

## **Health Care Liberty Jurisdiction Act**

### **Purpose of the Health Care Liberty Jurisdiction Act**

The purpose of the bill is to create a conflict between the jurisdictional claims of the federal government vis-à-vis those of state government over the day-to-day affairs of Tennessee residents relative to their fundamental rights at common law to personal security and liberty and that were “retained by the people“ under the Ninth Amendment.

### **Summary Explanation of the Provisions of the Act**

**The “Whereas” Clauses.** These provisions recite the basis upon which the state legislature has the constitutional authority to enact its provisions, even in the face of any federal mandate.

**Section 1 and Section 2.** These sections enact the “Health Care Liberty Jurisdiction Act.” Section 2 sets forth legislative findings drawn from the “whereas” clauses that justify the claim of the state to constitutional jurisdiction to protect the fundamental rights at common law of persons to personal security and liberty. On that basis, it provides that no person shall be required to submit or consent to or receive one of the currently offered COVID-19 shots. The protection of the person applies regardless of the justification given for the requirement.

**Rationale and Explanation.** A federal mandate for a COVID-19 shot will be imposed on employers and federal contractors, not directly on persons. While that mandate may or may not be within the powers delegated to the federal government, state law cannot override a *valid* federal law because of the Supremacy Clause in the U.S. Constitution.

Declaring any federal vaccine mandate void and unenforceable in Tennessee will not limit the ability of the federal government to bring an enforcement action against an employer or contractor to prevent or remedy a violation of federal law.

Moreover, litigation by employers and contractors over the constitutionality of the mandate on them as employers provides no protection to individual persons during any federal enforcement action against a non-complying employer or contractor.

Thus, the Act has the legislature exercise its constitutional powers to protect the lives and liberty of persons in the state in accordance with the Ninth and Tenth Amendments to give the person who is so employed or who works for a federal contractor the right to refuse to take the shot.

This creates a conflict between the jurisdictional claims of the federal government vis-à-vis those of state government over the day-to-day affairs of individual persons residing in Tennessee relative to their fundamental rights at common law to personal security and liberty and that were “retained by the people “under the Ninth Amendment.

These provisions should invite a lawsuit by the federal government (either through DOJ or OSHA) because state law allows persons not to do what federal law requires employers and contractors to do with respect to those persons.

It should provide employers a defense against any federal action for enforcement of a COVID-19 injection, because the employee is given a right to refuse by state law. This *is* the jurisdictional conflict that needs to occur.

Moreover, the right of the individual who is employed to refuse treatment should allow a business to bring a lawsuit for a declaration of whether federal law can require an employee to give up rights the employee has under state law and that exposes the business to greater liability as a result of Section 4.

**Section 3.** This section adds two provisions to the list of “prohibited activities” under the Tennessee Food, Drug, and Cosmetic Act.

The first prohibits any person from suggesting to another person that they are required “by a rule, regulation, or policy of the federal government to submit or consent to or receive” a COVID-19 shot. This is consistent with the legislature’s claim that the federal government has no direct constitutional authority to require any person to submit to any medical treatment.

The second prohibits the “manufacture, sale, or delivery, holding or offering for sale or the administration of “a COVID-19 drug as a “vaccine” unless it protects a person from being infected as a result of exposure to COVID-19. Its purpose is to prevent confusion among persons as to what creates immunity from a disease as opposed to controlling the effect of a disease once contracted.

This provision creates a conflict with the powers of Congress to “regulate commerce among the states” but it puts at issue whether the federal government and the drug companies are violating the federal government’s prohibition on “false advertisements” by “any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of . . . drugs.”

**Section 4.** This section adds “teeth” to the provisions in Sections 1 and 2 when it comes to an employer requiring COVID-19 shot by stating that the limitations of liability under the Worker’s Compensation laws will not apply if the employee is harmed by the shot.

**Section 5.** This provision amends the sections of the Code that govern malpractice actions against health care providers. It protects a patient by stating that informed consent is not obtained so as to shield the provider from liability for damages if:

- the provider “knows or reasonably should know” that a COVID-19 injection has been requested because the patient “believes it is or may be required by a rule, regulation, or policy of the federal government imposed upon the plaintiff’s employer” or

- the provider, in the presence of the patient, describes or refers to or implies that the injection is a vaccine or will protect the plaintiff from contracting COVID-19, or any variant thereof, if exposed to it.

However, the provider is protected from false claims by a patient if the health care provider provides and receives from the patient a written statement that the injection is not related to a requirement of an employer and that the plaintiff has been informed by the provider that the injection is not a vaccine that will protect the patient from contracting COVID-19.

### **Health Care Liberty Jurisdiction Act**

WHEREAS, United States Supreme Court Justice Joseph Story, in section 416 of his famed *Commentaries on the Constitution of the United States*, stressed the importance of our system of federal and state sovereigns with these words,

“Each, by the theory of our government, is essential to the existence and due preservation of the powers and obligations of the other. The destruction of either would be equally calamitous, since it would involve the ruin of that beautiful fabric of balanced government, which has been reared with so much care and wisdom, and in which the people have reposed their confidence, as the truest safeguard of their civil, religious, and political liberties.”

WHEREAS, the United States Supreme Court, in its unanimous decision in *Bond v. United States*, 564 U.S. 211, 221-22 (2011), extolled the importance of our nation’s system of dual sovereigns as follows:

Federalism is more than an exercise in setting the boundary between different institutions of government for their own integrity. “State sovereignty is not just an end in itself: ‘Rather, *federalism secures to citizens the liberties* that derive from the diffusion of sovereign power.’” *New York v. United States*, 505 U.S. 144, 181, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992) (quoting *Coleman v. Thompson*, 501 U.S. 722, 759, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991) (Blackmun, J., dissenting)). . . . [It] *protects the liberty* of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions.

WHEREAS, in *Martin v. Hunter’s Lessee*, 14 U.S. 304, 325 (1816), the United States Supreme Court said of the system of dual sovereigns created by the United States Constitution that “the sovereign powers, vested in the state governments by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States.”

WHEREAS, the Preamble to the Bill of Rights states that its purpose was to set forth “further declaratory and restrictive clauses” in order “to prevent misconstruction or abuse” of the federal government’s enumerated powers;

WHEREAS, the Ninth Amendment guarantees the people of Tennessee that the “enumeration of certain rights, in the Constitution shall not be construed to deny or disparage others retained by the people”;

WHEREAS, according to the stated purpose of the Bill of Rights, the Ninth Amendment operates as a constitutional limitation on the construction of the powers of the federal government relative to the rights that were enumerated as well as the “others” retained by the people;

WHEREAS, the General Assembly recognizes that in *Marbury v. Madison*, 5 U.S. 137, 174 (1803), the Court said “it cannot be presumed that any clause in the constitution is intended to be without effect”;

WHEREAS, the Ninth Amendment’s guarantee places the enumerated rights as well as the “others” retained by the people outside the powers of the federal government;

WHEREAS, a source of those other rights is the common law;

WHEREAS, the United States Supreme Court has repeatedly looked to the common law for its interpretation of rights enumerated in the Bill of Rights and for incorporating rights in the Bill of Rights into the provisions of the Fourteenth Amendment’s Due Process Clause;

WHEREAS, a few examples of the Court’s reliance on common law to interpret the U.S. Constitution from recent years include *Gamble v. United States*, \_\_ U.S. \_\_, 139 S. Ct. 1960 (2019) (the Court’s opinion, the concurrence, and one dissent citing Blackstone multiple times to determine the meaning of the phrase “the same offense” in the Fifth Amendment’s double jeopardy clause); *Department of Homeland Security v. Thuraissigiam*, \_\_ U.S. \_\_, 140 S. Ct. 1959, 1969 (2020) (calling Blackstone’s *Commentaries* a “satisfactory exposition of the common law of England”); *Ramos v. Louisiana*, \_\_ U.S. \_\_, 140 S. Ct. 1390, 1395 (2020) (citing Blackstone in explanation of the holding that the requirement of juror unanimity is “a vital right protected by the common law” and therefore the Constitution’s jury trial guarantee); *Torres v. Madrid*, \_\_ U.S. \_\_, 141 S. Ct. 989, 996, 997, 998, 1000 (2021) (citing Blackstone multiple times to determine meaning of Fourth Amendment “seizure”);

WHEREAS, rights at common law were private rights and, as such, it was not only the duty of civil government not to violate them, but affirmatively to secure them from violation by other persons;

WHEREAS, pursuant to the Tenth Amendment, the General Assembly, as representatives of the people, has the power, not abrogated by the Fourteenth Amendment, to secure to the people those rights they possessed prior to ratification of the U.S. Constitution;

WHEREAS, the rights the people had prior to and retained after ratification of the U.S. Constitution were the rights of persons at common law;

WHEREAS, as to common law, the United States Supreme Court has said “Sir William Blackstone’s . . . *Commentaries on the Laws of England* not only provided a definitive summary of the common law but was also a primary legal authority for 18th- and 19th-century American lawyers,” *Washington v. Glucksberg*, 521 U.S. 702, 712 (1997), and said they “constituted the preeminent authority on English law for the founding generation,” *District of Columbia v. Heller*, 554 U.S. 570, \_\_\_ 128 S.Ct. 2783, \_\_\_ (2008), quoting *Alden v. Maine*, 527 U.S. 706, 715, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999);

WHEREAS, in *Schick v. United States*, 195 U.S. 65, 69 (1904), the Court wrote that “Blackstone’s *Commentaries* are accepted as the most satisfactory exposition of the common law of England;”

WHEREAS, according to Blackstone’s *Commentaries*, at common law the “absolute rights” of persons consisted of “the three great and primary rights of personal security, personal liberty, and private property;”

WHEREAS, according to Blackstone’s *Commentaries* “[t]he right of personal security consists in a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation,” and “[b]esides those limbs and members that may be necessary to a man in order to defend himself or annoy his enemy, the rest of his person or body is also entitled, by the same natural right, to security from the corporal insults of menaces, assaults, beating, and wounding; though such insults amount not to destruction of life or member;”

WHEREAS, Blackstone described “injuries which affect the personal security of individuals” as “either injuries against their lives, their limbs, their bodies, their health, or their reputations;”

WHEREAS, Blackstone said “battery” was among the injuries “affecting the limbs or bodies of individuals;”

WHEREAS, Blackstone said “[t]he least touching of another’s person wilfully (sic), or in anger, is a battery; for the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it; every man’s person being sacred, and no other having a right to meddle with it in any the slightest manner;”

WHEREAS, the requirement of informed consent in regard to medical practices and procedures is consistent with the common law right of every person to personal security and the liberty to be free from unwanted touching or contact by another person, whether or not the medical practice or procedure is conducive to personal health;

WHEREAS, in *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905), the U.S. Supreme Court said, “[t]he authority of the State to enact [a] statute” authorizing local governments to require a smallpox vaccination of local residents was within “what is commonly called the police power — a power which the State did not surrender when becoming a member of the Union under the Constitution;”

WHEREAS, the Court supported its decision in *Jacobson* by citation to *Ogden v. Utah*, 22 U.S. 1, 203 (1824) in which the Court said “Inspection laws, quarantine laws, [and] health laws of every description” were left to the powers of the state and “[n]o direct general power over these objects is granted to Congress; and, consequently, they remain subject to state legislation;”

WHEREAS, no power to regulate health and medical practices was “delegated to the United States by the Constitution, nor prohibited by it to the States,” such power was “reserved to the States respectively, or to the people” by the Tenth Amendment;

WHEREAS, the legislature has a duty to specify and protect those “other rights” reserved by the Ninth Amendment to the people of Tennessee, one of which is the right of persons at common law to personal security, and, pursuant to the Tenth Amendment, has the power to discharge its duty;

WHEREAS, approval of a pharmaceutical by the federal Food and Drug Administration (FDA) does not require that an approved pharmaceutical be administered to any person and no person can be required to take any such pharmaceutical by virtue of FDA approval;

WHEREAS, the FDA approves pharmaceuticals that have what is known as a “clinical benefit” for which the pharmaceutical has been shown to have a positive therapeutic effect that is clinically meaningful whereas other pharmaceuticals are given “fast track” approval pursuant to Section 901 of Food and Drug Administration Safety Innovations Act (FDASIA) based on the substitution of a surrogate endpoint evaluation for a clinical benefit;

WHEREAS, the U.S. Centers for Disease Control and Prevention (“CDC”) defines a “vaccine” as “a product that stimulates a person's immune system to produce immunity to a specific disease, protecting the person from that disease.”

WHEREAS, the CDC defines “immunity” as “[p]rotection from an infectious disease,” meaning that, “If you are immune to a disease, you can be exposed to it without becoming infected.”

WHEREAS, the actual patents for mRNA COVID-19 injections submitted by Pfizer and Moderna describe the injections as “gene therapy,” not vaccines.

WHEREAS, mRNA COVID-19 shots are not vaccines as defined by the CDC and any representation of them as vaccines constitutes a “false advertisement” under 15 U.S. Code 52;

WHEREAS, the executive branch of the federal government has intimated that it will impose by rule, regulation, or policy a requirement that employers in Tennessee with a certain number of employees require some or all of their employees to submit to a subcutaneous injection of one or more drugs related to COVID-19, as designated by the World Health Organization, that have not be shown to have a clinical benefit;

WHEREAS, according to the FDA, “[a]pproval of a drug may be withdrawn or the labeled indication of the drug changed if trials fail to verify clinical benefit or do not demonstrate sufficient clinical benefit to justify the risks associated with the drug (e.g., show a significantly smaller magnitude or

duration of benefit than was anticipated based on the observed effect on the surrogate)” (accessed at <https://www.fda.gov/patients/fast-track-breakthrough-therapy-accelerated-approval-priority-review/accelerated-approval>);”

WHEREAS, a number of Tennesseans are concerned about the long-term consequences of a COVID-19 injection that has not been shown to have a clinical benefit;

NOW, THEREFORE:

SECTION 1. This Act shall be known as the “Health Care Liberty Jurisdiction Act.”

SECTION 2. Title 1, Chapter 1, Part 1, is amended by adding the following new Part:

\_\_\_\_. Findings: The General Assembly finds:

1. No power to regulate health and medical practices was delegated to the federal government by the United States Constitution and United States Constitution does not prohibit the states from regulating health and medical practices.
2. No power to require any person to consent to any form of medical treatment was granted, directly or indirectly, to the federal government under the U.S. Constitution.
3. The right to personal security and the liberty to be free from an unwanted touching of one’s limbs and body at common law was retained by the people of the state of Tennessee.
4. The right of a person at common law includes rights and duties with respect to medical treatment administered by other persons with respect to the person’s body, limbs, and health.
5. Informed consent between patient and health care practitioners protects the rights at common law of persons and all such consent must be voluntary and not given under duress, coercion, misrepresentation, or fraud.
6. The General Assembly has a duty to protect the right of personal security and liberty from an unwanted touching of one’s body and limbs at common law from any asserted power by the federal government that would tend to direct or control the actions of persons in Tennessee with respect to their personal health care decisions.
7. Imposing a requirement that a person submit or consent to a subcutaneous injection of one or more drugs related to COVID-19, as designated by the World Health Organization, and approved based on a surrogate endpoint evaluation rather than a clinical evaluation, violates the requirement of informed consent essential to the preservation of a person’s right to personal security and liberty.

\_\_\_\_. Vaccination Requirements Prohibited. No person shall be required by an employer or by any place of public accommodation, resort or amusement, as such are defined in T.C.A. § 4-21-102(15) to submit or consent to or receive a subcutaneous injection of one or more drugs related to COVID-

19, as designated by the World Health Organization, or any variant thereof, and approved based on a surrogate endpoint evaluation rather than a clinical evaluation.

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SECTION 3. Amend T.C.A. § 53-1-103 to add the following provisions to section (a)<sup>1</sup>:

(\_\_\_) The suggestion by any person that a person is or may be required by a rule, regulation, or policy of the federal government to submit or consent to or receive a subcutaneous injection of one or more drugs related to COVID-19, as designated by the World Health Organization, or variant thereof, particularly as a condition of continued employment or of engaging in any economic or commercial activities carried on in the state of Tennessee.

(\_\_\_) The manufacture, sale, or delivery, holding or offering for sale or the administration of any one or more drugs related to COVID-19, as designated by the World Health Organization, or variant thereof, as a vaccine unless it stimulates a person's immune system to produce immunity to a specific disease such that a person can be exposed to it without becoming infected.

SECTION 4. T.C.A. § 50-6-103 is amended by adding the following new section (b)<sup>2</sup>:

The provisions of this Chapter shall not apply to any injury to or economic loss suffered by any employee resulting from a subcutaneous injection of one or more drugs related to COVID-19, as designated by the World Health Organization, or variant thereof, taken by or administered to an employee upon a representation by the employer, express or implied, that such treatment is or may be required as a condition of employment and regardless of any rule, regulation, or policy of the federal government applicable to the employer.

SECTION 5. T.C. A. §29-26-118 is amended by designating the existing provision as section (a) and adding the following new sections:

(b) Informed consent is not obtained for a subcutaneous injection of one or more drugs related to COVID-19, as designated by the World Health Organization, or any variant thereof, if the defendant knows or reasonably should know that the plaintiff has requested the injection because he or she believes it is or may be required as a condition of employment or by a rule, regulation, or policy of the federal government imposed upon the plaintiff's employer or if, in the presence of the plaintiff, the defendant in any manner describes or refers to or implies that the injection is a vaccine or will protect the plaintiff from contracting COVID-19, or any variant thereof, if exposed to it.

(c) The provisions of section (b) shall not apply if the defendant obtains in writing from the plaintiff a statement that the injection is not related to a requirement of an employer or a condition of

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<sup>1</sup> Amends the “Tennessee Food, Drug, and Cosmetic Act. Section (a) begins with these words: “The following acts, and the causing of the following acts, within the state are prohibited:”

<sup>2</sup> This is the Worker’s Compensation section of the Code.



employment and that the plaintiff has been informed by the defendant that the injection is not a vaccine that will protect the patient from contracting COVID-19.