

## INITIATIVE PETITION

**To the Attorney General of Ohio:** Pursuant to Ohio Revised Code 3519.01(A), The undersigned electors of the State of Ohio, numbering in excess of one thousand, hereby submit to you the full text of a proposed law and a summary of the same.

### TITLE

Vaccine and Gene Therapy Choice and Anti-Discrimination Act

### SUMMARY

This act would enact Section 3792.02 of the Ohio Revised Code (O.R.C.) to protect the privacy and freedom of Ohioans in their ability to abstain from vaccination or gene therapy without unlawful discrimination by (1) prohibiting the state, county, or local establishment of a vaccination or gene therapy passport system, registry, or requirement; (2) providing increased transparency and reinforcement of existing laws proscribing public school vaccination exemptions and privacy for staff and students; (3) protecting businesses and employers from liability for their compliance honoring vaccination or gene therapy choice; (4) protecting employees from discrimination concerning their vaccination or gene therapy status; and (5) provides cause of action for individuals who have faced violations of the protections herein.

More specifically, this enactment would include, but is not limited to, the following provisions:

- ▶ Increases protections against coercion or penalty in the healthcare decisions of the individuals with informed consent, as well as any child, family, or person for whom the individual stands *in loco parentis* by:
  - Prohibits any person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer from issuing a mandate, requirement, or request for vaccination, immunization, or gene therapy. This prohibition provides exceptions for O.R.C. §§ 3313.671 and 5104.014, as concerns Chicken pox, Diphtheria, Haemophilus influenzae type b, Hepatitis A, Hepatitis B, Influenza, Measles, Mumps, Pertussis, Pneumococcal disease, Poliomyelitis, Rotavirus, Rubella, and Tetanus.
  - Requires notice be provided to all pupils and parents or legal guardians as to any immunization requirement, as well as all applicable exemptions for any school, private college, state institution of higher education pursuant to O.R.C. § 3313.671.
  - Requires notice be provided to all children and parents or legal guardians as to any immunization requirement as well as all applicable exemptions for any child day-care center pursuant to section 5104.014.
- ▶ Increases personal privacy protection over individual personal health information—making exceptions for personally identifiable information under O.R.C. §§ 3313.671, 5104.014 and protected health information for the purposes of patient care, treatment, or billing under O.R.C. §3798.01—but still otherwise prohibiting:
  - Required or mandated disclosure of vaccine or gene therapy status;
  - Participation in a vaccine or gene therapy passport system;
  - Vaccine or gene therapy registry, or other mechanism that is designed for the purpose of tracking an individual's vaccine or gene therapy status;
  - Public disclosure of an individual's vaccine or gene therapy status by any person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer;

- ▶ Measures to prohibit and prevent discrimination—by any person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer—on the basis of vaccine or gene therapy status (or refusal to receive a specific vaccination or gene therapy, series of vaccinations or gene therapies, subscribe to a vaccine or gene therapy or immunity passport or tracking system, or provide proof of vaccination or gene therapy for, immunity to, or testing of a specific contagious or infectious disease or diseases), including:
  - Denial of service or access
  - Segregation
  - Requiring a vaccine or gene therapy status label
  - Requiring disease or immunity testing
  - Rendering penalization as a result of, or otherwise discriminate against an individual
  - Providing any disposition, service, financial aid, or benefit to an individual that is different from, or is provided in a different manner than, that provided to other individuals;
  - Restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit provided to other individuals; based on their refusal to receive a specific vaccination or gene therapy or series of vaccinations or gene therapies, subscribe to a vaccine or gene therapy or immunity passport or tracking system, or provide proof of vaccination or gene therapy for, immunity to, or testing of a specific contagious or infectious disease or diseases;
  - Treating an individual differently from others in determining whether that individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition that individuals are required to meet in order to be provided any disposition, service, financial aid, or benefit available;
  - Denying an individual an opportunity to participate in a program through the provision of service or otherwise afford that individual an opportunity to do so that is different from that afforded to other members of the general public;
  - Creating, imposing, or allowing to be imposed any device or method of identification that acts as, or might be considered to be, a vaccine or gene therapy passport that would be required of any citizen seeking to travel, to enter any public space or private property, or to do any business within this state.
- ▶ Measures to prevent discrimination for any person, public official or employee, public agency, state agency, political subdivision, or insurer within the state, by prohibiting:
  - Denial of service to, penalize as a result of, or otherwise discriminate against a business, corporation, business trust, estate, trust, partnership, or association based on the entity's compliance with the intent of this Act;
  - Providing any disposition, service, financial aid, or benefit to a business, corporation, business trust, estate, trust, partnership, or association that is different from, or is provided in a different manner than that;
  - Restricting a business, corporation, business trust, estate, trust, partnership, or association in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit; provided to other businesses, corporations, business trusts, estates, trusts, partnerships, or associations based on the entity's compliance with the intent of this section;
- ▶ Limits regarding State of Emergency measures by requiring:
  - No public official or employee, public agency, state agency, or political subdivision shall issue any order or proclamation or take other action that:

- ▶ Violates any provision of this enactment, under the pretense of an emergency, including a state of emergency;
  - ▶ Encourages others to violate this enactment;
  - ▶ Penalizes those who refuses to violate this enactment.
- ▶ Creates a legal cause-of-action for violation of this enactment—by any person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer—which an individual may be pursue by seeking relief under Ohio Civil Rights law, Chapter 4112 of the Revised Code or bringing civil action against the person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer in a court of competent jurisdiction. If the plaintiff prevails, the court shall award the plaintiff financial compensation for court costs and attorney's fees, as well as any civil penalty that the court considers appropriate.

Further, this enactment would define the following terms according to the definition provision §3792.02(A) of the Act:

- ▶ "Child day-care center" as defined in O.R.C. §5104.01
- ▶ "Employer" as defined in O.R.C. §4113.51
- ▶ "Health care provider" as defined in O.R.C. §3701.74
- ▶ "Individual" as an adult or minor, state resident or otherwise.
- ▶ "Insurer" as defined in O.R.C. § 3902.02
- ▶ "Institution" as defined in O.R.C. §1713.01
- ▶ "Nursing home" and "residential care facility" as defined in O.R.C. §3721.01
- ▶ "Patient" as an individual seeking or receiving care or treatment from a health care provider.
- ▶ "Person" as defined in O.R.C §1.59
- ▶ "Political subdivision" as a county, township, municipal corporation, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" also includes a board of health of a city, county, or general health district.
- ▶ "Public agency" as defined in O.R.C §102.01
- ▶ "Public official or employee" as defined in O.R.C §102.01
- ▶ "Public space" as any of the following: (a) Places of public accommodation; (b) Any building or space, whether indoors or outdoors, that is owned, leased, operated, occupied, or otherwise used by a public body; (c) Any other building or space, whether indoors or outdoors, that is generally open to the public.
- ▶ "School" as either or both of the following: (a) A chartered nonpublic school as defined in section 3310.01 of the Revised Code. (b) A public school as defined in section 3792.04 of the Revised Code.
- ▶ "Private college" as defined in O.R.C §3365.01
- ▶ "State Institution of higher education" as defined in O.R.C §3345.011
- ▶ "State agency" as defined in O.R.C §1.60
- ▶ "Gene Therapy" as the transplantation of normal genes into cells in place of missing or defective ones in order to correct genetic disorders, including but not limited to ribonucleic acid, deoxyribonucleic acid, or any other genetic technology.
- ▶ "Gene Status" as whether or not an individual has received a specific gene therapy or series of therapies.

- ▶ “Vaccine,” “vaccination,” and “immunization” as any product, including gene therapies, manufactured for the purpose of creating acquired immunity, including to an infectious disease or diseases, or the process of administering such a product.
- ▶ “Vaccine status” whether or not an individual has received a specific vaccination or series of vaccinations.
- ▶ “Business” as a corporation, association, partnership, limited liability company, sole proprietorship, joint venture, or other business entity composed of one or more individuals, whether or not the entity is operated for profit.
- ▶ “Proof of vaccination” as a paper document or digital application available on a smartphone, tablet, or other device, that demonstrates that an individual has been vaccinated, including the use of a scannable device or code
- ▶ “Passport system” as a paper document or digital application available on a smartphone, tablet or other device, including the use of a scannable device or code.
- ▶ “Registry” as an official list whether it be a paper document or digital application available on a smartphone, tablet or other device.
- ▶ “Personally identifiable information” as information that, when used alone or with other relevant data, can identify an individual, including your full name, Social Security Number, driver’s license, financial information, medical records and as pursuant to O.R.C.§3319.321 of the Revised Code.
- ▶ “Protected Health Information” as defined in O.R.C §3798.01

#### **CERTIFICATION OF THE ATTORNEY GENERAL**

This certification of the Attorney General, pursuant to Ohio Revised Code 3519.01(A), will be inserted when it is provided. This initial petition must be submitted with at least one thousand (1,000) valid signatures of Ohio Electors before the Attorney General will issue that certification.

#### **COMMITTEE TO REPRESENT THE PETITIONERS**

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## FULL TEXT OF LAW

Be it enacted by the people of the State of Ohio that the following Chapter Section be added the Ohio Revised Code.

### Section 3792.02 Vaccine and Gene Therapy Choice and Anti-Discrimination

(A) As used in this section:

- (1) "Child day-care center" has the same meaning as in section 5104.01 of the Revised Code.
- (2) "Employer" has the same meaning as in section 4113.51 of the Revised Code.
- (3) "Health care provider" has the same meaning as in section 3701.74 of the Revised Code.
- (4) "Individual" means an adult or minor, state resident or otherwise.
- (5) "Insurer" has the same meaning as in section 3902.02 of the Revised Code.
- (6) "Institution" has the same meaning as in section 1713.01 of the Revised Code.
- (7) "Nursing home" and "residential care facility" have the same meanings as in section 3721.01 of the Revised Code.
- (8) "Patient" means an individual seeking or receiving care or treatment from a health care provider.
- (9) "Person" has the same meaning as in section 1.59 of the Revised Code.
- (10) "Political subdivision" means a county, township, municipal corporation, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.  
"Political subdivision" also includes a board of health of a city, county, or general health district.

- (11) "Public agency" has the same meaning as in section 102.01 of the Revised Code.
- (12) "Public official or employee" has the same meaning as in section 102.01 of the Revised Code.
- (13) "Public space" means any of the following:
- (a) Places of public accommodation;
  - (b) Any building or space, whether indoors or outdoors, that is owned, leased, operated, occupied, or otherwise used by a public body;
  - (c) Any other building or space, whether indoors or outdoors, that is generally open to the public.
- (14) "School" means either or both of the following:
- (a) A chartered nonpublic school as defined in section 3310.01 of the Revised Code.
  - (b) A public school as defined in section 3792.04 of the Revised Code.
- (15) "Private college" has the same meaning as in section 3365.01 of the Revised Code.
- (16) "State Institution of higher education" has the same meaning as in section 3345.011 of the Revised Code.
- (17) "State agency" has the same meaning as in section 1.60 of the Revised Code.
- (18) "Gene Therapy" means the transplantation of normal genes into cells in place of missing or defective ones in order to correct genetic disorders, including but not limited to ribonucleic acid, deoxyribonucleic acid, or any other genetic technology.

(19) "Gene Status means whether or not an individual has received a specific gene therapy or series of therapies.

(20) "Vaccine," "vaccination," and "immunization" refers to any product, including gene therapies, manufactured for the purpose of creating acquired immunity, including to an infectious disease or diseases, or the process of administering such a product.

(21) "Vaccine status" means whether or not an individual has received a specific vaccination or series of vaccinations.

(22) "Business" means a corporation, association, partnership, limited liability company, sole proprietorship, joint venture, or other business entity composed of one or more individuals, whether or not the entity is operated for profit.

(23) "Proof of vaccination" means a paper document or digital application available on a smartphone, tablet, or other device, that demonstrates that an individual has been vaccinated, including the use of a scannable device or code.

(24) "Passport system" means a paper document or digital application available on a smartphone, tablet or other device, including the use of a scannable device or code.

(25) "Registry" means an official list whether it be a paper document or digital application available on a smartphone, tablet or other device.

(26) “Personally identifiable information” mean information that, when used alone or with other relevant data, can identify an individual, including your full name, Social Security Number, driver’s license, financial information, medical records and as pursuant to section 3319.321 of the Revised Code.

(27) “Protected Health Information” has the same meaning pursuant to Chapter 3798. of the Revised Code.

(B) Individuals have a right to direct their own health care decisions, free from coercion or penalty, and with informed consent, for themselves, their children, their family, and anyone for whom they stand in loco parentis.

(1) No person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer shall mandate, require, or otherwise request an individual to receive a vaccine or gene therapy, except as provided in sections 3313.671 and 5104.014 of the Revised Code. In the case of those exceptions, all of the following apply:

(a) A school, private college, state institution of higher education, that notifies a pupil or the pupil's parent or guardian of the immunization requirements pursuant to section 3313.671 of the Revised Code shall notify the pupil and the pupil's parents or guardians of the exemptions from immunization described in that section in the same timing and manner, including text size and font, as it provides notice of the requirements.

(b) A school, private college, state institution of higher education, that requires immunizations Pursuant to section 3313.671 of the Revised Code shall honor the



exemptions from the immunization requirements described in that section.

(c) A child day-care center that notifies a child or the child's parent or guardian of the immunization requirements pursuant to section 5104.014 of the Revised Code shall notify the child and the child's parents or guardians of the exemptions from immunization described in that section in the same timing and manner, including text size and font, as it provides notice of the requirements.

(d) A child day-care center that requires immunizations pursuant to section 5104.014 of the Revised Code shall honor the exemptions from the immunization requirements described in that section.

(C) Individuals have a right to expect that their personal privacy rights remain protected, specifically private health information.

(1) Except as provided in division (C)(2) of this section, no person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer shall do any of the following:

(a) Mandate, require, or otherwise request an individual to disclose the individual's vaccine or gene therapy status;

(b) Mandate, require, or otherwise request participation in a vaccine or gene therapy passport system, vaccine or gene therapy registry, or other mechanism that is designed for the purpose of tracking an individual's vaccine or gene therapy status;

(c) Disclose an individual's vaccination or gene therapy status.

(2)(a) Division (C)(1) of this section does not apply to the extent described in sections 3313.671 and 5104.014 of the Revised Code. In such case, a student's or child's vaccine status shall be considered and treated as personally identifiable information pursuant to section 3319.321 of the Revised Code.

(b) Division (C)(1) of this section does not apply to a health care provider or insurer as it pertains to patient care, treatment, or billing. In such case, an individual's vaccine or gene therapy status shall be considered and treated as protected health information pursuant to Chapter 3798. of the Revised Code.

(3) No person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer shall make public an individual's vaccine or gene therapy status.

(D) Individuals have a right to expect that their personal health choices shall not result in discriminatory treatment.

(1) No person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer shall do any of the following:

(a) Deny service or access to, segregate, require a vaccine or gene therapy status label for, require disease or immunity testing of, penalize as a result of, or otherwise discriminate against an individual based on their refusal to receive a specific vaccination or gene therapy, series of vaccinations or gene therapies,

subscribe to a vaccine or gene therapy or immunity passport or tracking system, or provide proof of vaccination or gene therapy for immunity to, or testing of a specific contagious or infectious disease or diseases;

(b) Provide any disposition, service, financial aid, or benefit to an individual that is different from, or is provided in a different manner than, that provided to other individuals based on the individual's refusal to receive a specific vaccination or gene therapy, series of vaccinations or gene therapies, subscribe to a vaccine or gene therapy or immunity passport or tracking system, or provide proof of vaccination or gene therapy for immunity to, or testing of a specific contagious or infectious disease or diseases;

(c) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit provided to other individuals based on the individual's refusal to receive a specific vaccination or gene therapy, series of vaccinations or gene therapies, subscribe to a vaccine or gene therapy or immunity passport or tracking system, or provide proof of vaccination or gene therapy for immunity to, or testing of a specific contagious or infectious disease or diseases;

(d) Treat an individual differently from others in determining whether that individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition that individuals are required to meet in order to be provided any disposition, service, financial aid, or benefit available to other members of the general public;

(e) Deny an individual an opportunity to participate in a program through the provision of service or otherwise afford that individual an opportunity to do so that is different from that afforded to other members of the general public;

(f) Create, impose, or allow to be imposed any device or method of identification that acts as, or might be considered to be, a vaccine or gene therapy passport that would be required of any citizen seeking to travel, to enter any public space or private property, or to do any business within this state.

(E) The success of our state relies largely on the success of the businesses within the state, and therefore the intent to ensure protection of businesses who honor individual's rights to health choice and privacy. No person, public official or employee, public agency, state agency, political subdivision, or insurer shall do any of the following:

(1) Deny service to, penalize as a result of, or otherwise discriminate against a business, corporation, business trust, estate, trust, partnership, or association based on the entity's compliance with the intent of this section;

(2) Provide any disposition, service, financial aid, or benefit to a business, corporation, business trust, estate, trust, partnership, or association that is different from, or is provided in a different manner than that provided to other businesses, corporations, business trusts, estates, trusts, partnerships, or associations based on the entity's compliance with the intent of this section;

(3) Restrict a business, corporation, business trust, estate, trust, partnership, or association in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit provided to other businesses, corporations, business trusts, estates, trusts, partnerships, or associations based on the entity's compliance with the intent of this section.

(F) The health choice and privacy of individuals are paramount and shall remain so under all circumstances, even in the presence of emergencies.

(1) No public official or employee, public agency, state agency, or political subdivision shall issue any order or proclamation or take other action that violates any provision of this section, under the pretense of an emergency, including a state of emergency as defined in section 107.42 of the Revised Code.

(2) No public official or employee, public agency, state agency, or political subdivision shall issue any order or proclamation or take other action that encourages any person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer to violate any provision of this section.

(3) No public official or employee, public agency, state agency, or political subdivision shall issue any order or proclamation or take other action that penalizes any person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home,

residential care facility, health care provider, insurer, institution, or employer for refusing to violate any provision of this section.

(G) If an individual believes that a person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer has violated any provision of this section, the individual may pursue either or both of the following:

- (1) Seek relief under Ohio Civil Rights law, Chapter 4112 of the Revised Code;
- (2) Bring a civil action against the person, public official or employee, public agency, state agency, political subdivision, school, private college, state institution of higher education, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer in a court of competent jurisdiction. If the plaintiff prevails, the court shall award the plaintiff financial compensation for court costs and attorney's fees, as well as any civil penalty that the court considers appropriate.

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