and politic responsible for governmental activities in an area smaller than the entire state;
- Public official means any officer, employee, or duly authorized representative or agent of a public office;
- State agency means an organized body, office, agency, institution, or other entity established by the laws of Ohio to exercise any function of state government, as well as institutions and organizations that receive support from the state.

The bill also prohibits an adult individual from being required for any reason to be vaccinated against COVID-19 unless the individual chooses to be vaccinated, except that an incapacitated adult may be vaccinated if the individual’s legal guardian chooses to have the individual vaccinated.³ Incapacitated is defined by the bill as the inability to make or communicate decisions affecting one’s health, safety, or self-care.⁴

Regarding minors, the bill prohibits a minor from being required to be vaccinated against COVID-19 unless the minor’s parent or legal guardian chooses to have the minor vaccinated.⁵

Prohibition against providing proof of COVID-19 vaccination

The bill prohibits a person, political subdivision, public official, or state agency from requiring an individual to show proof of having been vaccinated against or having recovered from COVID-19, or from requiring the individual to provide the individual’s COVID-19 vaccination or recovery history or status.⁶

¹ R.C. 3792.02(B).

² R.C. 3792.02(A). “Person” is defined in the Revised Code to include an individual, corporation, business trust, estate, trust, partnership, and association. R.C. 1.59, not in the bill.

³ R.C. 3792.02 (C)(1) and (2).

⁴ R.C. 3792.02(A)(1).

⁵ R.C. 3792.02(C)(3) and (A)(2).

⁶ R.C. 3792.04(A).

The bill specifies that information regarding an individual's COVID-19 vaccination or recovery history or status is confidential. Except as required by federal law, a person, political subdivision, public official, or state agency that acquires such information is prohibited from disclosing it or releasing it without written consent.⁷

A political subdivision, public official, or state agency cannot connect an individual's COVID-19 vaccination or recovery history or status to any record issued to the individual by the political subdivision, public official, or state agency, including a birth certificate, driver's license, temporary instruction permit, temporary ID card or ID card.⁸ Additionally, a political subdivision or state agency is prohibited from creating, imposing, or allowing to be imposed any device or method of identification that might be used as proof of vaccination or COVID-19 recovery and required of a citizen seeking to travel to or within, enter any public space or private property in, or do any business within Ohio.⁹

Prohibition against discrimination

The bill specifies that it is an unlawful discriminatory practice under Ohio's existing law that prohibits discrimination in places of public accommodation based on race, color, religion, sex, military status, national origin, disability, age, or ancestry, for a person to deny any individual the full and equal enjoyment of goods, services, privileges, advantages, facilities, and public spaces on the basis of their COVID-19 vaccination or immunity status.¹⁰ Public spaces under the bill means places of public accommodation, as well as any building or space, whether indoor or outdoor, used by a public body or generally open to the public.¹¹

The bill specifically prohibits:¹²

- Providing any disposition, service, financial aid, or benefit to an individual that is different, or is provided in a different manner from that provided to other members of the general public;
- Subjecting any individual to segregation or separate treatment in any matter related to that individual's receipt of any disposition, service, financial aid, or benefit provided to other members of the general public;
- Restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit provided to other members of the general public;

⁷ R.C. 3792.04(B).

⁸ R.C. 3792.04(C).

⁹ R.C. 3792.05(D).

¹⁰ R.C. 3792.05(B)(1).

¹¹ R.C. 3792.05(A).

¹² R.C. 3792.05(B)(2).

- Treating an individual differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition that individuals are required to meet in order to be provided any disposition, service, financial aid, or benefit available to other members of the general public;
- Denying an individual an opportunity to participate in a program through the provision of service or otherwise afford that individual an opportunity to do so that is different from that afforded to other members of the general public.

The Ohio Civil Rights Commission handles discrimination complaints under existing law and under the bill.¹³ Additionally, violations give rise to civil claims for damages, injunctive relief, or any other appropriate relief.¹⁴

The bill provides that an individual cannot be required to take, be administered, or otherwise receive, or to disclose whether the individual has taken, been administered, or otherwise received a vaccine against COVID-19 as a condition of:

- Entry into a business or public space;
- Receipt of any service or good;
- Enjoyment of any facilities, privileges, advantages, or public spaces.¹⁵

Employment discrimination based on COVID-19 vaccination

The bill prohibits an employer from discharging without just cause, refusing to hire, or otherwise discriminating against any individual with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment for either of the following reasons:

- The individual's vaccination history with respect to COVID-19 or any of its variants.
- The individual's decision whether to receive a vaccination against COVID-19 or any of its variants.

An "employer" is any person who has one or more employees and includes an employer's agent; the state or any state agency or instrumentality; and any municipality, county, township, school district, or other political subdivision or any agency or instrumentality of those entities (see **COMMENT**).

If an individual believes that an employer has discriminated against the individual for either of the reasons listed above, the individual may sue the employer in a court of competent jurisdiction. The individual must file the lawsuit within three years after the date that the

¹³ R.C. 4112.05, not in the bill.

¹⁴ R.C. 4112.99, not in the bill.

¹⁵ R.C. 3792.05(C).

individual knew of the alleged discrimination. A court may award costs and reasonable attorney's fees to an individual who prevails in a lawsuit.

The bill specifies that an employer is liable if the employee develops an adverse reaction to a vaccination against COVID-19 or any of its variants.¹⁶

Loss of state funding

If a political subdivision fails to comply with the bill's provisions, then (1) the political subdivision can no longer receive funding from the state, including direct and matchings funds and (2) the Director of Budget and Management shall ensure that the state funding is no longer provided.¹⁷

COMMENT

The Home Rule Amendment to the Ohio Constitution grants a municipality authority over matters of local self-government and local police, sanitary, and other regulations that are not in conflict with general laws of the state. A county charter adopted under the Constitution may provide the county with the same powers provided to municipal corporations under the Home Rule Amendment.¹⁸ With respect to a matter of local self-government, a municipality or charter county may adopt an ordinance or resolution that conflicts with state law.¹⁹

The Constitution also grants the General Assembly the power to pass laws fixing and regulating the hours of labor, establishing the minimum wage, and providing for the general welfare of all employees. No other provision of the Constitution may impair or limit this power.²⁰

It is possible that a municipality or charter county may use its power of local self-government to require an applicant for public employment or a public employee to be vaccinated against COVID-19, even if the requirement conflicts with state law. It is also possible that a prohibition against requiring an employee to receive the vaccination protects the welfare of all employees and, therefore, is not limited by a municipality's or charter county's exercise of the power of local self-government.

¹⁶ R.C. 4113.73.

¹⁷ R.C. 3792.06.

¹⁸ Ohio Constitution, Article X, Section 3 and art. XVIII, sec. 3, and *Akron v. Meyer*, 2004-Ohio-4457 ¶11, fn.1

¹⁹ See, e.g., *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma*, 61 Ohio St.2d 375 (1980).

²⁰ Ohio Const., art. II., sec. 34 and *City of Cleveland v. State*, 2019-Ohio-3820 ¶23, 31.

HISTORY

Action	Date
Introduced	04-27-21
Pending Senate Health	---
