

1 HOUSE BILL NO. 703

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8 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE USE OF VACCINATION STATUS OR
9 IMMUNITY PASSPORT FOR CERTAIN PURPOSES; PROVIDING AN APPROPRIATION; AMENDING
10 SECTIONS 13-1-116 AND 49-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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12 WHEREAS, as noted in section 50-16-502, MCA, "health care information is personal and sensitive
13 information that if improperly used or released may do significant harm to a patient's interests in privacy and
14 health care or other interests"; and

15 WHEREAS, the Montana Supreme Court has concluded that "medical records fall within the zone of
16 privacy protected by Article II, section 10, of the Montana Constitution" and "are quintessentially private and
17 deserve the utmost constitutional protection"; and

18 WHEREAS, government adoption of tracking immunity passports or medical data can lead to new
19 forms of discrimination that could easily be expanded to include other forms of personal health data, such as
20 mental health records and genetic test results.

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22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 **NEW SECTION. Section 1. Use of vaccination status or immunity passport prohibited for**
25 **certain identification cards, benefits, and services -- legislative purpose -- EXCEPTIONS.** (1) The legislature
26 recognizes that the adoption, use, or sharing of vaccination status or immunity passports is a voluntary act by
27 an individual. The purpose of this section is to recognize that individuals ~~must be free from coercion~~ **MAY NOT BE**
28 **MANDATED** to provide private sensitive medical data to a third party.

(2) A state or local ~~government~~ GOVERNMENTAL entity or public accommodation operating in this state may not:

(a) connect an individual's ~~medical records~~ VACCINATION STATUS OR IMMUNITY PASSPORT, digitally or otherwise, to an individual's government-issued records or identification, including but not limited to a passport, driver's license, identification card, birth certificate, or social security card;

(b) require an individual to offer proof of vaccination status or immunity passport in order to obtain, maintain, or renew any government-issued ~~card~~ IDENTIFICATION DOCUMENT, government benefits, OR public assistance as defined in 53-2-101, ~~or membership card related to a private business; OR~~

~~(c) compel or coerce an individual to receive any pharmaceutical product or intervention; or~~

~~(d)(c)~~ require vaccination status or immunity passport to access or acquire ~~common life-sustaining~~ goods and services available to the public, including but not limited to COMMON LIFE-SUSTAINING GOODS SUCH AS food, child care products, and medication.

~~(2) For the purposes of this section, medical records include:~~

~~(a) medical records controlled by a government entity; and~~

~~(b) vaccination status or immunity passport.~~

~~(3)(2)(3)~~ A person, public accommodation, or a ~~government~~ GOVERNMENTAL entity that requires an individual WHO IS NOT AN EMPLOYEE to present a driver's license or ~~an identification card~~ A GOVERNMENT-ISSUED IDENTIFICATION DOCUMENT ~~as proof of driving or FOR~~ traveling privileges may not:

(a) require an individual to offer proof of vaccination status or immunity passport in order to travel; or

(b) ~~discriminate against~~, deny services or access for services, segregate, publicly identify, or otherwise penalize an individual for not receiving a vaccination or providing proof of immunity from any communicable disease.

(4) A HOSPITAL OR HEALTH CARE FACILITY AS DEFINED IN 50-5-101 IS NOT IN VIOLATION OF THIS SECTION IF THE HOSPITAL OR FACILITY REQUESTS VISITORS TO PROVIDE VACCINATION STATUS OR IMMUNITY PASSPORT FOR ENTRANCE DURING A DECLARED EMERGENCY BASED ON AN OUTBREAK OR EPIDEMIC OF COMMUNICABLE DISEASE AND PROVIDES AN ALTERNATIVE REASONABLE ACCOMMODATION FOR VISITORS WHO DO NOT WISH TO PROVIDE THEIR VACCINATION STATUS OR IMMUNITY PASSPORT.

~~(4)(3)(5)~~ This section does not apply to:

1 (A) a person who is confirmed to have a communicable disease and is quarantined under a public
2 isolation order;OR

3 (B) A PRIVATELY OR PUBLICLY OPERATED LONG-TERM CARE FACILITY PROVIDING SKILLED NURSING CARE AS
4 DEFINED IN 50-5-101 THAT HAS RECEIVED NOTIFICATION OF A DEFICIENCY FROM THE CENTERS FOR MEDICARE AND
5 MEDICAID SERVICES FOR NONCOMPLIANCE WITH A FEDERAL LAW, REGULATION, OR ENFORCEABLE GUIDANCE THAT
6 REQUIRES THE FACILITY TO BASE AN OPERATIONAL POLICY OR PROCEDURE ON A PERSON'S VACCINATION STATUS IF THE
7 DEFICIENCY WILL RESULT IN A FEDERAL ENFORCEMENT ACTION. THIS EXCEPTION APPLIES ONLY TO THE EXTENT
8 SPECIFICALLY REQUIRED BY THE FEDERAL LAW, REGULATION, OR ENFORCEABLE GUIDANCE AND IDENTIFIED IN THE
9 NOTIFICATION OF THE DEFICIENCY.

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11 **Section 2.** Section 13-1-116, MCA, is amended to read:

12 **"13-1-116. Fingerprint, mark, or agent for disabled electors -- rulemaking.** (1) Except as
13 otherwise specified by law, the provisions of this section apply.

14 (2) Whenever a signature is required by an elector under a provision of this title and the elector is
15 unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to
16 subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge
17 sign for the elector as provided in this section.

18 (3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not
19 established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the
20 elector after reviewing and verifying the elector's identification.

21 (4) (a) An elector who is unable to provide a signature may apply to the election administrator to have
22 another person designated as an agent for purposes of providing a signature or identifying mark required
23 pursuant to this title and for providing any other assistance to the elector throughout the registration and voting
24 process. The use of an agent is a reasonable accommodation under the provisions of 49-2-101(19)(20)(b).

25 (b) An application for designation of an agent by an elector under this section must be made on a
26 form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be
27 met and the process that must be followed in order for a person to become a designated agent for a disabled
28 elector pursuant to this subsection (4).

(5) If an election administrator or election judge signs or marks a document for an elector pursuant to this section, the election administrator or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint."

Section 3. Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

(3) "Commission" means the commission for human rights provided for in 2-15-1706.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(6) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(7) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) "Department" means the department of labor and industry provided for in 2-15-1701.

(9) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(10) (a) "Employee" means an individual employed by an employer.

(b) The term does not include an individual providing services for an employer if the individual has an independent contractor exemption certificate issued under 39-71-417 and is providing services under the terms of that certificate.

(11) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(12) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(13) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(14) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(15) "Immunity passport" means a document, digital record, or software application indicating that a person is immune to a disease, either through vaccination or infection and recovery.

~~(15)~~(16) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

~~(16)~~(17) "National origin" means ancestry.

~~(17)~~(18) (a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

~~(18)~~(19) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

~~(19)~~(20) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

1 (ii) a record of such an impairment; or

2 (iii) a condition regarded as such an impairment.

3 (b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental
4 disability includes the failure to make reasonable accommodations that are required by an otherwise qualified
5 person who has a physical or mental disability. An accommodation that would require an undue hardship or that
6 would endanger the health or safety of any person is not a reasonable accommodation.

7 ~~(20)~~(21) (a) "Public accommodation" means a place that caters or offers its services, goods, or
8 facilities to the general public subject only to the conditions and limitations established by law and applicable to
9 all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where
10 food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor,
11 tavern, nightclub, trailer park, resort, campground, barbering, barbering nonchemical, cosmetology, electrology,
12 esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course,
13 cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business
14 establishments.

15 (b) Public accommodation does not include an institution, club, or place of accommodation that
16 proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be
17 considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and
18 regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or
19 indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this
20 subsection ~~(20)~~(21), any lodge of a recognized national fraternal organization is considered by its nature
21 distinctly private.

22 (22) "Vaccination status" means an indication of whether a person has received one or more doses of
23 a vaccination."

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25 **NEW SECTION. Section 4. Appropriation.** There is appropriated \$500 from the general fund to the
26 department of labor and industry for the biennium beginning July 1, 2021, to provide online notice of immunity
27 passport laws.

NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 49, chapter 2, part 3, and the provisions of Title 49, chapter 2, part 3, apply to [section 1].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

COORDINATION SECTION. SECTION 7. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 702 AND [THIS ACT] ARE PASSED AND APPROVED AND IF A SUBSECTION OF [SECTION 1] OF HOUSE BILL NO. 702 DEFINES THE TERMS "IMMUNITY PASSPORT" AND "VACCINATION STATUS" AND [THIS ACT] AMENDS 49-2-101 TO DEFINE THE TERMS "IMMUNITY PASSPORT" AND "VACCINATION STATUS", THEN THE SUBSECTION DEFINING THOSE TERMS IN [SECTION 1] OF HOUSE BILL NO. 702 IS VOID.

NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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