HOUSE BILL 21-1191

A BILL FOR AN ACT

CONCERNING THE PROHIBITION AGAINST DISCRIMINATION BASED ON THE REFUSAL TO OBTAIN A COVID-19 VACCINE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill prohibits an employer, including a licensed health facility, from taking adverse action against an employee or an applicant for employment based on the employee's or applicant's COVID-19 immunization status. The bill allows an aggrieved employee or applicant for employment to file a civil action for injunctive, affirmative, and equitable relief and, if the employer or health facility acted with malice...
or wanton or willful misconduct or has repeatedly violated the law, the
court may also award punitive damages and attorney fees and costs.

Additionally, the bill specifies that the COVID-19 vaccine is not
mandatory, that the state cannot require any individual to obtain a
COVID-19 vaccine, and that government agencies and private businesses,
including health insurers, cannot discriminate against clients, patrons, or
customers based on their COVID-19 vaccination status. A person
aggrieved by a violation of these prohibitions may file a civil action for
injunctive and other appropriate relief and may be awarded punitive
damages and attorney fees and costs for wanton, willful, or repeated
violations.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the
"COVID-19 Immunization Nondiscrimination Act" or "CINDA".

SECTION 2. Legislative declaration. (1) The general assembly
finds and declares that:

(a) State law prohibits the Colorado department of public health
and environment from imposing any mode of treatment inconsistent with
the religious faith or belief of any person;

(b) State law also prohibits discriminatory or unfair employment
practices, including harassment, refusal to hire, refusal to train, and
termination of employment, based upon an employee's race, national
origin, sex, sexual orientation, disability, age, or religion;

(c) State law protects employees' jobs and civil rights; provides
relief for employees wrongly discriminated against, coerced, or
discharged from employment; and reflects judicial interpretations of the
federal "Civil Rights Act of 1964", Pub.L. 88-352, as amended;

(d) The Colorado department of public health and environment
acknowledges the right to informed consent for all treatments and
procedures; the right to refuse a drug, test, procedure, or treatment; and
the right to treatment in a safe setting that is respectful of personal privacy and that recognizes personal dignity, cultural values, and religious beliefs;

(e) Under the federal "National Childhood Vaccine Injury Act of 1986" (NCVIA), 42 U.S.C. secs. 300aa-1 to 300aa-34, as amended, a person administering a vaccine is not liable in civil court for harm to the patient caused by the administration of the vaccine;

(f) The National Academy of Medicine published physician committee reports that acknowledge that there are significant gaps in vaccine safety science, including the need for more biological mechanism studies and methodologically sound epidemiological studies;

(g) The NCVIA created the "Vaccine Adverse Event Reporting System" (VAERS), co-administered by the federal centers for disease control and prevention (CDC) and the federal food and drug administration (FDA), which requires health-care providers to report injury, harm, and any adverse event resulting from the administration of a vaccine;

(h) The VAERS has received seven hundred forty-nine thousand eight hundred twenty-five vaccine adverse event reports, including ten thousand four hundred thirty from Colorado, since its inception in 1990 through September 30, 2019, and receives about thirty thousand reports annually;

(i) As of February 20, 2021, the VAERS shows fifteen thousand nine hundred twenty-three reports filed for COVID-19 vaccines alone, with the following reports in the following categories:

(I) Urgent care: Three thousand four hundred twenty-one cases;

(II) Office visits: Two thousand one hundred ninety-one cases;
(III) Anaphylaxis: One hundred ninety cases;

(IV) Bell's palsy: One hundred ninety-eight cases;

(V) Hospitalizations: One thousand eight hundred sixty-nine cases; and

(VI) Deaths: Nine hundred twenty-nine cases;

(j) The medical code of ethics for the American Medical Association accepts that some individuals have medical, religious, or philosophical reasons to not be vaccinated;

(k) The ethical principle of informed consent to medical treatment, which requires the voluntary consent of individuals and parents or guardians of minor children prior to the administration of medical treatment, is recognized internationally as a human right under the World Medical Association (WMA) Declaration of Lisbon on the Rights of the Patient, the WMA Medical Ethics Manual, the WMA Declaration of Helsinki of 1964, the United Nations Universal Declaration of Human Rights of 1948, and the Nuremberg Code of 1947;

(l) In contrast to most vaccines, which use weakened or inactivated versions or components of the disease-causing pathogen to stimulate the body's immune response, the COVID-19 vaccine uses messenger RNA (mRNA) technology, a process that employs genetic material to prompt cells in the body to make proteins to trigger an immune response;

(m) The mRNA technology used in the COVID-19 vaccine shots is experimental and has never before been used in widespread human vaccination programs;

(n) Given that the COVID-19 vaccine shots were authorized for use starting in December 2020, less than twelve months since the first
COVID-19 case was reported in the United States and less than nine months since pharmaceutical manufacturers began researching and developing a vaccine for COVID-19, there has not been time to conduct long-term safety studies of the vaccinations;

(o) Moreover, no studies have been conducted on the safety of the COVID-19 vaccine for pregnant women or on potential interactions with other drugs or vaccines;

(p) It has been shown that different racial groups have different antibody responses to traditional vaccines, but no studies have been conducted as to the safety of mRNA technology across different racial groups;

(q) The Black community, in particular, is acutely aware of the pharmaceutical industry's history of using Black people for medical experimentation;

(r) Markers for autoimmunity are now found in more than fifteen percent of the United States population and are steadily rising;

(s) Fifty-four percent of the United States population, including children, suffer from at least one chronic illness or disease;

(t) Allergies are the sixth leading cause of chronic illness in the United States, resulting in an annual cost in excess of eighteen billion dollars;

(u) More than fifty million Americans suffer from allergies each year, and many of those Americans will not be medically able to receive the COVID-19 vaccine without suffering imminent harm;

(v) The CDC, FDA, and the vaccine manufacturers all concur that the COVID-19 vaccines will neither prevent infection nor stop viral transmission; and
(w) Therefore, it is the intent of the general assembly to enact the "COVID-19 Immunization Nondiscrimination Act", referred to as "CINDA", to prohibit employers, government agencies, educational institutions, and commercial enterprises from taking adverse action or discriminating against employees, applicants for employment, students, or customers who choose to delay or decline the COVID-19 vaccines.

SECTION 3. In Colorado Revised Statutes, add 8-2-131 as follows:

8-2-131. Prohibitions of employer - adverse action based on COVID-19 immunization status - civil action - definitions. (1) As used in this section:

(a) "ADVERSE ACTION" MEANS:

(I) To refuse to hire, to discharge, to refuse to promote, to demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against an employee; or

(II) Any other employment decision or treatment that adversely affects an employee.

(b) "COVID-19" MEANS THE CORONAVIRUS DISEASE 2019 CAUSED BY THE SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2, ALSO KNOWN AS SARS-CoV-2.

(c) "EMPLOYEE" MEANS A PERSON WHO MAY BE PERMITTED, REQUIRED, OR DIRECTED BY ANY EMPLOYER, IN CONSIDERATION OF DIRECT OR INDIRECT GAIN OR PROFIT, TO ENGAGE IN ANY EMPLOYMENT AND INCLUDES AN APPLICANT FOR EMPLOYMENT.

(d) "EMPLOYER" MEANS A PERSON TRANSACTING BUSINESS IN COLORADO WHO, AT ANY TIME, EMPLOYS ANOTHER PERSON TO PERFORM
SERVICES OF ANY NATURE AND WHO HAS CONTROL OF THE PAYMENT OF
WAGES FOR SUCH SERVICES OR IS THE OFFICER, AGENT, OR EMPLOYEE OF
THE PERSON HAVING CONTROL OF THE PAYMENT OF WAGES.

(2) Notwithstanding any other provision of law, an
employer shall not take adverse action against an employee
based on the employee’s COVID-19 immunization status.

(3) (a) An employee aggrieved under this section may file
a civil action for:

(I) injunctive relief against any further violation;

(II) affirmative relief, including reinstatement or hiring
and back pay and lost benefits for the entire time of the
violation with interest up to ten percent; and

(III) any other equitable relief that may be appropriate.

(b) In a civil action filed pursuant to this section, a court
may also award:

(I) punitive damages if:

(A) it is demonstrated by clear and convincing evidence
that the employer has acted with malice or acted with willful
and wanton misconduct; or

(B) the employer was previously found, in a proceeding
for a violation of this section, to have violated this section; and

(II) attorney fees and costs in connection with the civil
action.

SECTION 4. In Colorado Revised Statutes, add 25-1-131 as
follows:

25-1-131. COVID-19 vaccinations - not mandatory - civil
action - definitions. (1) As used in this section:
(a) "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF
AGE OR OLDER OR WHO IS AN EMANCIPATED MINOR.

(b) "CHILD" MEANS AN UNEMANCIPATED INDIVIDUAL WHO IS
UNDER EIGHTEEN YEARS OF AGE.

(c) "COVID-19" MEANS THE CORONAVIRUS DISEASE 2019 CAUSED
BY THE SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2, ALSO
KNOWN AS SARS-CoV-2.

(d) "COVID-19 VACCINE" MEANS A VACCINE USED FOR PURPOSES
OF INDUCING IMMUNITY AGAINST COVID-19 OR SEVERE ACUTE
RESPIRATORY SYNDROME CORONAVIRUS 2 IN HUMANS.

(e) "INCAPACITATED PERSON" MEANS AN INDIVIDUAL WHO IS
EIGHTEEN YEARS OF AGE OR OLDER AND WHO IS UNABLE TO MAKE OR
COMMUNICATE DECISIONS AFFECTING THE INDIVIDUAL'S HEALTH, SAFETY,
OR CARE.

(f) "INDIVIDUAL IN A PARENTAL RELATIONSHIP WITH THE CHILD"
MEANS AN INDIVIDUAL WHO IS A PARENT OR LEGAL GUARDIAN OF A CHILD.

(g) "LEGAL GUARDIAN" MEANS AN ADULT WHO IS DESIGNATED BY
AN INCAPACITATED PERSON, PRIOR TO THE INCAPACITATION, AS THE
PERSON'S LEGAL GUARDIAN OR AN ADULT WHO IS LEGALLY APPOINTED BY
A COURT AS THE LEGAL GUARDIAN OF THE INCAPACITATED PERSON.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
CONTRARY:

(a) NO COVID-19 VACCINE SHALL BE MADE A MANDATORY
IMMUNIZATION IN THIS STATE;

(b) AN ADULT MAY VOLUNTARILY CHOOSE, BUT SHALL NOT BE
REQUIRED, TO RECEIVE A COVID-19 VACCINE;

(c) A CHILD SHALL NOT BE REQUIRED TO RECEIVE A COVID-19
VACCINE UNLESS AN INDIVIDUAL IN A PARENTAL RELATIONSHIP WITH THE CHILD CHOOSES TO HAVE THE CHILD RECEIVE THE COVID-19 VACCINE;

(d) An incapacitated person shall not be required to receive a COVID-19 vaccine unless the legal guardian of the incapacitated person chooses to have the incapacitated person receive the COVID-19 vaccine;

(e) A government agency, commercial establishment or enterprise, service provider, or nonprofit organization shall not discriminate against a client, patron, or customer based on whether the client, patron, or customer received the COVID-19 vaccine; and

(f) A health insurer shall not consider whether a person has received a COVID-19 vaccine as a condition for issuing a health coverage plan to the person or as a metric to determine health insurance premiums.

(3) (a) An individual aggrieved under this section may file a civil action for:

(I) injunctive relief against any further violation; and

(II) any other relief, including equitable relief or damages, that may be appropriate.

(b) In a civil action filed pursuant to this section, a court may also award:

(I) punitive damages if:

(A) it is demonstrated by clear and convincing evidence that the person that violated this section has acted with malice or acted with willful and wanton misconduct; or

(B) the person that violated this section was previously
FOUND, IN A PROCEEDING FOR A VIOLATION OF THIS SECTION, TO HAVE
VIOLATED THIS SECTION; AND

(II) ATTORNEY FEES AND COSTS IN CONNECTION WITH THE CIVIL
ACTION.

SECTION 5. In Colorado Revised Statutes, add 25-3-126 as
follows:

25-3-126. Health facilities - prohibit adverse action based on
COVID-19 immunization status - civil action - definitions. (1) As
used in this section:

(a) "ADVERSE ACTION" MEANS:

(I) TO REFUSE TO HIRE, TO DISCHARGE, TO REFUSE TO PROMOTE,
TO DEMOTE, TO HARASS DURING THE COURSE OF EMPLOYMENT, OR TO
DISCRIMINATE IN MATTERS OF COMPENSATION, TERMS, CONDITIONS, OR
PRIVILEGES OF EMPLOYMENT AGAINST AN EMPLOYEE; OR

(II) ANY OTHER EMPLOYMENT DECISION OR TREATMENT THAT
ADVERSELY AFFECTS AN EMPLOYEE.

(b) "COVID-19" MEANS THE CORONAVIRUS DISEASE 2019 CAUSED
BY THE SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2, ALSO
KNOWN AS SARS-CoV-2.

(c) "COVID-19 VACCINE" MEANS A VACCINE USED FOR PURPOSES
OF INDUCING IMMUNITY AGAINST COVID-19 OR SEVERE ACUTE
RESPIRATORY SYNDROME CORONAVIRUS 2 IN HUMANS.

(d) "EMPLOYEE" MEANS A PERSON WHO MAY BE PERMITTED,
REQUIRED, OR DIRECTED BY A HEALTH FACILITY, IN CONSIDERATION OF
DIRECT OR INDIRECT GAIN OR PROFIT, TO ENGAGE IN ANY EMPLOYMENT
AND INCLUDES AN APPLICANT FOR EMPLOYMENT. "EMPLOYEE" INCLUDES
A PERSON WITH WHOM THE HEALTH FACILITY CONTRACTS.
(e) "HEALTH FACILITY" means a facility licensed pursuant to
section 25-1.5-103.

(2) Notwithstanding any other provision of law, a health
facility shall neither require an employee, as a condition of
employment, to receive a COVID-19 vaccine nor take adverse
action against an employee based on the employee's COVID-19
immunization status.

(3) The department shall not require a health facility to
ensure that the health facility's employees receive a COVID-19
vaccine.

(4) (a) An employee aggrieved under this section may file
a civil action for:

(I) Injunctive relief against any further violation;

(II) Affirmative relief, including reinstatement or hiring
and back pay and lost benefits for the entire time of the
violation with interest up to ten percent; and

(III) Any other equitable relief that may be appropriate.

(b) In a civil action filed pursuant to this section, a court
may also award:

(I) Punitive damages if:

(A) It is demonstrated by clear and convincing evidence
that the health facility has acted with malice or acted with
willful and wanton misconduct; or

(B) The health facility was previously found, in a
proceeding for a violation of this section, to have violated this
section; and

(II) Attorney fees and costs in connection with the civil
SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.