



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 248

I_134_0602-11

134th General Assembly

Bill Analysis

Version: As Pending in House Health

Primary Sponsor: Rep. Gross

Elizabeth Molnar, Attorney

SUMMARY

- Prohibits mandatory vaccinations, vaccination status disclosures, and certain other actions regarding vaccinations.
- Authorizes an individual to bring a civil action if the individual believes a violation has occurred and requires the court to award a prevailing plaintiff attorney's fees, compensation for court costs, and any civil penalty the court considers appropriate.
- Names the act the Vaccine Choice and Anti-Discrimination Act.

DETAILED ANALYSIS

Vaccinations

Policy statement

The bill declares that it is the policy of Ohio that individuals have a right to direct their own health care decisions, free from coercion or penalty, and with informed consent, for themselves, their children, their family, and anyone for whom they stand in loco parentis.¹

Mandatory vaccinations prohibited

The bill prohibits any of the following from mandating, requiring, or otherwise requesting an individual to receive a vaccine:

- A person (defined to include an individual, business trust, estate, trust, partnership, and association);
- Public official or employee;

¹ R.C. 3792.02(B).

- Public agency;
- State agency;
- Political subdivision;
- School;
- Child day-care center;
- Nursing home;
- Residential care facility;
- Health care provider;
- Insurer;
- Institution (defined to include a nonprofit university, college, academy, or school);
- Employer.²

Note on school and child care immunizations

While the bill appears to maintain the law requiring immunizations against certain diseases before a child may enroll in school or child care, it specifically addresses the exemptions to those requirements – in particular, the manner in which a child’s family is notified of them. Under the bill, a school or day-care center that notifies a child’s parent or guardian about the required immunizations must also notify the parent or guardian of the available exemptions. This is to be done in the same timing and manner, including text size and font, as the school or center notifies families of the immunization requirements.³

Vaccination status disclosures

Policy statement

The bill declares that it is the policy of Ohio that individuals have a right to expect that their personal privacy rights remain protected, specifically their private health information.⁴

Prohibition on disclosures and vaccine passports

The bill prohibits all of the following from: (1) mandating, requiring, or otherwise requesting an individual to disclose the individual’s vaccine status or participate in a vaccine passport system, vaccine registry, or other mechanism designed for the purpose of tracking an individual’s vaccine status, (2) disclosing an individual’s vaccination status, and (3) making public an individual’s vaccine status:

² R.C. 3792.02(B)(1).

³ R.C. 3792.02(B)(1)(a) to (d).

⁴ R.C. 3792.02(C).

- A person (defined to include an individual, business trust, estate, trust, partnership, and association);
- Public official or employee;
- Public agency;
- State agency;
- Political subdivision (defined to include a county, township, municipal corporation, school district, or board of health);
- School;
- Child day-care center;
- Nursing home;
- Residential care facility;
- Health care provider (defined to include professionals and facilities);
- Insurer;
- Institution (defined to include a nonprofit university, college, academy, or school);
- Employer.⁵

Note on school and child care immunizations

The bill includes language stating that its prohibition on disclosures does not apply to the extent described in the law requiring a child's parent or guardian to provide proof of immunization to the child's school or child care provider; however, it does specify that, in case of disclosure, a student's or child's vaccine status is to be considered and treated as personally identifiable information.⁶

Patient care, treatment, or billing

The bill also includes language stating that its prohibition on disclosures does not apply to a health care provider or insurer as it pertains to patient care, treatment, or billing. In case of a disclosure for purposes of care, treatment, or billing, an individual's vaccine status must be considered and treated as protected health information.⁷

Disclosures by college students

Current Ohio law requires a college student – when seeking to reside in on-campus housing – to disclose to the college or university whether he or she has been vaccinated against

⁵ R.C. 3792.02(C)(1)(a) to (c) and 3792.02(C)(3).

⁶ R.C. 3319.321, not in the bill and 3792.02(C)(2)(a).

⁷ R.C. Chapter 3798, not in the bill and 3792.02(C)(2)(b).

hepatitis B and meningococcal meningitis. To meet this requirement, the student may complete either the form prepared by the Ohio Department of Health or an equivalent developed by the college or university.⁸ The bill repeals this law.

Discrimination

Policy statement

The bill declares that it is the policy of Ohio that individuals have a right to expect that their personal health choices will not result in discriminatory treatment.

Prohibition on discrimination

In the case of an individual who refuses to (1) receive a specific vaccination or series of vaccinations, (2) subscribe to a vaccine or immunity passport or tracking service, or (3) provide proof of vaccination for, immunity to, or testing of a specific contagious or infectious disease, the bill prohibits an individual, business, public official or employee, public agency, state agency, political subdivision, school, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer from doing any of the following:

- Denying service or access to, segregating, requiring a vaccine status label for, requiring disease or immunity testing of, penalizing as a result of, or otherwise discriminating against the individual;
- Providing any disposition, service, financial aid, or benefit to the individual that is different from or provided in a different manner than that provided to another individual;
- Restricting the 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 individuals;
- Treating the individual differently from others in determining whether that 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 the 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;
- Creating, imposing, or allowing to be imposed any device or method of identification that acts as or might be considered to be a vaccine passport that would be required of

⁸ R.C. 1713.55, 3332.25, 3345.47, 3345.85, and 3701.133, repealed by the bill.

any citizen seeking to travel, enter any public space or private property, or do any business in Ohio.⁹

Business protections

Policy statement

The bill declares that it is the policy of Ohio that the success of the state relies largely on the success of its private businesses and that Ohio intends to ensure protection of businesses honoring individual's rights to health choice and privacy.

Prohibition

In the case of a business that complies with the bill's foregoing policy statement and honors the rights of individuals to health choice and privacy, the bill prohibits an individual, business, public official or employee, public agency, state agency, political subdivision, or insurer from doing any of the following:

- Denying service to, penalizing, or otherwise discriminating against the business;
- Providing any disposition, service, financial aid, or benefit to the business that is different from or is provided in a different manner than that provided to another business;
- Restricting the business 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 businesses.¹⁰

State and local orders

Policy statement

The bill declares that it is the policy of Ohio that the health choice and privacy of individuals are paramount and must remain so under all circumstances, even in the presence of emergencies.

Prohibition on certain state and local orders

The bill prohibits a public official or employee, public agency, state agency, or political subdivision from doing any of the following:

- Issuing any order or proclamation or taking other action that violates the bill's provisions under the pretense of an emergency;
- Issuing any order or proclamation or taking other action that encourages any individual, business, public official or employee, public agency, state agency, political subdivision,

⁹ R.C. 3792.02(D).

¹⁰ R.C. 3792.02(E).

school, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer to violate any of the bill's provisions;

- Issuing any order or proclamation or taking other action that penalizes any individual, business, public official or employee, public agency, state agency, political subdivision, school, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer for refusing to violate any of the bill's provisions.¹¹

Violations and civil causes of action

The bill authorizes an individual who believes that any of the bill's provisions have been violated to pursue any of the following:

- Relief under Ohio's anti-discrimination statutes;¹²
- Relief through a complaint submitted to the Attorney General;
- A civil action.¹³

In the case of a complaint submitted to the Attorney General, the bill authorizes the Attorney General, if he or she has reasonable cause to believe that any of the bill's provisions have been violated, to bring either an action to obtain a declaratory judgment or an action to obtain a temporary restraining order (TRO), preliminary injunction, or permanent injunction.

The bill permits a court to issue a TRO or injunction if the Attorney General shows by a preponderance of the evidence that any of the bill's provisions have been violated. It also grants the court the authority to impose – on the motion of the Attorney General or the court itself – any civil penalty that the court considers appropriate.

In the case of a civil action brought by an individual plaintiff, if the plaintiff prevails, the bill requires the court to award the plaintiff financial compensation for court costs and attorney's fees as well as any civil penalty the court considers appropriate.

Special vs. general provisions

The bill specifies that its provisions prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; however, if any such general law contains a specific exemption from the bill's provisions, including a specific reference to this particular provision, the general law prevails, but only to the extent of the exemption.¹⁴

¹¹ R.C. 3792.02(F).

¹² R.C. Chapter 4112, not in the bill.

¹³ R.C. 3792.02(G).

¹⁴ R.C. 3792.02(H).

HISTORY

Action	Date
Introduced	04-06-21
