

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

SENATE BILL 738

By: Senator A. Clark

## For An Act To Be Entitled

AN ACT TO PROHIBIT PRIVATE EMPLOYERS AND PUBLIC ACCOMMODATIONS FROM DISCRIMINATING BASED ON A PERSON'S CORONAVIRUS 2019 (COVID-19) VACCINATION STATUS OR POSSESSION OF A VACCINE PASSPORT; TO PROHIBIT PRIVATE EMPLOYERS AND PUBLIC ACCOMMODATIONS FROM MANDATING VACCINES OR IMMUNIZATIONS FOR CORONAVIRUS 2019 (COVID-19); AND FOR OTHER PURPOSES.

## Subtitle

TO PROHIBIT PRIVATE EMPLOYERS AND PUBLIC ACCOMMODATIONS FROM DISCRIMINATING BASED ON A PERSON'S VACCINATION STATUS OR POSSESSION OF A VACCINE PASSPORT AND FROM MANDATING VACCINES FOR COVID-19.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-7-143 is amended to read as follows:

20-7-143. Prohibition on requirement for vaccine or immunization for coronavirus 2019 (COVID-19) – Definition.

(a) As used in this section, “coerce” means:

(1) Using physical violence, threats, intimidation, or retaliation with the purpose of causing a reasonable individual of ordinary susceptibilities to acquiesce when the individual otherwise would not;

(2)(A) Making conditional a private or public benefit, including without limitation employment, promotion, or another employment benefit, with the purpose of causing a reasonable individual of ordinary susceptibilities



to acquiesce when the individual otherwise would not.

(B) However, other positive incentives that are above or beyond any expected compensation or benefit of employment shall not be included under the term “coerce”; or

(3) Using any other means with the purpose of causing a reasonable individual of ordinary susceptibilities to acquiesce when the individual otherwise would not.

(b)(1) The state, a state agency or entity, a political subdivision of the state, ~~or~~ a state or local official, a private employer, or a public accommodation shall not mandate or require an individual to receive a vaccine or immunization for coronavirus 2019 (COVID-19) if the vaccine or immunization has been tested for less than five (5) years or on the market for less than three (3) years.

(2) A state-owned or state-controlled medical facility may offer positive incentives to an individual to receive a vaccine or immunization for coronavirus 2019 (COVID-19).

(3) If a state-owned or state-controlled medical facility desires to mandate or require an individual to receive a vaccine or immunization for coronavirus 2019 (COVID-19), then the state-owned or state-controlled medical facility shall receive approval from the Legislative Council to mandate or require the individual to receive a vaccine or immunization for coronavirus 2019 (COVID-19).

(c) Receiving a vaccine or immunization for coronavirus 2019 (COVID-19) shall not be a condition of education, employment, entry, or services from the state or a state agency or entity or for obtaining a licensure, certificate, or permit from a state agency or entity.

(d)(1) The Department of Health shall maintain information and data about the safety and efficacy of any vaccine or immunization for coronavirus 2019 (COVID-19) approved by the United States Food and Drug Administration, including without limitation information and data on any risk of harm associated with the administration of the vaccine or immunization, on the department’s website.

(2) The information and data described in subdivision (d)(1) of this section shall be presented in a manner that is understandable and accessible to all individuals.

(e) The state, a state agency or entity, a political subdivision of

the state, ~~or a state or local official, a private employer, or a public accommodation~~ shall not discriminate against or coerce in any way an individual for refusing to receive a vaccine or immunization for coronavirus 2019 (COVID-19), including without limitation:

(1) Coercing an employee into consenting to receive a vaccine or immunization for coronavirus 2019 (COVID-19);

(2) Withholding the opportunity for career advancement from an employee who does not consent to receiving a vaccine or immunization for coronavirus 2019 (COVID-19); ~~or~~

(3) Withholding a salary, a wage increase, insurance, or insurance discounts from an employee who does not consent to receiving a vaccine or immunization for coronavirus 2019 (COVID-19); or

(4) Excluding, limiting, segregating, refusing to serve, or otherwise discriminating against a person based on his or her vaccination status.

(f)(1) If the state, a state agency or entity, a political subdivision of the state, ~~or a state or local official, a private employer, or a public accommodation~~ recommends that an individual in this state receive a vaccine or immunization for coronavirus 2019 (COVID-19), the state, state agency or entity, political subdivision of the state, ~~or state or local official, private employer, or public accommodation~~ shall provide notice that the recommendation is not mandatory.

(2) Recommending a vaccination or immunization for coronavirus 2019 (COVID-19) is not unlawful discrimination under this section.

(3) A healthcare facility does not unlawfully discriminate under this section if the healthcare facility:

(A)(i) Asks an employee to volunteer the employee's vaccination or immunization status for the purpose of determining whether the healthcare facility should implement reasonable accommodation measures to protect the safety and health of employees, patients, visitors, and other persons from communicable diseases.

(ii) A healthcare facility may consider an employee to be nonvaccinated or nonimmune if the employee declines to provide the employee's vaccination or immunization status; and

(B) Implements reasonable accommodation measures for employees, patients, visitors, and other persons who are not vaccinated or

not immune to protect the safety and health of employees, patients, visitors, and other persons from communicable diseases.

(g) This section shall expire two (2) years from the date that the United States Food and Drug Administration approves the immunization or vaccine for coronavirus 2019 (COVID-19).

(h) A healthcare facility is exempt from complying with this section during any period of time that compliance with this section would result in a violation of regulations or guidance issued by the Centers for Medicare and Medicaid Services or the Centers for Disease Control and Prevention.

(i) The state, a state agency or entity, a political subdivision of the state, a state or local official, a private employer, a public accommodation, or a healthcare facility may apply for funds under the American Rescue Plan Act of 2021, Pub. L. No. 117-2, related to the implementation of this section if such funds are available for that purpose.

SECTION 2. Arkansas Code § 20-7-145 is amended to read as follows:

20-7-145. Prohibition on vaccine passports – Definition.

(a) As used in this section, “vaccine passport” means documentation that an individual has been vaccinated against coronavirus 2019 (COVID-19).

(b) The state, a state agency or entity, a political subdivision of the state, ~~or~~ a state or local official, a private employer, or a public accommodation shall not:

(1) Require ~~require~~ an individual to use a vaccine passport in this state for any purpose; or

(2) Discriminate against an individual based on his or her vaccine passport.

(c) The use of a vaccine passport shall not be a condition for entry, travel, education, or services.