STATE OF NEW YORK

7100

2021-2022 Regular Sessions

IN ASSEMBLY

April 22, 2021

Introduced by M. of A. DiPIETRO -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to a vaccine bill of rights to protect New York citizens against unconstitutional and medically irresponsible COVID-19 vaccine mandates; to amend the education law and the public health law, in relation to medical exemptions from vaccination requirements; to amend the labor law, in relation to limiting the civil liability of employers and employees for the spread or possible transmission of COVID-19 caused by an act or omission while acting in good faith; to amend the public health law, in relation to prohibiting a mandatory immunization against the novel coronavirus/COVID-19; and to amend the public health law, in relation to exempting private and parochial schools and day care centers from immunization requirements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The Founders designated that a Bill of Rights was necessary to guard individual liberty against encroachments from state and federal actors, public and private. The 14th Amendment to the U.S. Constitution explicitly directs states not to "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". No COVID vaccine is FDA-approved but some are authorized under a temporary Emergency Use Authorization as experimental (investigational) agents. Emergency use products are specifically prohibited by federal law 21 U.S.C. §360bbb-3 from being mandated: "Authorization for medical products for use in emergencies ... require ... the option to accept or refuse administration of the product". The CDC Advisory Committee on Immunization Practices (ACIP) affirmed in August 2020 that under an Emergency Use Authorization (EUA), experimental vaccines are not allowed to be mandatory. Decades-old universally accepted Codes of

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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Medical Ethics, including the Nuremberg Code and the Declaration of Helsinki absolutely prohibits any form of coercion whatsoever to individuals to participate in a medical experiment. 40 percent of respondents in at least one US poll reported that they would opt out of taking experimental COVID vaccines. It is neither feasible nor safe to mandate experimental vaccination given the large number of COVID-19 recovered patients in the general population and the FDA/Pfizer/ Moderna protocols which excluded COVID-19 recovered patients. It is neither feasible nor safe to administer experimental vaccines to many groups of patients, such as persons with post-natural infections, waning titers, allergic reactions, as well as childbearing women. Public and private measures are nonetheless being considered to mandate experimental vaccinations in order to participate in certain public activities and functions of daily American life, including but not limited to: employment, in-person school attendance, public transportation, and concert performances. "Vaccine passports," "digital health IDs," and other such required documentation pose substantial risks to personal privacy and equal treatment before the law for all citizens of New York as well as the United States generally. Administration of the experimental COVID-19 vaccines according to guidelines established by the CDC's Advisory Committee on Immunization Practices do not provide adequate protections for average Americans concerned about potential health hazards associated with the inoculations. The public is entitled to receive unbiased, transparent, easily accessible medical information related to all vaccines from their public health officials. The doctors and nurses administering the inoculation are required by law to give informed consent and they cannot do that if they themselves are not informed. The emergency powers assumed by the chief executives of certain states as well as municipal leaders violate certain unalienable rights guaranteed under the U.S. Constitution and its and Bill of Rights and therefore deserve redress. While these legitimate grievances are pursued by the courts of various states, state lawmakers must enshrine certain rights against encroachment by decrees that are not medically or scientifically indicated, such as vaccine mandates, in order to ensure the continuity of these rights. A COVID-19 Vaccine Bill of Rights against COVID-19 vaccine mandates provides an example of adoption for other legislative bodies across the United States to be recognized and upheld by the attorneys general of those states. Technical guidance for employers released by the U.S. Equal Employment Opportunity Commission (EEOC) in December should not be understood to undermine employee constitutional rights. State legislative bodies must practice oversight of such federal assistance consistent with their enumerated powers. Out-of-state commercial vendors, including Ticketmaster, cannot require venue operators and organizers to mandate proof of vaccination from concertgoers and other paying customers before freely entering a venue on private or public property. K-12 vaccinations cannot be required without certain clear and consistent exemptions applied, among them medical and conscience clauses, or risk forfeiting a district's or school board's authority in the State of New York to authorize such a mandate, nor can a vaccine mandate for these populations be a factor in state school-aid funding. Interstate carriers such as airlines and all forms of public transit calling for so-called "vaccine passports" as a condition of entry cannot be allowed to operate with state licensure and waivers.

§ 2. The public health law is amended by adding a new section 2169 to read as follows:

§ 2169. Vaccine bill of rights. 1. No persons will be mandated, coerced, forced or pressured to take an experimental or "investigational" medication.

2. All persons reserve the right, at all times, to determine what is in their own best medical interest without threat to their livelihood, schooling, or freedom of movement.

3. No physician or nurse shall be asked by an employer to promote a COVID-19 vaccine.

4. All healthcare providers must attest that they are aware of the VAERS database and their professional obligation to check it regularly and share information about VAERS with each vaccine recipient. All persons will be informed of the specific vaccine they are receiving.

5. All persons must be given access to independent information to help them determine what is in their own best medical interest, including the risk of death based upon age/condition from contracting the virus naturally. This must include information from sources that are independent of a conflict of interest. For example, pharmaceutical companies have an inherent conflict of interest, as do government or quasi-government institutions. Such information can be included but cannot be the sole source of information.

6. The frail elderly are additionally entitled to a knowledgeable, independent advocate with medical training to help them determine their own medical interest.

7. Private businesses operating within the state have no legal authority to require or mandate or coerce medication or experimental medication for any persons.

§ 3. The education law is amended by adding a new section 6509-f to read as follows:

§ 6509-f. Failure to immunize not professional misconduct. 1. Notwithstanding any other provision of law to the contrary, it shall not be considered professional misconduct pursuant to this subarticle for any person who is licensed under title eight of this chapter to:

a. fail to immunize any patient under their care if such patient refuses or a person in parental relation to a child refuses consent to immunization of such child;

b. provide a certification that any immunization may be detrimental to a patient's health if, in his or her professional judgment, such immunization poses a risk to such patient; or

c. provide any treatment or care to a patient who has not received any immunizations required by law.

2. No person who is licensed under title eight of this chapter shall be subject to any proceedings, including investigations, for misconduct for any actions set forth in subdivision one of this section.

§ 4. Subdivision 8 of section 2164 of the public health law, as amended by chapter 401 of the laws of 2015, is amended to read as follows:

8. If any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child's health, the requirements of this section shall be inapplicable until such immunization is found no longer to be detrimental to the child's health. A certification by a physician under this subdivision shall not be subject to review by any department, public officer or board.

§ 5. Paragraph (c) of subdivision 1 of section 2805-h of the public health law, as amended by chapter 266 of the laws of 2006, is amended to read as follows:

(c) If any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child's health, the requirements of this section shall be inapplicable until such immunization is found no longer to be detrimental to the child's health. **A certification by a physician under this paragraph shall not be subject to review by any department, public officer or board.**

§ 6. The labor law is amended by adding a new section 200-b to read as follows:

§ 200-b. Limitation on liability for employers and employees during COVID-19 pandemic. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "Covered entity" shall mean one or more individuals, business trusts, legal representatives, corporations, companies, associations, firms, partnerships, societies, joint stock companies, universities, schools, not-for-profit organizations, religious organizations or any organized group of such entities.

(b) "Good faith" shall mean making reasonable efforts to act in compliance with (i) applicable guidance from a federal, state, local, territorial or tribal public health authority; or (ii) appropriate professional or industry standards, recommendations or guidance.

(c) "Serious bodily injury" shall mean (i) death or injury requiring in-patient hospitalization of at least forty-eight hours; (ii) permanent impairment of a bodily function; or (iii) permanent damage to a body structure.

2. Notwithstanding any other provision of law and except as provided in subdivision three of this section, no covered entity, as defined by paragraph (a) of subdivision one of this section, shall be liable in any civil action for the spread or possible transmission of COVID-19 caused by an act or omission of such covered entity acting in good faith in the workplace.

3. Subdivision two of this section shall not apply if harm to another individual is shown, by clear and convincing evidence, to be caused by an act or omission constituting willful or criminal misconduct, reckless misconduct, gross negligence, or a conscious flagrant indifference to the rights or safety of the individual harmed by such covered entity. For purposes of this section, infection with COVID-19 shall not be the basis for damages arising from bodily injury, except to the extent that such injury is serious bodily injury.

§ 7. The public health law is amended by adding a new section 2183 to read as follows:

§ 2183. Novel coronavirus/COVID-19; immunization. 1. No immunization used for the purposes of inducing immunity against COVID-19 in humans in this state shall be made a mandatory immunization. No person shall be required to receive such vaccine.

2. No child under the age of eighteen shall be required to receive such vaccine against COVID-19 unless a person in a parental relation to such child requests and consents to have the child vaccinated. For the purpose of this subdivision the term "person in parental relation to a child" shall have the same meaning as set forth in section twenty-one hundred sixty-four of this article. Prior to administering the immunization every health care provider or practitioner shall provide a list of ingredients contained in the vaccine as provided by the manufacturer product insert and all potential side effects as indicated by industry studies.

3. No incapacitated person shall be required to receive such immunization against COVID-19 unless a person who is the legal guardian of such

incapacitated person chooses to have the incapacitated person vaccinated. For the purposes of this subdivision: (a) the term "incapacitated person" shall mean any person over the age of eighteen who is unable to make or communicate decisions affecting their physical health, safety, or self-care; and (b) the term "legal guardian" shall mean and include any person who is over the age of eighteen and designated by an incapacitated person prior to incapacitation as their legal guardian or a person legally appointed by a court as guardian of such incapacitated person.

4. No immunization against COVID-19 shall be required for:

(a) attendance by students or employment of teachers and staff at any public or private educational institution or day care facility;

(b) travel to or from any location, including other states or countries;

(c) receipt of any government services;

(d) entrance into public buildings;

(e) employment or continued employment in any business or not-for-profit organization; or

(f) use of public transportation.

5. (a) No governmental entity shall provide any special privileges or financial rewards to any individual for receiving immunization against COVID-19.

(b) No health care provider or practitioner which administers vaccine shall be offered any incentive or compensation to achieve targeted vaccination rates.

(c) No insurance company or other entity that could profit from the sale of COVID-19 vaccines shall provide any funding, incentives or advertising to any party to increase sales of a COVID-19 vaccine.

6. No nursing home, state-sponsored group home for adults or children or any other group home shall require immunization against COVID-19 as a condition of residency.

7. No person shall be required to have, carry or present evidence of having received immunization against COVID-19.

§ 8. Paragraph a of subdivision 1 of section 2164 of the public health law, as amended by chapter 401 of the laws of 2015, is amended to read as follows:

a. The term "school" means and includes any public[~~, private or parochial child caring center, day nursery, day care agency, nursery school,~~] pre-kindergarten, kindergarten, elementary, intermediate or secondary school.

§ 9. This act shall take effect immediately.