

SUBJECT: Prohibiting private employers from requiring COVID-19 vaccines

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 9 ayes — Hunter, Dean, Geren, Guillen, Metcalf, Raymond, Slawson, Smithee, Spiller

3 nays — Anchía, S. Thompson, Turner

1 absent — Hernandez

SENATE VOTE: On final passage (October 12, 2023) — 19 - 12

WITNESSES: For — Jackie Schlegel, Texans for Medical Freedom; Michelle Evans, Texans for Vaccine Choice; Sheila Hemphill, Texas Right To Know; Jonathan Covey, Texas Values; Howard Barker; Matt Long (*Registered, but did not testify*: Sheena Rodriguez, Savannah Rodriguez, Alliance For a Safe Texas; Justin West, Constable, Galveston County Precinct 4; Paul Edinburgh, Jimmy Fullen, Galveston County Constable Office Pct. 2)

Against — (*Registered, but did not testify*: Bethany Carson, Grassroots Leadership; Ana Gonzalez, Texas AFL-CIO; Alejandro Pena, Texas American Federation of Teachers; Thomas Kennedy, Texas Building and Construction Trades Councils; Rocio Fierro Perez, Texas Freedom Network; and eight individuals)

On — Ed Serna, Texas Workforce Commission (*Registered, but did not testify*: Wroe Jackson, Texas Association of Manufacturers; Deanna Kuykendall, Texas Brain Injury Providers Alliance; Cesar Lopez, Texas Hospital Association; Clayton Stewart, Texas Medical Association; Wendolyn Ward, The Immunization Partnership; Felipe Quiroga)

DIGEST: CSSB 7 would prohibit an employer from adopting or enforcing a mandate requiring an employee, contractor, or applicant for employment or a contract position to be vaccinated against COVID-19 as a condition of employment or a contract position. “Employer” would be defined as a

person, other than a governmental entity, who employed one or more employees.

An employer also could not take an adverse action against an employee, contractor, or applicant for refusal to be vaccinated against COVID-19. “Adverse action” would be defined as an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, or applicant.

A health care facility, health care provider, or physician could establish and enforce a reasonable policy that includes requiring the use of protective medical equipment by an individual who is an employee or contractor of the facility, provider, or physician who was not vaccinated against COVID-19 based on the level of risk the individual presented to patients from the individuals’ routine and direct exposure to patients. Establishing or enforcing such a policy would not be considered an adverse action.

An employee, contractor, or applicant could file a complaint with the Texas Workforce Commission (TWC) against an employer who took an adverse action in violation of the bill. A complaint filed with TWC would be required to include the complainant’s name, the employer’s name, and the nature and description of any alleged adverse action that the employer took against the complainant.

On receipt of such a complaint, TWC would be required to conduct an investigation to determine whether the employer took an adverse action against the complainant because of the complainant’s refusal to be vaccinated against COVID-19. For complaints against a health care facility, health care provider, or physician, TWC would be required to consult with the Department of State Health Services in determining if the policy was reasonable.

TWC could request that the attorney general bring an action for injunctive relief against the employer to prevent further violations of the bill. The

action would have to be filed in a district court in Travis County or the county in which the alleged adverse action occurred. In such an injunction, a court could include reasonable requirements to prevent further violations.

TWC would be required to impose on an employer who violated the bill an administrative penalty of \$10,000 for each violation, unless the employer:

- hired the applicant for employment or offered a contract to the applicant for a contract position; or
- reinstated the employee or contractor and provided back pay from the date the employer took the adverse action and made every reasonable effort to reverse the effects of the adverse action.

If TWC determined that the employer violated the bill, TWC could recover reasonable investigative costs from the employer, regardless of whether the employer took the above actions to avoid an administrative penalty. TWC would be required to adopt rules as necessary to enforce the bill.

The bill's provisions would be severable and the bill would apply only to conduct or an adverse action that occurred on or after the effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

**SUPPORTERS
SAY:**

CSSB 7 would protect an individual's right to make private medical decisions without fear of retribution by prohibiting private employers from adopting or enforcing a COVID-19 vaccine mandate for employees, contractors, and applicants. Texans should not have to choose between receiving the COVID-19 vaccine and their livelihoods. Many people do not want to receive the COVID-19 vaccine due to medical issues, reasons of conscience, or other concerns.

Medical facilities should not be exempted from the bill because healthcare workers have a right to medical freedom along with other workers. The healthcare industry should be held to the same standard as any other industry. COVID-19 vaccine mandates also could cause some healthcare workers to leave the industry, which would not improve patient safety. Additionally, medical facilities would not lose any federal or state funding due to recent federal rule changes related to COVID-19 vaccine requirements.

The bill would ensure that medical facilities could adopt certain policies to accommodate workers who were not vaccinated and protect patient safety, such as requiring the use of personal protective equipment. Though state law already regulates health care facility policies on vaccine requirements, it does not sufficiently ensure that medical or conscience exemptions are granted to individuals who do not want to receive a vaccine.

The Texas Workforce Commission (TWC) is well suited to appropriately handle complaints related to COVID-19 vaccine requirements due to its past experience with workforce complaints. If a complaint was made against a medical facility, TWC would be required to consult with the Department of State Health Services to determine the appropriateness of a facility's infectious disease policy to ensure decisions were made accurately. Enforcing the bill through a TWC complaint process also would ensure that there is less opportunity for frivolous lawsuits against employers.

CRITICS
SAY:

CSSB 7 would interfere with a private business' right to set policies for its workplace to ensure a safe and healthy work environment. Texas is an at-will state, so outside of protected classes such as sex and race, employers should be able to make staffing decisions at their discretion. Additionally, the bill would impede a private employer's ability to choose who to do business with because a business would not be able to hire contractors based on individual's COVID-19 vaccination status.

The bill does not sufficiently allow medical facilities to take necessary steps to protect staff and patients, and such facilities should be exempt

from the prohibition on COVID-19 vaccine mandates. Medical professionals should be trusted to make appropriate decisions to ensure patient safety, especially when serving vulnerable populations, and state law already regulates health care facility policies on vaccine requirements. Medical facilities could lose federal funding in the future if the federal government reinstated certain COVID-19 vaccine requirements but these facilities were not allowed to require these vaccines for employees under state law.

CSSB 7 should specify what kinds of policies would be considered reasonable to ensure that the standard for reasonableness was clear. Additionally, the bill should include a sunset date so that a future legislature can revisit the issue and determine if such legislation was still necessary.

OTHER
CRITICS
SAY:

CSSB 7 should be expanded to prohibit employers from requiring employees to receive any vaccine, not just the COVID-19 vaccine. Additionally, the bill also should apply to medical schools to ensure that medical and nursing students are not required to receive the COVID-19 vaccine.

NOTES:

The fiscal implications of the bill could not be determined due to the unknown nature of the number and timing of applicable COVID-19 vaccine mandates adopted or enforced, the volume of complaints and resulting administrative workload, and the amount of any administrative penalty revenue.