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Sponsor Testimony - House Bill 435
House Health Committee
September 27, 2021

Rep. Rick Carfagna

Chairman Lipps, Vice Chairman Holmes, Ranking Member Russo, and members of the House Health Committee. Thank you for allowing us to present sponsor testimony on House Bill 435.

There's been extensive debate and deliberation about COVID-19 vaccines not only in this committee and here at the Statehouse, but across Ohio. That shouldn't come as any surprise. It's a very personal issue.

As you know, leadership recently paused work on this important issue in this committee while we worked to develop a path forward.

This bill, The Ohio COVID-19 Vaccine Fairness Act is the result of those efforts.

This legislation is sensible and responsible. It empowers Ohioans by ensuring the availability of clear, unambiguous COVID-19 vaccine mandate exemptions. It balances personal medical freedom and protecting the health and safety of Ohioans.

A few of the highlights of the bill, which we will discuss in greater detail, include:

- Most public and private sector employees would be able to secure exemptions from employer-mandated FDA approved COVID-19 vaccinations for medical reasons, natural immunity as demonstrated by the presence of COVID-19 antibodies, **and reasons of conscience including religious convictions.**
- These same exemptions would also be available for employees and students at Ohio's public and private schools, colleges and universities.
- We are also making clear that employees and students asserting a religious exemption would not be required to provide any additional documentation, other than a written statement claiming the exemption.

House Bill 435 strikes a sensible balance between honoring one's personal medical freedom, while safeguarding the latitude of employers and schools to mitigate the spread of this virus and protect the health and safety of employees, students, patients, and customers.

Let's first be clear about what House Bill 435 doesn't do. It neither discourages nor prohibits COVID-19 vaccines, nor bars access to any Ohioan wishing to vaccinate against COVID-19. This legislation does not deal in any way with masking or quarantines. It purely seeks to ensure that Ohioans reluctant to take the COVID-19 shot will not be injected against their will and will not have their jobs, their education, or their access to governmental services jeopardized as a result.

The provisions of House Bill 435 are as follows

EMPLOYMENT (These sections are effective through June 30, 2023)

Vaccinations Without an FDA-Issued Biologics License

- No employer (public or private) shall require an employee to receive any vaccine for which the FDA has not issued a biologics license.
 - FDA biologics license is not considered the same as FDA-granted emergency use authorization.

COVID-19 Vaccinations

- Employees who are employed by a public/private employer on or before effective date of the bill are exempt from mandates for any COVID-19 vaccine for any of the following:
 1. Medical contraindications.
 2. Natural immunity, as demonstrated by the presence of COVID-19 antibodies in an amount at least equal to those conferred by a COVID-19 vaccine.
 3. Reasons of conscience, including religious convictions.
- Employees exempted from COVID-19 vaccinations are not responsible for any costs/fees associated with alternative measures required by the employer to prevent the spread of COVID-19, including masking and testing.
- Employees exempted from vaccinations due to natural immunity are responsible for any costs or fees associated with demonstrating natural immunity to the employer.
- Employees exempted from vaccinations due to medical contraindications shall submit to the employer a written statement signed by the employee's primary care provider and shall not be required to do anything beyond providing the written statement.
- Employees exempted from vaccinations due to reasons of conscience or religious convictions shall submit to the employer a written statement and shall not be required to submit any additional information beyond the written statement.

Recourse for Unlawful Discriminatory Practices

- Employees may file a complaint with the Ohio Civil Rights Commission in accordance with ORC 4112.051 and 4112.052.
 - If the Commission determines a violation has occurred, the order shall be limited to an order that the employer cease/desist from the unlawful discriminatory practice relating to employment and provide back pay and reasonable attorney's fees, if applicable.
- Employees of the state or a political subdivision may commence a mandamus action in accordance with ORC Chapter 2731 to obtain a judgement ordering the employer to comply with ORC 3792.07.
 - The court may award reasonable attorney's fees to the prevailing party.
 - A person is prohibited from bringing an action under this division if the person filed a complaint with the Ohio Civil Rights Commission.

Exemption provisions are not applicable to the following:

- An employee of a children's hospital.
- An employee in an intensive care or critical care unit of a hospital.
- An employee who begins employment after the effective date of this bill.
- An employer that, as a regular part of its business, conducts research on, develops, handles, administers, transports, or stores infectious organisms (ex. federal contractors that do R&D on infectious organisms and would instead be subjected to federal order - potential national security concerns).
- No provision of a collective bargaining agreement entered into before, on, or after the bill's effective date and that relates to vaccines, applies to a person who is not a party to the agreement.

Workers' Compensation

- For BWC claims between the effective date of the bill and June 30, 2023:
 - No claimant is entitled to compensation or benefits for injuries caused by a COVID-19 mandated vaccine if both of the following apply:
 - At the time the vaccine was administered, it was non-FDA approved.
 - The claimant received compensation under the "National Childhood Vaccine Injury Act of 1986" or "The Public Readiness and Emergency Preparedness (PREP) Act".
 - If a claimant receives both BWC and federal compensation as listed above, the BWC Administrator or any self-insured employer may collect from the claimant the amount applicable to the BWC compensation and any interest, attorney's fees, and costs incurred in the collection.

K-12 & HIGHER EDUCATION (These sections are effective through June 30, 2023)

Vaccinations Without an FDA-Issued Biologics License

- No school, private college, or state institution of higher education shall require a student to receive any vaccine for which the FDA has not issued a biologics license.
 - FDA biologics license is not considered the same as FDA-granted emergency use authorization.

COVID-19 Vaccinations

- Students are exempt from mandates for any COVID-19 vaccine by a school, private college, or state institution of higher education for any of the following:
 1. Medical contraindications.
 2. Natural immunity, as demonstrated by the presence of COVID-19 antibodies in an amount at least equal to those conferred by a COVID-19 vaccine.
 3. Reasons of conscience, including religious convictions.
- Students exempted from COVID-19 vaccinations are not responsible for any costs/fees associated with alternative measures required by the school, private college, or state institution of higher education to prevent the spread of COVID-19, including masking and testing.
- Students exempted from vaccinations due to natural immunity are responsible for any costs or fees associated with demonstrating natural immunity to the school, private college, or state institution of higher education.
- Students exempted from vaccinations due to medical contraindications shall submit to the school, private college, or state institution of higher education a written statement signed by the student's primary care provider and shall not be required to do anything beyond providing the written statement.
- Students exempted from vaccinations due to reasons of conscience or religious convictions shall submit to the school, private college, or state institution of higher education a written statement and shall not be required to submit any additional information beyond the written statement.
- Students may commence a mandamus action in accordance with ORC Chapter 2731 to obtain a judgement ordering compliance with ORC 3792.07. The court may award reasonable attorney's fees to the prevailing party.

Exemption provisions are not applicable to the following:

- A student who, as part of the student's course of study, undergoes instruction or training at either of the following that is owned or operated by, or affiliated with, a private college or state institution of higher education:
 - A children's hospital.

- An intensive care or critical care unit of a hospital.

MISCELLANEOUS PROVISIONS

- All HB 606 qualified liability immunity provisions extended from September 30, 2021 through June 30, 2023.
 - “Hearing aid dealers” and “hearing aid fitters” as defined under ORC 4747.01 are included as the entities covered under these extended liability protections.
- A facility owned by a political subdivision or state agency shall not require an individual to show proof of COVID-19 vaccination in order for the individual to gain admission to or enter the facility.
- Emergency Medical Technicians (basic, intermediate, and paramedic) who have received proper training may administer COVID-19 tests and collect/label test specimens.
- The Ohio Department of Health shall adopt rules establishing the frequency with which employees/students exempted due to natural immunity shall be retested to determine whether their antibody presence remains at least equal to or greater than those conferred by a COVID-19 vaccine.

Chairman Lipps and members of this committee, House Bill 435 empowers Ohioans by ensuring the availability of COVID-19 vaccine mandate exemptions without compromising the ability to provide for public health. No Ohioan should have to involuntarily submit to a COVID-19 vaccination, and we hope you will agree that the measures provided in House Bill 435 represent a sensible path of fairness towards all as we navigate this pandemic together.

Thank you again for your consideration, and at this time we would be happy to answer any questions.