

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0756.02 Kristen Forrestal x4217

SENATE BILL 20-084

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SENATE SPONSORSHIP

Marble,

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Senate Committees

State, Veterans, & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING A PROHIBITION AGAINST REQUIRING EMPLOYEES TO BE  
102 VACCINATED.

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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 immunization status. The bill allows an aggrieved person to file a civil action for injunctive, affirmative, and equitable relief.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

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

2           **SECTION 1. Short title.** The short title of this act is the  
3 "Employee Immunization Rights of Conscience Act".

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

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

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

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

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

23           (e) The vaccine injury compensation program (VICP), which was  
24 established under the federal "National Childhood Vaccine Injury Act of  
25 1986" (NCVIA), 42 U.S.C. secs. 300aa-1 to 300aa-34, as amended, as an  
26 administrative alternative to a civil action, acknowledges that vaccines

1 can cause injury and death and that federal compensation may be paid to  
2 individuals for an injury or death following receipt of a federally licensed  
3 and recommended childhood vaccine, with a presumption of causation if  
4 the evidence demonstrates that there is no other plausible biological  
5 explanation for the injury or death;

6 (f) The United States department of health and human services'  
7 health resources and services administration reported in November 2019  
8 that the VICP has awarded more than four billion two hundred million  
9 dollars in compensation for vaccine-related injuries and deaths to more  
10 than six thousand nine hundred vaccine-injured individuals and families;

11 (g) The NCVIA states that no vaccine manufacturer may be liable  
12 in a civil action for damages arising from a vaccine-related injury or death  
13 associated with the administration of a vaccine after October 1, 1988, if  
14 the injury or death resulted from side effects, so long as the vaccine was  
15 properly prepared according to federal food and drug administration  
16 (FDA) licensing standards and was accompanied by FDA-approved  
17 directions and warnings;

18 (h) In 2011, the United States supreme court interpreted federal  
19 law as it applies to a vaccine manufacturer's design defects and held in  
20 *Bruesewitz v. Wyeth*, 131 S. Ct. 1068, that the NCVIA preempts all  
21 design-defect claims against vaccine manufacturers brought by plaintiffs  
22 who seek compensation for injury or death caused by vaccine side effects;

23 (i) Under the NCVIA, a person administering a vaccine is not  
24 liable in civil court for harm to the patient caused by the administration  
25 of the vaccine;

26 (j) The National Academy of Sciences, Institute of Medicine,  
27 published physician committee reports that evaluate evidence in the

1 medical literature, confirming that vaccines can cause injury and death  
2 and that there are individual genetic, biological, and environmental  
3 susceptibilities to vaccine reactions that have not been fully defined by  
4 science, thus preventing doctors from accurately predicting who will be  
5 harmed by vaccination;

6 (k) The Institute of Medicine also published physician committee  
7 reports that acknowledge that there are significant gaps in vaccine safety  
8 science, including the need for more biological mechanism studies and  
9 methodologically sound epidemiological studies;

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

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

20 (n) Vaccine adverse events are underreported to VAERS, with at  
21 most ten percent, and as low as less than one percent, of vaccine adverse  
22 events reported;

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

26 (p) The ethical principle of informed consent to medical  
27 treatment, which requires the voluntary consent of individuals and parents

1 or guardians of minor children prior to the administration of medical  
2 treatment, is recognized internationally as a human right under the World  
3 Medical Association (WMA) declaration on the rights of the patient, the  
4 WMA medical ethics manual, the WMA declaration of Helsinki of 1964,  
5 the United Nations universal declaration of human rights of 1948, and the  
6 "Nuremberg Code" of 1947; and

7 (q) Therefore, it is the intent of the general assembly to enact the  
8 "Employee Immunization Rights of Conscience Act" to prohibit  
9 employers from taking adverse action against employees and applicants  
10 for employment who delay or decline immunizations.

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

13 **8-2-131. Prohibitions of employer - adverse action based on**  
14 **immunization status - civil action - definitions.** (1) AS USED IN THIS  
15 SECTION:

16 (a) "ADVERSE ACTION" MEANS:

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

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

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

27 (c) "EMPLOYER" MEANS A PERSON TRANSACTING BUSINESS IN

1 COLORADO WHO, AT ANY TIME, EMPLOYS ANOTHER PERSON TO PERFORM  
2 SERVICES OF ANY NATURE AND WHO HAS CONTROL OF THE PAYMENT OF  
3 WAGES FOR SUCH SERVICES OR IS THE OFFICER, AGENT, OR EMPLOYEE OF  
4 THE PERSON HAVING CONTROL OF THE PAYMENT OF WAGES.

5 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN  
6 EMPLOYER SHALL NOT TAKE ADVERSE ACTION AGAINST AN EMPLOYEE  
7 BASED ON AN EMPLOYEE'S IMMUNIZATION STATUS.

8 (3) (a) AN EMPLOYEE AGGRIEVED UNDER THIS SECTION MAY FILE  
9 A CIVIL ACTION FOR INJUNCTIVE RELIEF AGAINST ANY FURTHER  
10 VIOLATION; AFFIRMATIVE RELIEF, INCLUDING REINSTATEMENT OR HIRING  
11 AND BACK PAY AND LOST BENEFITS FOR THE ENTIRE TIME OF THE  
12 VIOLATION WITH INTEREST UP TO TEN PERCENT; AND ANY OTHER  
13 EQUITABLE RELIEF THAT MAY BE APPROPRIATE.

14 (b) IN A CIVIL ACTION FILED PURSUANT TO THIS SECTION, A COURT  
15 MAY ALSO AWARD:

16 (I) PUNITIVE DAMAGES IF:

17 (A) IT IS DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE  
18 THAT THE EMPLOYER HAS ACTED WITH MALICE OR ACTED WITH WILLFUL  
19 AND WANTON MISCONDUCT; OR

20 (B) THE EMPLOYER WAS PREVIOUSLY ADJUDICATED IN A  
21 PROCEEDING FOR A VIOLATION OF THIS SECTION; AND

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

24 **SECTION 4.** In Colorado Revised Statutes, **add** 25-3-124 as  
25 follows:

26 **25-3-124. Health facilities - prohibit adverse action based on**  
27 **immunization status - civil action - definitions.** (1) AS USED IN THIS

1 SECTION:

2 (a) "ADVERSE ACTION" MEANS:

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

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

9 (b) "EMPLOYEE" MEANS A PERSON WHO MAY BE PERMITTED,  
10 REQUIRED, OR DIRECTED BY A HEALTH FACILITY, IN CONSIDERATION OF  
11 DIRECT OR INDIRECT GAIN OR PROFIT, TO ENGAGE IN ANY EMPLOYMENT  
12 AND INCLUDES AN APPLICANT FOR EMPLOYMENT. "EMPLOYEE" INCLUDES  
13 A PERSON WITH WHOM THE HEALTH FACILITY CONTRACTS.

14 (c) "HEALTH FACILITY" MEANS A FACILITY LICENSED PURSUANT TO  
15 SECTION 25-1.5-103.

16 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A HEALTH  
17 FACILITY SHALL NEITHER REQUIRE AN EMPLOYEE, AS A CONDITION OF  
18 EMPLOYMENT, TO RECEIVE A VACCINATION NOR TAKE ADVERSE ACTION  
19 AGAINST AN EMPLOYEE BASED ON AN EMPLOYEE'S IMMUNIZATION STATUS.

20 (3) THE DEPARTMENT SHALL NOT REQUIRE A HEALTH FACILITY TO  
21 ENSURE THAT THE HEALTH FACILITY'S EMPLOYEES RECEIVE  
22 VACCINATIONS.

23 (4) (a) AN EMPLOYEE AGGRIEVED UNDER THIS SECTION MAY FILE  
24 A CIVIL ACTION FOR INJUNCTIVE RELIEF AGAINST ANY FURTHER  
25 VIOLATION; AFFIRMATIVE RELIEF, INCLUDING REINSTATEMENT OR HIRING  
26 AND BACK PAY AND LOST BENEFITS FOR THE ENTIRE TIME OF THE  
27 VIOLATION WITH INTEREST UP TO TEN PERCENT; AND ANY OTHER

1       EQUITABLE RELIEF THAT MAY BE APPROPRIATE.

2               (b) IN A CIVIL ACTION FILED PURSUANT TO THIS SECTION, A COURT  
3       MAY ALSO AWARD:

4               (I) PUNITIVE DAMAGES IF:

5               (A) IT IS DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE  
6       THAT THE HEALTH FACILITY HAS ACTED WITH MALICE OR ACTED WITH  
7       WILLFUL AND WANTON MISCONDUCT; OR

8               (B) THE HEALTH FACILITY WAS PREVIOUSLY ADJUDICATED IN A  
9       PROCEEDING FOR A VIOLATION OF THIS SECTION; AND

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

12              **SECTION 5. Effective date.** This act takes effect July 1, 2020.

13              **SECTION 6. Safety clause.** The general assembly hereby finds,  
14       determines, and declares that this act is necessary for the immediate  
15       preservation of the public peace, health, or safety.