

1-1 By: Price, et al. (Senate Sponsor - Kolthorst) H.B. No. 1105  
 1-2 (In the Senate - Received from the House May 8, 2023;  
 1-3 May 11, 2023, read first time and referred to Committee on Health &  
 1-4 Human Services; May 21, 2023, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 7, Nays 2;  
 1-6 May 21, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15		X		
1-16		X		
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1105 By: Kolthorst

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to preventative health care and public health, including  
 1-22 prohibited immunization and face-covering requirements, private  
 1-23 business or school closures, and the ordering and administration of  
 1-24 immunizations by a pharmacist.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 38.001, Education Code, is amended by  
 1-27 amending Subsections (a) and (b-1) and adding Subsection (b-2) to  
 1-28 read as follows:

1-29 (a) ~~Except as provided by Subsection (c), each [Each]~~  
 1-30 ~~student shall be fully immunized against the diseases listed in~~  
 1-31 ~~Section 161.004, Health and Safety Code [diphtheria, rubella,~~  
 1-32 ~~rubella, mumps, tetanus, and poliomyelitis, except as provided by~~  
 1-33 ~~Subsection (c)].~~

1-34 (b-1) Each year, the Department of State Health Services  
 1-35 shall prepare a list of the immunizations required ~~[under this~~  
 1-36 ~~section]~~ for admission to public schools ~~[and of any additional~~  
 1-37 ~~immunizations the department recommends for school-age children].~~  
 1-38 The department shall prepare the list in English and Spanish and  
 1-39 make the list available in a manner that permits a school district  
 1-40 to easily post the list on the district's Internet website as  
 1-41 required by Section 38.019.

1-42 (b-2) ~~An elementary or secondary school may not require a~~  
 1-43 ~~student, as a condition of the student's admission to or continued~~  
 1-44 ~~enrollment in the school, to be vaccinated against the 2019 novel~~  
 1-45 ~~coronavirus disease (COVID-19).~~

1-46 SECTION 2. Section 38.019(a), Education Code, is amended to  
 1-47 read as follows:

1-48 (a) A school district that maintains an Internet website  
 1-49 shall post prominently on the website:

1-50 (1) a list, in English and Spanish, of:

1-51 (A) the immunizations required for admission to  
 1-52 public school in accordance with ~~[by rules of the Department of~~  
 1-53 ~~State Health Services adopted under]~~ Section 38.001; and

1-54 (B) ~~[any immunizations or vaccines recommended~~  
 1-55 ~~for public school students by the Department of State Health~~  
 1-56 ~~Services; and~~

1-57 ~~[(C)]~~ health clinics in the district that offer  
 1-58 the influenza vaccine, to the extent those clinics are known to the  
 1-59 district; and

1-60 (2) a link to the page on the Department of State

2-1 Health Services Internet website that provides ~~[where a person may~~  
2-2 ~~obtain]~~ information relating to the procedures for claiming an  
2-3 exemption from the immunization requirements of Section 38.001.

2-4 SECTION 3. Subchapter 2, Chapter 51, Education Code, is  
2-5 amended by adding Section 51.91921 to read as follows:

2-6 Sec. 51.91921. PROHIBITION ON PRIVATE OR INDEPENDENT  
2-7 INSTITUTIONS OF HIGHER EDUCATION MANDATING COVID-19 VACCINATION  
2-8 FOR STUDENTS. (a) In this section:

2-9 (1) "COVID-19" means the 2019 novel coronavirus  
2-10 disease, including any variant.

2-11 (2) "Private or independent institution of higher  
2-12 education" has the meaning assigned by Section 61.003.

2-13 (b) A private or independent institution of higher  
2-14 education may not require a student, as a condition of the student's  
2-15 admission to or continued enrollment in the institution, to be  
2-16 vaccinated against COVID-19.

2-17 SECTION 4. Section 51.933, Education Code, is amended by  
2-18 amending Subsections (b) and (b-1) and adding Subsection (b-2) to  
2-19 read as follows:

2-20 (b) The executive commissioner of the Health and Human  
2-21 Services Commission may require a student at an institution of  
2-22 higher education who is pursuing a course of study in a human or  
2-23 animal health profession to be immunized ~~[immunizations]~~ against  
2-24 the diseases listed in Subsection (a) and against hepatitis B,  
2-25 measles, rabies, and varicella, as applicable. ~~The [additional~~  
2-26 ~~diseases for students at any institution of higher education who~~  
2-27 ~~are pursuing a course of study in a human or animal health~~  
2-28 ~~profession, and the] executive commissioner may require those~~  
2-29 immunizations for any students in times of an emergency or epidemic  
2-30 in a county where the commissioner of state health services has  
2-31 declared such an emergency or epidemic.

2-32 (b-1) A requirement ~~[rule adopted]~~ under Subsection (b) for  
2-33 ~~[that requires]~~ a student to be immunized against hepatitis B  
2-34 ~~[vaccination for students]~~ may apply only to students enrolled in a  
2-35 course of study that involves potential exposure to human or animal  
2-36 blood or bodily fluids.

2-37 (b-2) An institution of higher education may not require a  
2-38 student, as a condition of the student's admission to or continued  
2-39 enrollment in the institution, to be vaccinated against COVID-19 as  
2-40 defined by Section 51.91921.

2-41 SECTION 5. Sections 81.023(a) and (c), Health and Safety  
2-42 Code, are amended to read as follows:

2-43 (a) The executive commissioner may recommend to the  
2-44 legislature immunizations to include on the list of immunizations  
2-45 required ~~[department shall develop immunization requirements]~~ for  
2-46 children under Section 161.004.

2-47 (c) The department shall cooperate with the State Board of  
2-48 Education in ~~[formulating and]~~ implementing immunization  
2-49 requirements for students admitted to public or private primary or  
2-50 secondary schools.

2-51 SECTION 6. Subtitle D, Title 2, Health and Safety Code, is  
2-52 amended by adding Chapter 81B to read as follows:

2-53 CHAPTER 81B. PROHIBITED CORONAVIRUS PREVENTATIVE MEASURES

2-54 Sec. 81B.001. DEFINITIONS. In this chapter:

2-55 (1) "COVID-19" means the 2019 novel coronavirus  
2-56 disease and any variants of the disease.

2-57 (2) "Governmental entity" means this state, a local  
2-58 government entity as defined by Section 418.004, Government Code,  
2-59 or an agency of this state or a local government entity.

2-60 Sec. 81B.002. PROHIBITED FACE-COVERING MANDATE.  
2-61 Notwithstanding any other law, including Chapter 81 of this code  
2-62 and Chapter 418, Government Code, a governmental entity may not  
2-63 implement, order, or otherwise impose a mandate requiring a person  
2-64 to wear a face mask or other face covering to prevent the spread of  
2-65 COVID-19.

2-66 Sec. 81B.003. PROHIBITED VACCINE MANDATE. Notwithstanding  
2-67 any other law, including Chapter 81 of this code and Chapter 418,  
2-68 Government Code, a governmental entity may not implement, order, or  
2-69 otherwise impose a mandate requiring a person to be vaccinated

3-1 against COVID-19.

3-2 Sec. 81B.004. PROHIBITED CLOSURE MANDATE FOR PRIVATE  
 3-3 BUSINESSES AND SCHOOLS. Notwithstanding any other law, including  
 3-4 Chapter 81 of this code and Chapter 418, Government Code, a  
 3-5 governmental entity may not implement, order, or otherwise impose a  
 3-6 mandate requiring the closure of a private business, public school,  
 3-7 open-enrollment charter school, or private school to prevent the  
 3-8 spread of COVID-19.

3-9 SECTION 7. Section 161.004(a), Health and Safety Code, is  
 3-10 amended to read as follows:

3-11 (a) Every child in the state shall be immunized against  
 3-12 diphtheria, hepatitis A, hepatitis B, measles, meningococcal  
 3-13 disease, mumps, pertussis, polio, rubella, tetanus, and varicella  
 3-14 [vaccine preventable diseases caused by infectious agents] in  
 3-15 accordance with the [immunization] schedule prescribed [adopted]  
 3-16 in department rules. The executive commissioner may not require  
 3-17 immunizations against any additional diseases for students  
 3-18 admitted to a public or private primary or secondary school.

3-19 SECTION 8. Subtitle H, Title 2, Health and Safety Code, is  
 3-20 amended by adding Chapter 174 to read as follows:

3-21 CHAPTER 174. PATIENT RIGHTS

3-22 Sec. 174.001. DEFINITIONS. In this chapter:

3-23 (1) "COVID-19" has the meaning assigned by Section  
 3-24 81B.001.

3-25 (2) "Health care facility" means a hospital,  
 3-26 freestanding emergency medical care facility, urgent care or retail  
 3-27 clinic, outpatient clinic, birthing center, ambulatory surgical  
 3-28 center, or other facility that is licensed to provide health care  
 3-29 services in this state.

3-30 Sec. 174.002. PROHIBITED DISCRIMINATION BASED ON COVID-19  
 3-31 VACCINATION STATUS. (a) Except as provided by Subsection (b), a  
 3-32 health care facility may not refuse to provide health care services  
 3-33 to an individual based on the individual's vaccination status or  
 3-34 post-transmission recovery of COVID-19.

3-35 (b) The prohibition under Subsection (a) does not apply to a  
 3-36 hospital that requires a COVID-19 vaccination in relation to  
 3-37 oncology or transplant care.

3-38 Sec. 174.003. MEDICAID REIMBURSEMENT PROHIBITED. (a) The  
 3-39 commission:

3-40 (1) may not provide Medicaid reimbursement to a health  
 3-41 care facility that violates this chapter; and

3-42 (2) shall disenroll the facility from participation as  
 3-43 a Medicaid provider.

3-44 (b) The executive commissioner may adopt rules as necessary  
 3-45 to implement this section.

3-46 SECTION 9. Chapter 21, Labor Code, is amended by adding  
 3-47 Subchapter H-1 to read as follows:

3-48 SUBCHAPTER H-1. DISCRIMINATION BASED ON COVID-19 VACCINATION  
 3-49 STATUS

3-50 Sec. 21.421. DEFINITION. In this subchapter, "COVID-19"  
 3-51 has the meaning assigned by Section 81B.001, Health and Safety  
 3-52 Code.

3-53 Sec. 21.422. PROHIBITED DISCRIMINATION BASED ON COVID-19  
 3-54 VACCINATION STATUS. (a) Except as provided by Subsection (d), an  
 3-55 employer commits an unlawful employment practice if the employer  
 3-56 fails or refuses to hire, discharges, or otherwise discriminates  
 3-57 against an individual with respect to the compensation or the  
 3-58 terms, conditions, or privileges of employment because the  
 3-59 individual has not been vaccinated against COVID-19.

3-60 (b) A labor organization commits an unlawful employment  
 3-61 practice if the labor organization excludes or expels from  
 3-62 membership or otherwise discriminates against an individual  
 3-63 because the individual has not been vaccinated against COVID-19.

3-64 (c) An employment agency commits an unlawful employment  
 3-65 practice if the employment agency classifies or refers for  
 3-66 employment, fails or refuses to refer for employment, or otherwise  
 3-67 discriminates against an individual because the individual has not  
 3-68 been vaccinated against COVID-19.

3-69 (d) This section does not apply to:

4-1 (1) a health care facility, as defined by Section  
4-2 224.001, Health and Safety Code, that:

4-3 (A) implements a policy or procedure to exempt  
4-4 from a required vaccination an individual described by this section  
4-5 who has a medical condition identified as a contraindication or  
4-6 precaution to the vaccination by the Centers for Disease Control  
4-7 and Prevention;

4-8 (B) establishes procedures that an exempt  
4-9 individual is required to follow to protect facility patients from  
4-10 exposure to disease, including the use of gloves, face masks, or  
4-11 other protective medical equipment, based on the level of risk the  
4-12 individual presents to patients by the individual's routine and  
4-13 direct exposure to patients; and

4-14 (C) prohibits discrimination or retaliatory  
4-15 action against an exempt individual, except that the required use  
4-16 of protective medical equipment under Paragraph (B) is not  
4-17 considered a retaliatory action for purposes of this paragraph; or

4-18 (2) a private employer that:

4-19 (A) implements a policy or procedure to exempt  
4-20 from a required vaccination an individual described by this section  
4-21 based on reasons of conscience or because the individual has a  
4-22 medical condition identified as a contraindication or precaution to  
4-23 the vaccination by the Centers for Disease Control and Prevention;

4-24 (B) establishes procedures that an exempt  
4-25 individual is required to follow to protect employees and other  
4-26 individuals from exposure to disease, including the use of gloves,  
4-27 face masks, or other protective medical equipment, based on the  
4-28 level of risk the individual presents to employees and other  
4-29 individuals by the individual's routine and direct exposure to  
4-30 employees and other individuals; and

4-31 (C) prohibits discrimination or retaliatory  
4-32 action against an exempt individual, except that the required use  
4-33 of protective medical equipment under Paragraph (B) is not  
4-34 considered a retaliatory action for purposes of this paragraph.

4-35 SECTION 10. Section 551.003(33), Occupations Code, is  
4-36 amended to read as follows:

4-37 (33) "Practice of pharmacy" means:

4-38 (A) providing an act or service necessary to  
4-39 provide pharmaceutical care;

4-40 (B) interpreting or evaluating a prescription  
4-41 drug order or medication order;

4-42 (C) participating in drug or device selection as  
4-43 authorized by law, and participating in drug administration, drug  
4-44 regimen review, or drug or drug-related research;

4-45 (D) providing patient counseling;

4-46 (E) being responsible for:

4-47 (i) dispensing a prescription drug order or  
4-48 distributing a medication order;

4-49 (ii) compounding or labeling a drug or  
4-50 device, other than labeling by a manufacturer, repackager, or  
4-51 distributor of a nonprescription drug or commercially packaged  
4-52 prescription drug or device;

4-53 (iii) properly and safely storing a drug or  
4-54 device; or

4-55 (iv) maintaining proper records for a drug  
4-56 or device;

4-57 (F) performing for a patient a specific act of  
4-58 drug therapy management delegated to a pharmacist by a written  
4-59 protocol from a physician licensed in this state in compliance with  
4-60 Subtitle B; [~~or~~]

4-61 (G) subject to Section 554.052(c-1), ordering or  
4-62 administering an immunization or vaccination to a patient who is at  
4-63 least three years of age; or

4-64 (H) if the patient is younger than three years of  
4-65 age and is referred to a pharmacist by a physician, administering an  
4-66 immunization or vaccination to a patient under a physician's  
4-67 written protocol.

4-68 SECTION 11. The heading to Section 554.004, Occupations  
4-69 Code, is amended to read as follows:

5-1 Sec. 554.004. ADMINISTRATION OF MEDICATION; ORDERING AND  
 5-2 ADMINISTRATION OF IMMUNIZATION OR VACCINATION.

5-3 SECTION 12. Section 554.004(a), Occupations Code, is  
 5-4 amended to read as follows:

5-5 (a) The board shall specify conditions under which a  
 5-6 pharmacist may administer medication and order or administer [~~or~~  
 5-7 ~~including~~] an immunization or [~~and~~] vaccination. The conditions  
 5-8 for ordering or administering an immunization or vaccination must  
 5-9 ensure that:

5-10 (1) [~~a licensed health care provider authorized to~~  
 5-11 ~~administer the medication is not reasonably available to administer~~  
 5-12 ~~the medication;~~

5-13 [~~(2) failure to administer the medication, other than~~  
 5-14 ~~an immunization or vaccination, might result in a significant delay~~  
 5-15 ~~or interruption of a critical phase of drug therapy;~~

5-16 [~~(3)] the pharmacist possesses the necessary skill,~~  
 5-17 education, and certification as specified by the board to order or  
 5-18 administer the immunization or vaccination [~~medication~~];

5-19 (2) [~~(4)] within a reasonable time after~~  
 5-20 administering an immunization or vaccination that is prescribed by  
 5-21 a licensed health care provider [~~medication~~], the pharmacist  
 5-22 notifies the licensed health care provider responsible for the  
 5-23 patient's care that the immunization or vaccination [~~medication~~]  
 5-24 was administered;

5-25 [~~(5) the pharmacist may not administer medication to a~~  
 5-26 ~~patient at the patient's residence, except at a licensed nursing~~  
 5-27 ~~home or hospital;~~

5-28 [~~(6) the pharmacist administers an immunization or~~  
 5-29 ~~vaccination under a physician's written protocol and meets the~~  
 5-30 ~~standards established by the board;~~] and

5-31 (3) [~~(7)] the authority of a pharmacist to administer~~  
 5-32 an immunization or vaccination [~~medication~~] may [~~not~~] be delegated  
 5-33 to a certified pharmacy technician.

5-34 SECTION 13. Sections 554.052(a), (b), (c), and (c-1),  
 5-35 Occupations Code, are amended to read as follows:

5-36 (a) The board by rule shall require a pharmacist to notify a  
 5-37 physician who prescribes an immunization or vaccination not later  
 5-38 than the 14th day [~~within 24 hours~~] after the date the pharmacist  
 5-39 administers the immunization or vaccination.

5-40 (b) The board shall establish minimum education and  
 5-41 continuing education standards for a pharmacist who orders or  
 5-42 administers an immunization or vaccination. The standards must  
 5-43 include federal Centers for Disease Control and Prevention  
 5-44 training, basic life support training, and hands-on training in  
 5-45 techniques for administering immunizations and vaccinations.

5-46 (c) Supervision by a physician is adequate if the delegating  
 5-47 physician:

5-48 (1) is responsible for formulating or approving an  
 5-49 order or protocol, including the physician's order, standing  
 5-50 medical order, or standing delegation order, and periodically  
 5-51 reviews the order or protocol and the services provided to a patient  
 5-52 under the order or protocol;

5-53 (2) [~~except as provided by Subsection (c-1),~~] has  
 5-54 established a physician-patient relationship with each patient who  
 5-55 is younger than three [~~under 14~~] years of age and referred the  
 5-56 patient to the pharmacist;

5-57 (3) is geographically located to be easily accessible  
 5-58 to the pharmacy where an immunization or vaccination is  
 5-59 administered;

5-60 (4) receives, as appropriate, a periodic status report  
 5-61 on the patient, including any problem or complication encountered;  
 5-62 and

5-63 (5) is available through direct telecommunication for  
 5-64 consultation, assistance, and direction.

5-65 (c-1) A pharmacist may order or administer an immunization  
 5-66 or [~~influenza~~] vaccination to a patient who is at least three [~~over~~  
 5-67 ~~seven~~] years of age without an established physician-patient  
 5-68 relationship if the immunization or vaccination is:

5-69 (1) authorized or approved by the United States Food

6-1 and Drug Administration or listed in the routine immunization  
6-2 schedule recommended by the federal Advisory Committee on  
6-3 Immunization Practices published by the federal Centers for Disease  
6-4 Control and Prevention; and

6-5 (2) ordered or administered in accordance with the  
6-6 federal Advisory Committee on Immunization Practices  
6-7 vaccine-specific recommendations.

6-8 SECTION 14. Section 38.001(b), Education Code, as amended  
6-9 by Chapters 43 (H.B. 1098) and 94 (H.B. 1059), Acts of the 80th  
6-10 Legislature, Regular Session, 2007, is repealed.

6-11 SECTION 15. (a) The changes in law made by this Act to  
6-12 Title 2, Education Code, apply beginning with the 2023-2024 school  
6-13 year.

6-14 (b) The changes in law made by this Act to Title 3, Education  
6-15 Code, apply beginning with the 2023-2024 academic year.

6-16 SECTION 16. Subchapter H-1, Chapter 21, Labor Code, as  
6-17 added by this Act, applies only to an unlawful employment practice  
6-18 that occurs on or after the effective date of this Act.

6-19 SECTION 17. If before implementing any provision of this  
6-20 Act a state agency determines that a waiver or authorization from a  
6-21 federal agency is necessary for implementation of that provision,  
6-22 the agency affected by the provision shall request the waiver or  
6-23 authorization and may delay implementing that provision until the  
6-24 waiver or authorization is granted.

6-25 SECTION 18. This Act takes effect immediately if it  
6-26 receives a vote of two-thirds of all the members elected to each  
6-27 house, as provided by Section 39, Article III, Texas Constitution.  
6-28 If this Act does not receive the vote necessary for immediate  
6-29 effect, this Act takes effect September 1, 2023.

6-30

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