

HOUSE BILL 413¹: HEALTH: PROHIBIT STATE OR LOCAL GOVERNMENTS FROM REQUIRING INDIVIDUALS TO SUBMIT TO VACCINATION AS A CONDITION TO CERTAIN ACTIONS IF THE VACCINE DOES NOT MEET CERTAIN CONDITIONS

First Signature: Representative Beth Camp (131st)

Cosponsors: Rep. Brad Thomas (21st), Rep. Karen Mathiak (73rd), Rep. Mitchell Scoggins (14th), Rep. Matthew Gambill (15th), Rep. Martin Momtahan (17th)

Summary: “A BILL to be entitled an Act to amend Chapter 12 of Title 31 of the Official Code of Georgia Annotated, relating to control of hazardous conditions, preventable diseases, and metabolic disorders, so as to prohibit state or local governments from requiring individuals to submit to vaccinations as a condition to certain actions if the vaccine does not meet certain conditions; to provide for related matters; to repeal conflicting laws; and for other purposes.”²

Status: House Second Readers on February 17, 2021³

TEXT OF HOUSE BILL 413⁴

SECTION 1.

Chapter 12 of Title 31 of the Official Code of Georgia Annotated, relating to control of hazardous conditions, preventable diseases, and metabolic disorders, is amended by revising Code Section 31-12-3, relating to power to require immunization and other preventive measures, as follows:

"31-12-3.

(a) The department and all county boards of health are empowered to require, by appropriate rules and regulations, persons located

¹H.B. 413 156th Gen. Assemb., 2nd Reg. Sess. (Ga. 2021), *available at* <https://www.legis.ga.gov/legislation/59594> (last visited May 25, 2023).

² 2021-2022 Regular Session- H.B. 413, *Health; Prohibit State or Local Governments from Requiring Individuals to Submit to Vaccinations as a Condition to Certain Actions if the Vaccine does not meet certain conditions*, GA. GEN ASSEMB., <https://www.legis.ga.gov/legislation/59594> (last visited Nov. 8, 2022) [hereinafter H.B. 413 Status Sheet].

³ *Id.*

⁴ H.B. 413, *supra* note 1.

within their respective jurisdictions to submit to vaccination against contagious or infectious disease where the particular disease may occur, whether or not the disease may be an active threat. The department may, in addition, require such other measures to prevent the conveyance of infectious matter from infected persons to other persons as may be necessary and appropriate. The department shall promulgate appropriate rules and regulations for the implementation of the provisions of this Code section in the case of a declaration of a public health emergency and shall include provisions permitting consideration of the opinion of a person's personal physician as to whether the vaccination is medically appropriate or advisable for such person. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(b) In the absence of an epidemic or immediate threat thereof, this Code section shall not apply to any person who objects in writing thereto on grounds that such immunization conflicts with his or her religious beliefs.

(c)(1) No law, rule, or order, by any state or local government shall require the receipt of vaccines used to prevent SARS-CoV-2 or COVID-19, for any reason, including, but not limited to, as a condition of employment, school attendance, professional licensure, educational certification or degree, admittance to any place of business or entertainment, or access to any mode of transportation, if the following requirements have not been met:

(A) The vaccine has been licensed for use, not including emergency use authorization, by the United States Food and Drug Administration;

(B) The vaccine product has been evaluated for its long-term potential to cause cancer, impair fertility, mutate genes, or cause autoimmune, neurological, or any other chronic or serious adverse effects;

(C) The pivotal clinical trial relied upon by the United States Food and Drug Administration for approval of the vaccine product has been evaluated for its safety:

(i) For no less than three years after such vaccine product is administered; and

(ii) Against a control group that received:

(I) A true placebo; or

(II) Another vaccine product approved by the United States Food and Drug Administration based on a pivotal clinical trial that has evaluated the safety of that vaccine product against a control group that received a true placebo;

(D) Studies have been conducted to determine what injuries and health conditions may be caused by the vaccine product when administered alone, as well as with, other vaccines;

(E) The risk of permanent disability and death from the vaccine product has been proven to be less than that caused by the disease it is intended to prevent;

(F) The infection targeted by the vaccine product is highly transmissible in public settings and:

(i) There are no reasonable nonpharmaceutical interventions capable of reducing risk of the spread;

(ii) There are no effective nutrient or drug treatments available to reduce the risk of the infection; and

(iii) There are no effective nutrient or drug treatments available to reduce risk of severe disease;

(G) The infection targeted by the vaccine poses a grave health risk to the population being required to receive it; and

(H) The vaccine product has been proven to prevent person-to-person transmission of the targeted infection.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, no person who objects in writing thereto on grounds that the receipt of vaccines used to prevent SARS-CoV-2 or COVID-19 conflicts with his or her philosophical beliefs shall be required to receive any such vaccine pursuant to this subsection."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

SPONSOR'S RATIONALE

Representative Camp filed House Bill 413 to protect each person's ability to make their own decision about their health and wellbeing⁵. House Bill 413 specifically addresses vaccinations against COVID-19.⁶ Specifically, Representative Camp stated that her rationale for the Bill was influenced by her daughter and wanted her to have a chance at a family when the time comes – noting the potential side effects and long term complications from the vaccine, specifically impaired fertility as mentioned in the Bill.⁷ Representative Camp explained that every person should be able to make an educated and informed decision about whether to take the vaccine without it affecting their ability to work, go to school or engage in social activities.⁸ Representative Camp further explained that the decision on whether to require the vaccine should be left to the states to decide individually instead of a blanket mandate that was put into place by the federal government.⁹ Representative Camp noted that H.B. 413 would modify the Georgia Code in a way that would separate a person's decision from the societal and economic pressure to do so, giving them a chance to make the decision for him or herself.¹⁰

While he did not voice support for H.B. 413 specifically, Georgia Governor Brian Kemp has been another proponent of freedom of choice and was outspoken about vaccine mandates and their effects.¹¹ Governor Brian Kemp aired his frustration with the vaccine mandates handed down by the federal government as “yet another unlawful mandate from this administration will only worsen worker shortages in a critical need area as

⁵ Interview with Representative Elizabeth Camp, GA State Representative (2020-Present), in Zebulon, Ga. (Sep. 12, 2022)

⁶ H.B. 413

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Press Release, Brian P. Kemp, Office of the Governor, Gov. Kemp, AG Carr Challenge Biden's Vaccine Mandate for Health Care Workers (Nov. 16, 2021) (on file with author).

we continue to balance the everyday healthcare needs of hardworking Georgians and fighting COVID-19.”¹² Georgia’s Attorney General, Chris Carr, voiced his frustration with the vaccine mandates in the same press release by Governor Kemp.¹³ Attorney General Carr referred to the federal vaccine mandate as unconstitutional and noted the effects on healthcare workers that played a key role in helping others in the height of the COVID-19 pandemic.¹⁴

OPPOSITION’S RATIONALE

While there is no clear and published opposition to House Bill 413, there is no doubt that the vaccine requirement has been a topic of debate throughout the State of Georgia and the United States.¹⁵ The opposition’s rationale is best summarized in an article published by the A.B.A titled “*Not Breaking News: Mandatory Vaccination Has Been Constitutional for Over a Century.*”¹⁶ The viewpoint in this article is that the requirement of the vaccine is not only constitutional, but that the arguments against vaccine requirements have been made before and have failed, quoting Justice Scalia’s opinion in *Bruesewitz*: “the elimination of communicable diseases through vaccination became one of the greatest achievements of public health in the 20th century.”¹⁷ The opposition believes that the vaccine requirement is the only way to stop the rampant spread of COVID-19 and that the fears of the possible implications of the vaccine are moot. “Persons who ‘attach little or no value to vaccination as a means of preventing’ disease, or who claim ‘that vaccination causes other diseases,’ must give way to the modern consensus. Vaccines work.”¹⁸ The author adds that “[v]accine resistance need not be tolerated when it allows disease to spread and imperil others.”¹⁹

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Jeff Amy, *Georgia House Approves Blocking COVID-10 Vaccine Mandates*, AP NEWS, (March 22, 2023), <https://apnews.com/article/georgia-covid-vaccine-ban-schools-3decd4d0d23af9a93e9e6aa25f584a77>.

¹⁶ James M. Beck, *Not Breaking News: Mandatory Vaccinations Has Been Constitutional for Over a Century*, AMERICAN BAR ASSOCIATION (Oct. 28, 2021), <https://www.americanbar.org/groups/litigation/committees/mass-torts/articles/2021/winter2022-not-breaking-news-mandatory-vaccination-has-been-constitutional-for-over-a-century/>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

IMPLICATIONS IN GEORGIA

Currently, O.C.G.A. § 31-12-3 allows the department and all county boards of health to require persons within their respective jurisdictions to submit to vaccination against infectious diseases.²⁰ If the Bill is passed in Georgia, it will amend the Georgia code to restrict local/state governments, specifically department and all county boards of health, from requiring individuals to submit to vaccinations as a condition of employment, school attendance, professional licensure, education degrees or admittance to any place of business/entertainment unless the vaccine meets certain criteria detailed in the bill, including but not limited to, approval of the vaccine by the Food and Drug Administration.²¹ In 1898, the Court held that it is within the power of the general assembly to confer the authority upon municipal corporations to require people to submit to vaccination when an outbreak of smallpox was present.²² While this case is not identical to House Bill 413, it is an example of the court's discretion and the power of the state to enforce vaccinations when there is a risk to public safety. By amending O.C.G.A. § 31-12-3, it would limit the government's power to enforce vaccinations without clear criteria for doing so.

LEGISLATIVE GENEALOGY

The Bill was first introduced into the House Hopper on February 11, 2021.²³ The Bill was read into the House on February 16, 2021 and referred to the Committee.²⁴ The Bill was read a second time on February 17, 2021.²⁵ H.B. 413 "died" in committee.²⁶ However, Representative Camp is prepared to introduce a similar bill to the House Hopper during her next session.²⁷

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²⁰ *Ga. Code Ann. § 31-12-3 (West 2020)*.

²¹ Interview with Representative Elizabeth Camp, GA State Representative (2020-Present), in Zebulon, Ga. (Sep. 12, 2022).

²² *Morris v. City of Columbus*, 102 Ga. 792, 30 S.E. 850 (1898).

²³ H.B. 413 Status Sheet, *supra* note 2.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Interview with Representative Elizabeth Camp, GA State Representative (2020-Present), in Zebulon, Ga. (Sep. 12, 2022)