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H.B. 411  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 411's Fiscal Note](#)

**Version:** As Introduced

**Primary Sponsors:** Reps. Click and Grendell

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### SUMMARY

- Specifies that information regarding an individual's COVID-19 vaccination status is private and confidential.
- Prohibits requiring an individual to disclose the individual's COVID-19 vaccination status or show proof of COVID-19 vaccination for any reason.
- Prohibits a business, employer, state agency, political subdivision, public official, or individual that acquires information regarding an individual's COVID-19 vaccination status from disclosing the information without written consent unless required by federal law.
- Prohibits requiring an individual to provide a reason for declining to disclose the individual's COVID-19 vaccination status or declining to show proof of COVID-19 vaccination.
- Declares an emergency.

### DETAILED ANALYSIS

#### The Individual Privacy and Anti-Discrimination Act

The bill, known as the "Individual Privacy and Anti-Discrimination Act,"<sup>1</sup> makes an individual's COVID-19 status confidential information. It also generally prohibits discrimination based on an individual's refusal to disclose the individual's COVID-19 vaccination status or refusal to show proof of COVID-19 vaccination.

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<sup>1</sup> Section 3.

## **Vaccine status confidentiality**

The bill specifies that information regarding an individual's COVID-19 vaccination status is private and confidential. Except as required by federal law, the bill prohibits a business, employer, state agency, political subdivision, public official, or individual who acquires information regarding an individual's COVID-19 vaccination status from disclosing or releasing the information without written consent.<sup>2</sup>

Under the bill, no individual can be required to disclose the individual's COVID-19 vaccination status or show proof of COVID-19 vaccination for any reason, including the following:

- To enter a building, facility, or place controlled, operated, or owned by any business, state agency, political subdivision, or public official;
- To receive a service provided by any business, state agency, political subdivision, or public official.

Additionally, the bill prohibits requiring an individual to provide a reason for declining to disclose the individual's COVID-19 vaccination status or declining to show proof of COVID-19 vaccination.<sup>3</sup>

## **Nondiscrimination**

Under the bill, a business, state agency, political subdivision, public official, or individual may not discriminate against, deny service or entry or access to, segregate, or otherwise penalize an individual for failing to disclose the individual's COVID-19 vaccination status or failing to show proof of COVID-19 vaccination. Currently, Ohio law appears to allow a private business to deny service or facilities to an individual if the individual refuses to disclose the individual's vaccination status or refuses to show proof of vaccination, provided the denial applies to all individual's regardless of race, color, religion, sex, military status, national origin, disability, age, or ancestry.<sup>4</sup>

The bill also prohibits an employer from discharging without just cause, refusing to hire, or otherwise discriminating against any individual with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment for either of the following reasons:

- The individual refuses to disclose the individual's COVID-19 vaccination status or show proof of COVID-19 vaccination;

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<sup>2</sup> R.C. 3792.03(C) and 4113.73(B)(2).

<sup>3</sup> R.C. 3792.03(B).

<sup>4</sup> R.C. 3792.03(D) and 4112.02, not in the bill.

- The individual refuses to provide a reason for not disclosing the individual's COVID-19 vaccination status or refuses to provide a reason for not showing proof of COVID-19 vaccination.<sup>5</sup> (See **COMMENT.**)

The bill's employment related provisions pertaining to an individual's COVID-19 vaccination status prevail over a collective bargaining agreement between a public employer and an exclusive representative.<sup>6</sup>

### **Remedy for violation**

In the event of an alleged violation of the bill, an individual may sue for injunctive relief or damages in a court of competent jurisdiction. However, the individual may not sue a business, state agency, political subdivision, public official, or individual if the individual previously sued the same entity in the entity's capacity as an employer, and the previous suit was based on the same allegations and practices.<sup>7</sup>

### **Definitions**

Under the bill:

- "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;
- "Employer" means any person who has one or more employees and includes an agent of an employer, the state or any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality thereof;
- "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, including a board of health of a city or general health district;
- "Proof of COVID-19 vaccination" means a paper document or a digital application available on a smartphone, tablet, or other device, that demonstrates, including through the use of a scannable code, that an individual has been vaccinated;
- "Public official" means any officer, employee, or duly authorized agent or representative of a state agency or political subdivision;

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<sup>5</sup> R.C. 4113.73(B)(1).

<sup>6</sup> R.C. 4117.10.

<sup>7</sup> R.C. 3792.03(E) and 4113.73(C).

- “State agency” means any organized agency, board, body, commission, department, institution, office, or other entity established by the laws of the state for the exercise of any function of state government, but does not include a court.<sup>8</sup>

## Severability

The bill specifies that its provisions are severable under continuing law. Severability provides that, if a provision of a Revised Code section or the application of the provision to a particular circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or a related section that can be given effect without the invalid provision or application.<sup>9</sup>

## Emergency declaration

The bill declares it to be an emergency measure, meaning that it will take effect immediately once signed by the Governor.<sup>10</sup>

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## COMMENT

The Home Rule Amendment to the Ohio Constitution grants a municipality authority over matters of local self-government and local police, sanitary, and other regulations (police powers) that are not in conflict with general laws of the state. A county charter adopted under the Constitution may provide the county with the same powers provided to municipal corporations under the Home Rule Amendment.<sup>11</sup>

The Ohio Supreme Court has held that matters related to local public employment are matters of local self-government. With respect to a matter of local self-government, a municipality or charter county may adopt an ordinance or resolution that conflicts with state law.<sup>12</sup> It is possible that a municipal or charter county ordinance or resolution requiring an applicant for public employment or a public employee to prove that the individual has received a COVID-19 vaccination is an exercise of local self-government.

Additionally, conditioning access to municipal and county premises and services on COVID-19 vaccination status may be a police-power under the Home Rule Amendment.<sup>13</sup> A

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<sup>8</sup> R.C. 3792.03(A) and 4113.73(A).

<sup>9</sup> Section 4, by reference to R.C. 1.50, not in the bill.

<sup>10</sup> Section 5.

<sup>11</sup> Ohio Constitution, Article X, Section 3 and Article XVIII, Section 3; and *Akron v. Meyer*, 2004-Ohio-4457 ¶11, fn.1

<sup>12</sup> See, e.g., *Northern Ohio Patrolmen’s Benevolent Ass’n v. Parma*, 61 Ohio St.2d 375 (1980) (leave benefits) and *State ex rel. Mullin v. Mansfield*, 26 Ohio St.2d 129 (1971) (number of positions and pay scales).

<sup>13</sup> See, e.g., *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96 (2008) (finding that an ordinance prohibiting concealed handguns in certain public places is a police-power ordinance).

state law precludes a police-power ordinance only if the state law is a “general law” with which the ordinance conflicts. Among other requirements, a “general law” must prescribe a rule of conduct upon citizens generally and must set forth regulations rather than purport only to limit a municipal corporation’s (or charter county’s) legislative power.<sup>14</sup>

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## HISTORY

Action	Date
Introduced	09-08-21

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<sup>14</sup> *Canton v. State*, 95 Ohio St.3d 149 (2002).