

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 262 Session of 2021

INTRODUCED BY DIAMOND, GLEIM, HAMM, KAUFFMAN, METCALFE, MOUL, ROWE, RYAN, SMITH, ZIMMERMAN, E. NELSON, MALONEY, RADER, JONES, COOK, DAVANZO, BOROWICZ, PENNYCUICK, GILLEN, GREINER, LEWIS, HELM, ROTHMAN, ROAE, SILVIS AND BERNSTINE, JANUARY 26, 2021

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 15, 2021

AN ACT

1 Providing for the right of an employee or prospective employee
2 to refuse to participate in an invasive medical test or
3 vaccination INJECTION required by an employer. <--

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Right to
8 Refuse Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Employee." Includes an individual employed by an employer.

14 "Employer." Includes an individual, partnership,
15 association, corporation or business trust, the Commonwealth, a
16 political subdivision of the Commonwealth or an authority or

1 instrumentality of the Commonwealth, or a person or group of
2 persons acting, directly or indirectly, in the interest of an
3 employer in relation to an employee.

4 "INJECTION." A VACCINATION OR ANY OTHER MEDICAL PRODUCT OR <--
5 DRUG DELIVERED INTO AN INDIVIDUAL'S BODY USING A NEEDLE AND
6 SYRINGE.

7 "Invasive medical test." As follows:

8 (1) A medical test or screening that:

9 (i) involves puncture or incision of the skin,
10 insertion of an instrument or injection of foreign
11 material into the body; or

12 (ii) requires the employee to provide samples of
13 bodily fluids, bodily tissue or genetic material.

14 (2) The term does not apply to medical testing or
15 screening that is:

16 (i) required OR EXPLICITLY AUTHORIZED by Federal or <--
17 State law;

18 (ii) intended to screen for the illegal use of
19 drugs, ~~except for the use of marijuana; or;~~ <--

20 (iii) ~~is~~ necessary for the employer to comply with <--
21 workplace safety standards issued under the Occupational
22 Safety and Health Act of 1970 (Public Law 91-596, 29
23 U.S.C. § 651 et seq.); OR <--

24 (IV) MINIMALLY INVASIVE VISUAL EXAMINATIONS OF THE
25 EYES, EARS, NOSE, MOUTH AND THROAT, WHICH ARE NECESSARY
26 TO CHECK FOR THE SYMPTOMS OF INFECTIOUS DISEASE OR OTHER
27 SIGNIFICANT MEDICAL CONDITIONS.

28 "Prospective employee." An individual who has been offered
29 employment by an employer, whether or not the offer is
30 contingent on additional review or screening by the employer.

1 Section 3. ~~Prohibited acts~~ RIGHT TO REFUSE. <--

2 (A) REASONS.--AN EMPLOYEE OR PROSPECTIVE EMPLOYEE SHALL HAVE <--
3 THE RIGHT TO REFUSE TO PARTICIPATE IN AN INVASIVE MEDICAL TEST
4 OR INJECTION REQUIRED BY THE EMPLOYER FOR ANY OF THE FOLLOWING
5 REASONS:

6 (1) THE EMPLOYEE OR PROSPECTIVE EMPLOYEE OBJECTS IN
7 WRITING BASED ON THE WRITTEN STATEMENT OF A PHYSICIAN OR THE
8 PHYSICIAN'S DESIGNEE STATING THAT THE INVASIVE MEDICAL TEST
9 OR INJECTION MAY BE DETRIMENTAL TO THE HEALTH OF THE EMPLOYEE
10 OR PROSPECTIVE EMPLOYEE.

11 (2) THE EMPLOYEE OR PROSPECTIVE EMPLOYEE OBJECTS IN
12 WRITING TO THE INVASIVE MEDICAL TEST OR INJECTION ON
13 RELIGIOUS GROUNDS OR ON THE BASIS OF A STRONG MORAL OR
14 ETHICAL CONVICTION SIMILAR TO A RELIGIOUS BELIEF.

15 (3) THE EMPLOYEE OR PROSPECTIVE EMPLOYEE OBJECTS IN
16 WRITING TO THE INVASIVE MEDICAL TEST OR INJECTION ON THE
17 GROUNDS THAT THE TEST OR INJECTION:

18 (I) HAS NOT BEEN APPROVED BY THE UNITED STATES FOOD
19 AND DRUG ADMINISTRATION; OR

20 (II) HAS BEEN APPROVED BY THE UNITED STATES FOOD AND
21 DRUG ADMINISTRATION AFTER EXPEDITED DEVELOPMENT AND
22 REVIEW PERMISSIBLE UNDER SECTION 506 OF THE FEDERAL FOOD,
23 DRUG, AND COSMETIC ACT (52 STAT. 1040, 21 U.S.C. § 356),
24 IF THE EXPEDITED DEVELOPMENT AND REVIEW WAS COMPLETED IN
25 LESS THAN THREE YEARS. THE EMPLOYEE OR PROSPECTIVE
26 EMPLOYEE MAY NOT OBJECT TO AN INVASIVE MEDICAL TEST OR
27 INJECTION UNDER THIS PARAGRAPH IF THE TEST OR INJECTION
28 HAS BEEN APPROVED BY THE UNITED STATES FOOD AND DRUG
29 ADMINISTRATION FOR MORE THAN THREE YEARS.

30 (4) THE EMPLOYEE SUBMITS AN AFFIDAVIT TO THE EMPLOYER

1 STATING THAT THE EMPLOYEE OBJECTS TO AN INJECTION ON THE
2 GROUNDS THAT THE EMPLOYEE HAS ALREADY BEEN INFECTED WITH THE
3 DISEASE THAT THE REQUIRED INJECTION IS INTENDED TO PREVENT.

4 (B) PROHIBITED ACTS.--It shall be unlawful for an employer
5 to discharge, refuse to hire, threaten or otherwise retaliate or
6 discriminate against an employee or prospective employee
7 regarding compensation or other terms or conditions of
8 employment because the employee or prospective employee:

9 (1) refuses to participate in an invasive medical test
10 or ~~vaccination~~ INJECTION required by the employer, IF THE <--
11 EMPLOYEE OR PROSPECTIVE EMPLOYEE HAS REFUSED ON GROUNDS
12 ALLOWED UNDER SUBSECTION (A) AND IN ACCORDANCE WITH SECTION
13 4; or

14 (2) informs other employees of the provisions of this
15 act; IN A MANNER THAT DOES NOT DISRUPT THE NORMAL BUSINESS <--
16 OPERATIONS OF THE EMPLOYER.

17 SECTION 4. OBLIGATIONS OF EMPLOYEES, PROSPECTIVE EMPLOYEES AND
18 EMPLOYERS.

19 (A) NOTICE OF REQUIREMENT.--AN EMPLOYER SHALL PROVIDE NOTICE
20 OF A REQUIREMENT FOR AN EMPLOYEE OR PROSPECTIVE EMPLOYEE TO
21 RECEIVE AN INVASIVE MEDICAL TEST OR INJECTION AT LEAST 10 DAYS
22 PRIOR TO THE DATE THAT THE EMPLOYEE OR PROSPECTIVE EMPLOYEE IS
23 REQUIRED TO RECEIVE THE TEST OR INJECTION. THE FOLLOWING APPLY:

24 (1) THE NOTICE SHALL BE PROVIDED IN WRITING OR
25 ELECTRONICALLY AND SHALL INCLUDE NOTICE OF THE EMPLOYEE'S OR
26 PROSPECTIVE EMPLOYEE'S RIGHTS UNDER THIS ACT.

27 (2) IF URGENT OR EMERGENT CIRCUMSTANCES MAKE IT
28 IMPRACTICAL TO COMPLY WITH THIS SUBSECTION, AN EMPLOYER SHALL
29 MAKE GOOD FAITH EFFORTS TO PROVIDE AS MUCH ADVANCE NOTICE AS
30 PRACTICAL, OR TO OBTAIN THE VERBAL CONSENT OF THE EMPLOYEE OR

1 PROSPECTIVE EMPLOYEE FOR THE TEST OR INJECTION IF IT IS
2 IMPOSSIBLE TO PROVIDE ADVANCE NOTICE.

3 (B) EMPLOYEE REFUSAL.--AN EMPLOYEE OR PROSPECTIVE EMPLOYEE
4 WHO REFUSES AN INVASIVE MEDICAL TEST OR INJECTION SHALL PROVIDE
5 WRITTEN NOTICE TO THE EMPLOYER EXPLAINING THE REASONS FOR
6 REFUSAL AND SHALL INCLUDE ANY SUPPORTING DOCUMENTATION. THE
7 EMPLOYEE'S OR PROSPECTIVE EMPLOYEE'S WRITTEN NOTICE MAY BE
8 PROVIDED AT ANY TIME PRIOR TO THE DEADLINE FOR THE EMPLOYEE OR
9 PROSPECTIVE EMPLOYEE TO RECEIVE THE TEST OR INJECTION.

10 (C) EMPLOYER RESPONSE TO REFUSAL.--AS SOON AS PRACTICABLE
11 BUT NO LATER THAN THREE BUSINESS DAYS AFTER RECEIPT OF NOTICE OF
12 REFUSAL UNDER SUBSECTION (B), THE EMPLOYER SHALL PROVIDE A
13 WRITTEN RESPONSE TO THE EMPLOYEE OR PROSPECTIVE EMPLOYEE WHO HAS
14 REFUSED AN INVASIVE MEDICAL TEST OR INJECTION. THE EMPLOYER MAY:

15 (1) GRANT AN EXCEPTION TO THE REQUIREMENT FOR AN
16 INVASIVE MEDICAL TEST OR INJECTION WITHOUT ANY ADDITIONAL
17 REQUIREMENTS FOR THE EMPLOYEE.

18 (2) PROVIDE A REASONABLE ACCOMMODATION TO THE EMPLOYEE
19 OR PROSPECTIVE EMPLOYEE IN LIEU OF REQUIRING THE INVASIVE
20 MEDICAL TEST OR INJECTION.

21 (3) NOTIFY THE EMPLOYEE OR PROSPECTIVE EMPLOYEE THAT THE
22 EMPLOYEE'S OR PROSPECTIVE EMPLOYEE'S REASON FOR REFUSAL IS
23 NOT PROTECTED UNDER SECTION 3(A) AND THAT AN EXCEPTION WILL
24 NOT BE GRANTED.

25 (4) MAKE A REQUEST FOR ADDITIONAL INFORMATION OR
26 DOCUMENTATION THAT IS REQUIRED BY SECTION 3(A), BUT WAS NOT
27 PROVIDED BY THE EMPLOYEE OR PROSPECTIVE EMPLOYEE, CLEARLY
28 INDICATING TO THE EMPLOYEE OR PROSPECTIVE EMPLOYEE WHAT
29 ADDITIONAL INFORMATION OR DOCUMENTATION WILL BE NECESSARY TO
30 GRANT AN EXCEPTION TO THE REQUIREMENT UNDER PARAGRAPH (1) OR

1 PROVIDE A REASONABLE ACCOMMODATION TO THE EMPLOYEE UNDER
2 PARAGRAPH (2).

3 Section 4 5. Actions. <--

4 (a) Right to bring action.--An employee or prospective
5 employee who suffers retaliation or discrimination in violation
6 of section 3 may bring an action in a court of common pleas in
7 accordance with established civil procedures of this
8 Commonwealth.

9 (b) Time limitation.--An action under this section must be
10 brought within ~~three~~ TWO years from the date that the employee <--
11 or prospective employee knew OR SHOULD HAVE KNOWN of the <--
12 retaliation or discrimination.

13 Section 5 6. Relief. <--

14 (A) RELIEF IF EMPLOYER DID NOT MEET OBLIGATIONS.--If an <--
15 employee or prospective employee prevails in an action commenced
16 under section 4 5, the employee shall be entitled to the <--
17 following relief, IF THE COURT FINDS THAT THE EMPLOYER DID NOT <--
18 MAKE A GOOD FAITH EFFORT TO MEET ITS OBLIGATIONS UNDER SECTION
19 4:

20 (1) Reinstatement of the employee, if applicable.

21 (2) Restitution equal to three times the amount of the
22 individual's wages and fringe benefits or prospective wages
23 and fringe benefits calculated from the date of the
24 retaliation or discrimination.

25 (3) Reasonable attorney fees and costs of the action.

26 (4) Any other legal and equitable relief as the court
27 deems appropriate.

28 (B) RELIEF IF EMPLOYER DID MEET OBLIGATIONS.--IF AN EMPLOYEE <--
29 OR PROSPECTIVE EMPLOYEE PREVAILS IN AN ACTION COMMENCED UNDER
30 SECTION 5, THE EMPLOYEE OR PROSPECTIVE EMPLOYEE SHALL BE

1 ENTITLED TO THE FOLLOWING RELIEF, IF THE COURT FINDS THAT THE
2 EMPLOYER MADE A GOOD FAITH EFFORT TO MEET ITS OBLIGATIONS UNDER
3 SECTION 4:

4 (1) REINSTATEMENT OF THE EMPLOYEE, IF APPLICABLE.

5 (2) RESTITUTION EQUAL TO THE AMOUNT OF THE INDIVIDUAL'S
6 WAGES AND FRINGE BENEFITS OR PROSPECTIVE WAGES AND FRINGE
7 BENEFITS CALCULATED FROM THE DATE OF THE RETALIATION OR
8 DISCRIMINATION.

9 (3) REASONABLE ATTORNEY FEES AND COSTS OF THE ACTION.

10 (C) EMPLOYEE NOT ENTITLED TO RELIEF.--AN EMPLOYEE OR
11 PROSPECTIVE EMPLOYEE SHALL NOT BE ENTITLED TO RELIEF UNDER THIS
12 ACT IF THE COURT FINDS THAT THE EMPLOYEE OR PROSPECTIVE EMPLOYEE
13 DID NOT MAKE A GOOD FAITH EFFORT TO COMPLY WITH THE EMPLOYEE'S
14 OR PROSPECTIVE EMPLOYEE'S OBLIGATIONS UNDER SECTION 4.

15 (D) INJURY FROM INVASIVE MEDICAL TEST OR INJECTION.--IF AN
16 EMPLOYEE IS INJURED AS THE RESULT OF AN INVASIVE MEDICAL TEST OR
17 INJECTION REQUIRED BY AN EMPLOYER, THE INJURY SHALL BE
18 COMPENSABLE UNDER THE ACT OF JUNE 2, 1915 (P.L.736, NO.338),
19 KNOWN AS THE WORKERS' COMPENSATION ACT. THE FOLLOWING APPLY:

20 (1) THE EMPLOYEE'S RIGHT TO REFUSE AN INVASIVE MEDICAL
21 TEST OR INJECTION FOR REASONS PROVIDED IN SECTION 3(A) AND
22 THE EMPLOYER'S COMPLIANCE WITH THIS ACT SHALL NOT BE
23 CONSTRUED TO MITIGATE THE EMPLOYER'S LIABILITY UNDER THE
24 WORKERS' COMPENSATION ACT FOR ANY INJURY RESULTING FROM A
25 REQUIRED INVASIVE MEDICAL TEST OR INJECTION, REGARDLESS OF
26 WHETHER THE EMPLOYEE REQUESTED AN EXCEPTION.

27 (2) THIS ACT SHALL NOT BE CONSTRUED TO LIMIT THE
28 LIABILITY OF A THIRD PARTY RESPONSIBLE FOR AN INJURY THAT
29 RESULTS FROM AN INVASIVE MEDICAL TEST OR INJECTION REQUIRED
30 BY AN EMPLOYER.

1 SECTION 7. CONSTRUCTION.

2 (A) WORKPLACE SAFETY.--THIS ACT SHALL NOT BE CONSTRUED TO
3 PROHIBIT AN EMPLOYER FROM IMPLEMENTING SAFETY POLICIES AND
4 PROCEDURES INTENDED TO MAINTAIN A SAFE WORK ENVIRONMENT FOR
5 EMPLOYEES OR REQUIRING NONINVASIVE MEDICAL TESTING FOR EMPLOYEES
6 TO PREVENT THE SPREAD OF INFECTIOUS DISEASE. EMPLOYER ACTIONS
7 THAT DO NOT VIOLATE THIS ACT INCLUDE:

8 (1) REQUIRING AN EMPLOYEE OR PROSPECTIVE EMPLOYEE TO
9 REPORT SYMPTOMS OR DIAGNOSES OF INFECTIOUS DISEASES OR
10 CONDUCT NONINVASIVE SCREENINGS FOR SYMPTOMS.

11 (2) REQUIRING AN EMPLOYEE OR PROSPECTIVE EMPLOYEE WHO
12 HAS EXHIBITED SYMPTOMS OR HAS BEEN DIAGNOSED WITH AN
13 INFECTIOUS DISEASE TO PROVIDE DOCUMENTATION FROM A PHYSICIAN
14 OR THE PHYSICIAN'S DESIGNEE STATING THAT AN EMPLOYEE OR
15 PROSPECTIVE EMPLOYEE MAY ENTER THE WORKPLACE.

16 (3) REQUIRING AN EMPLOYEE WHO EXHIBITS SYMPTOMS OF
17 ILLNESS TO LEAVE THE WORKPLACE UNTIL THE EMPLOYEE NO LONGER
18 EXHIBITS SYMPTOMS.

19 (4) REQUIRING AN EMPLOYEE TO CONDUCT WORK DUTIES FROM
20 THE EMPLOYEE'S HOME OR ANOTHER REMOTE LOCATION TO AVOID THE
21 SPREAD OF INFECTIOUS DISEASE.

22 (5) PROVIDING EMERGENCY FIRST AID IN GOOD FAITH TO AN
23 EMPLOYEE WHO IS INCAPACITATED OR INCAPABLE OF COMMUNICATING
24 THE EMPLOYEE'S WISHES TO THE INDIVIDUALS PROVIDING FIRST AID.

25 (B) ADDITIONAL PRECAUTIONS FOR EMPLOYEES WHO REFUSE AN
26 INJECTION.--IT SHALL NOT BE CONSIDERED RETALIATION OR
27 DISCRIMINATION UNDER THIS ACT TO REQUIRE AN EMPLOYEE WHO
28 LAWFULLY REFUSES AN INJECTION UNDER SECTION 3(A) TO ENGAGE IN
29 ADDITIONAL PRECAUTIONS, WHICH ARE NOT REQUIRED OF EMPLOYEES WHO
30 RECEIVED THE INJECTION, TO PREVENT THE SPREAD OF INFECTIOUS

1 DISEASE. AN EMPLOYER MAY REQUIRE ADDITIONAL PRECAUTIONS AS PART
2 OF A REASONABLE ACCOMMODATION FOR AN EMPLOYEE WHO LAWFULLY
3 REFUSES AN INJECTION, INCLUDING:

4 (1) REQUIRING THE EMPLOYEE TO CONDUCT JOB DUTIES FROM
5 THE EMPLOYEE'S HOME OR ANOTHER REMOTE LOCATION IF THE
6 EMPLOYEE IS ABLE TO DO SO.

7 (2) REQUIRING THE EMPLOYEE TO UTILIZE PERSONAL
8 PROTECTIVE EQUIPMENT INTENDED TO PREVENT THE SPREAD OF
9 INFECTIOUS DISEASE.

10 (3) PLACING RESTRICTIONS ON THE EMPLOYEE'S PHYSICAL
11 PROXIMITY TO OTHER EMPLOYEES, OR OTHER INDIVIDUALS WHOM THE
12 EMPLOYEE WILL ENCOUNTER DURING THE COURSE OF EMPLOYMENT, IN
13 SITUATIONS WHERE CLOSE PHYSICAL PROXIMITY IS NOT NECESSARY
14 FOR THE EMPLOYEE TO PERFORM WORK DUTIES.

15 (4) SCREENING THE EMPLOYEE FOR SYMPTOMS OF INFECTIOUS
16 DISEASE OR REQUIRING THE EMPLOYEE TO REPORT SYMPTOMS TO THE
17 EMPLOYER.

18 Section 6 8. Effective date.

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19 This act shall take effect in 60 days.