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Substitute Bill Comparative Synopsis

Sub. H.B. 435

134th General Assembly

House Health

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This document summarizes how the latest substitute version of the bill (I_134_1965-3) differs from the immediately preceding version (H.B. 435, As Introduced). It removes the bill's provision declaring the General Assembly's intent to enact legislation regarding vaccines and instead adds all of the provisions outlined below.

Student and employee vaccinations

Vaccines without full FDA approval¹ – prohibition

Prohibits each of the following entities from requiring a student to receive a COVID-19 vaccine for which the federal Food and Drug Administration (FDA) has not issued a biologics license:

- A public school;
- A chartered nonpublic school;
- A private college;
- A state institution of higher education.

Prohibits, except as described below, an employer from requiring an employee to receive any vaccine for which the FDA has not issued a biologics license.

Permits an employer other than a hospital to require an employee to receive a vaccine for which the FDA has not issued a biologics license if, as a regular part of its business, the

¹ To receive full FDA approval, a vaccine manufacturer must submit a Biologics License Application. COVID-19 vaccines that have not yet been granted a biologics license are also available under an FDA Emergency Use Authorization.

employer conducts research on, develops, handles, administers, transports, or stores infectious organisms.

Specifies that a biologics license is not the same as an emergency use authorization granted by the FDA.

Fully approved COVID-19 vaccines required by schools and employers

If a school, college, university, or employer requires a student or employee to receive a COVID-19 (fully approved) vaccine, permits the student or employee to satisfy the requirement by receiving either that vaccine or another COVID-19 vaccine that has been granted an emergency use authorization.

Available exemptions

Exempts a student or an employee employed by the employer on or before the bill's effective date from the COVID-19 vaccination requirement for any of the following reasons:

- Medical contraindications;
- Natural immunity;
- Reasons of conscience, including religious convictions.

Specifies that the exemptions are not available to a student who, as part of the student's course of study, undergoes instruction or training at either of the following owned or operated by, or affiliated with, a private college or state university:

- A children's hospital;
- An intensive care or critical care unit of a hospital.

Specifies that the exemptions are not available to an employee to whom either of the following apply:

- The employee is employed in a children's hospital or a hospital intensive care or critical care unit;
- The employee begins employment after the bill's effective date.

Specifies that the bill does not limit, diminish, or affect limitations on employer vaccine requirements contained in state and federal law.

Claiming an exemption

To claim an exemption for a medical contraindication, requires the student or employee to submit to the school, college, university, or employer a written statement signed by the student's or employee's primary care provider.

To claim an exemption for reasons of conscience, including religious convictions, requires the student or employee to submit to the school, college, university, or employer a written statement.

Also specifies that the student or employee is not required to submit any additional information beyond the written statement in order to claim the foregoing exemptions.

In the case of an exemption for natural immunity, requires the student or employee to submit to the school, college, university, or employer written documentation that the student or employee has been tested for the presence of COVID-19 antibodies in a form or manner recognized by the medical community and at the time of testing, had antibodies in an amount at least equal to or greater than those conferred by a COVID-19 vaccine for which the FDA has issued a biologics license.

Requires the Ohio Department of Health to adopt rules establishing the frequency with which a student or employee must be retested for the presence of COVID-19 antibodies.

Specifies that until the rules are adopted, the student or employee is not required to submit any additional information beyond the initial written documentation.

Costs of demonstrating natural immunity

Specifies that in the case of a student or employee who is exempt from COVID-19 vaccination because of natural immunity, the student or employee is responsible for any costs or fees associated with demonstrating natural immunity to the school, private college, state institution of higher education, or employer.

Costs of mitigation measures

States that a student, employee, or prospective employee who is exempt from COVID-19 vaccination is not responsible for any costs or fees associated with measures required by the school, college, university, or employer to prevent the spread of disease, including testing for active infection and masking.

Collective bargaining

Specifies that the prohibitions and requirements regarding employee COVID-19 vaccinations do not impede or diminish collective bargaining rights with respect to terms and other conditions of employment related to vaccines.

Prohibits COVID-19 vaccine-related provisions of a collective bargaining agreement entered into before, on, or after the bill's effective date from applying to a person who is not a party to the agreement.

Employee and student remedies

Permits a private sector or public sector employee who believes an employer has violated the bill to seek relief through continuing law procedures applicable to state employment discrimination claims, but limits available remedies to a cease and desist order and back pay, and, for the prevailing party reasonable attorney's fees.

Allows a public sector employee to elect to pursue a mandamus action rather than an action based on employment discrimination, and permits the court to award reasonable attorney's fees.

Also authorizes a student to bring a mandamus action in the event a school, private college, or state university violates the bill's provisions, and permits the court to award reasonable attorney's fees.

Sunset clause

Specifies that the bill's provisions related to student and employee vaccinations sunset on June 30, 2023.

Workers' compensation and employer-mandated vaccines

Expressly states that an injury caused by receiving an employer-mandated COVID-19 vaccine is an injury covered by the Workers' Compensation Law.

For claims arising during the period between the bill's effective date and June 30, 2023, prohibits a person from receiving workers' compensation for an injury caused by an employer-mandated COVID-19 vaccine if the person receives compensation for the same injury under the federal Vaccine Injury Compensation Program or the Countermeasures Injury Compensation Program.

Allows, if a person does receive compensation or benefits under the Workers' Compensation Law and compensation under either federal program, the Administrator of Workers' Compensation or a self-insuring employer to collect the amount of compensation or benefits paid to the person and any interest, attorney's fees, and costs the Administrator or the self-insuring employer incurs in collecting that payment.

Vaccine passports

Prohibits a facility owned by a political subdivision or state agency from requiring an individual to show proof of vaccination against COVID-19 in order to gain admission to or enter the facility.

Defines proof of COVID-19 vaccination to include a paper document or digital application, including a scannable code.

Emergency medical technicians – COVID-19 tests

Codifies provisions of S.B. 310 from the 133rd General Assembly (expired May 1, 2021) authorizing emergency medical technicians at the basic, intermediate, and paramedic levels who have received proper training to (1) administer COVID-19 tests and (2) collect and label test specimens.

Qualified civil immunity

Extends through June 30, 2023, the provisions of H.B. 606 of the 133rd General Assembly (expiring September 30, 2021), which grant temporary qualified civil immunity for (1) health care and emergency services provided during a government-declared disaster or emergency and (2) exposure to or transmission or contraction of certain coronaviruses.

Includes a hearing aid dealer and hearing aid fitter within H.B. 606's definition of a health care provider.

Also specifies that the provisions regarding temporary qualified civil immunity are remedial in nature and apply retroactively to acts, omissions, conduct, decisions, or compliance from September 30, 2021, through June 30, 2023.

Severability

Specifies that the bill's provisions are severable, meaning that if an item of law or the application of the item to a particular circumstance is held invalid, the invalidity does not affect other items of law or applications that can be given effect without the invalid item of law or application.