

# SENATE BILL No. 287

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18; IC 16-39-11; IC 21-14-1-1.5; IC 25-22.5; IC 25-26-13-4; IC 34-6-2-141.5; IC 34-13-3-1; IC 34-30-32; IC 34-30-33.

**Synopsis:** Health and immunization matters. Specifies that a state educational institution may not require an immunization passport. Provides that a state educational institution with a COVID-19 vaccine mandate is not entitled to certain statutory immunities. Specifies that the budget agency may not allot certain funds to a state educational institution that requires an immunization passport or has implemented a COVID-19 vaccine mandate. Makes it unlawful for the state or a political subdivision to spend public funds promoting a medical treatment for COVID-19. Prohibits discrimination on the basis of COVID-19 immunization status, prohibits requiring a person to answer a question concerning the person's COVID-19 immunization status, and limits the retention of medical records concerning COVID-19 immunization status. Prohibits the medical licensing board of Indiana or the Indiana board of pharmacy from taking disciplinary action against a physician or pharmacist based on the failure to follow guidelines, recommendations, or rules concerning COVID-19. Specifies that a physician noncompete agreement may not be enforced against a physician who suffers an adverse employment action due to the physician's opinion, recommendation, or treatment concerning COVID-19. Provides that a physician may not recommend that a child receive a COVID-19 immunization, and only authorizes a physician to administer a COVID-19 immunization if the physician provides: (1) a written document describing advantages and risks of a COVID-19 immunization; (2) the document is signed by the parent, guardian, health care representative, or emancipated child; and (3) the parent, guardian, health care representative, or emancipated child gives informed consent for the immunization.

**Effective:** July 1, 2022.

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January 10, 2022, read first time and referred to Committee on Health and Provider Services.

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Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

# SENATE BILL No. 287

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-18-1-6 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2022]: **Sec. 6. It is unlawful for the state or a political subdivision**  
4 **to:**

- 5 (1) **spend public funds promoting a medical treatment for**  
6 **COVID-19; or**
- 7 (2) **offer a financial incentive or disincentive to an individual**  
8 **for choosing or avoiding a particular medical treatment for**  
9 **COVID-19.**

10 SECTION 2. IC 16-18-2-338.4 IS ADDED TO THE INDIANA  
11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
12 [EFFECTIVE JULY 1, 2022]: **Sec. 338.4. "State", for purposes of**  
13 **IC 16-39-11, has the meaning set forth in IC 16-39-11-4.5.**

14 SECTION 3. IC 16-39-11-4.5 IS ADDED TO THE INDIANA  
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 2022]: **Sec. 4.5. "State" includes a state**  
17 **educational institution (as defined in IC 21-7-13-32).**



1 SECTION 4. IC 16-39-11-5, AS ADDED BY P.L.196-2021,  
 2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2022]: Sec. 5. (a) Except as provided in subsection (b), the  
 4 state or a local unit may not issue or require an immunization passport.

5 (b) This section does not prohibit the state or a local unit from doing  
 6 any of the following **with the written permission of the individual:**

7 (1) Maintaining, creating, or storing a medical record of an  
 8 individual's immunization status.

9 (2) Providing a medical record of an individual's immunization  
 10 status to the individual's medical provider in accordance with the  
 11 federal Health Insurance Portability and Accountability Act  
 12 (HIPAA) (P.L.104-191).

13 (3) Providing the individual with a record of an immunization at  
 14 the time the individual receives the immunization or upon request  
 15 by the individual.

16 ~~(4) Maintaining an immunization record for the purpose of public  
 17 health administration.~~

18 SECTION 5. IC 16-39-11-6 IS ADDED TO THE INDIANA CODE  
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 20 1, 2022]: Sec. 6. (a) **No person, including an insurer, may  
 21 discriminate against an individual based on the individual's  
 22 immunization status.**

23 (b) **Except for the purpose of medical diagnosis or treatment, no  
 24 person may require an individual to answer a question about the  
 25 individual's immunization status or discriminate against an  
 26 individual who does not answer a question about the individual's  
 27 immunization status.**

28 (c) **Except for the purpose of medical diagnosis or treatment,  
 29 and except as provided in section 5 of this chapter, no person may  
 30 retain records of an individual's immunization status.**

31 (d) **For purposes of:**

32 (1) **subsection (b), a question by an insurer is not made for the  
 33 purpose of medical diagnosis or treatment; and**

34 (2) **subsection (c), records held by an insurer are not for the  
 35 purpose of medical diagnosis or treatment.**

36 (e) **An individual may bring a civil action against a person who  
 37 violates this section.**

38 (f) **The court may award an individual who prevails in an action  
 39 under this section any of the following:**

40 (1) **Injunctive relief.**

41 (2) **The greater of:**

42 (A) **actual and consequential damages resulting from the**



1 violation; or

2 (B) liquidated damages of not more than:

3 (i) five thousand dollars (\$5,000) for a first offense; and

4 (ii) ten thousand dollars (\$10,000) for a second or  
5 subsequent offense.

6 (3) Costs and reasonable attorney's fees.

7 (4) Any other appropriate relief determined by the court.

8 SECTION 6. IC 16-39-11-7 IS ADDED TO THE INDIANA CODE  
9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2022]: Sec. 7. (a) The state, a political subdivision, or a health  
11 care provider may not make a recommendation concerning the  
12 advisability of administering an immunization against COVID-19  
13 to a person less than eighteen (18) years of age.

14 (b) Except as provided in subsection (c), a physician may not  
15 administer an immunization against COVID-19 to a child less than  
16 eighteen (18) years of age unless:

17 (1) the physician provides the child's parent, guardian, or  
18 health care representative with a written document that  
19 neutrally describes:

20 (A) the advantages of administering an immunization  
21 against COVID-19 to a child less than eighteen (18) years  
22 of age;

23 (B) the risks of administering an immunization against  
24 COVID-19 to a child less than eighteen (18) years of age;  
25 and

26 (C) adverse reactions suffered by a child less than eighteen  
27 (18) years of age who was administered an immunization  
28 against COVID-19;

29 (2) after reading the document described in subdivision (1),  
30 the parent, guardian, or health care representative signs the  
31 document described in subdivision (1); and

32 (3) the parent, guardian, or health care representative gives  
33 informed consent for the physician to administer an  
34 immunization against COVID-19 to the child.

35 (c) This section applies only to a child less than eighteen (18)  
36 years of age who is capable of consenting to the child's own health  
37 care under IC 16-36-1-3(a)(2)(A), IC 16-36-1-3(a)(2)(B),  
38 IC 16-36-1-3(a)(2)(C), IC 16-36-1-3(a)(2)(D), or  
39 IC 16-36-1-3(a)(2)(F), and is not prohibited from consenting under  
40 IC 16-36-1-4. A physician may not administer an immunization  
41 against COVID-19 to a child to whom this section applies unless:

42 (1) the physician provides the child with a written document



1 that neutrally describes:

2 (A) the advantages of administering an immunization  
3 against COVID-19 to a child less than eighteen (18) years  
4 of age;

5 (B) the risks of administering an immunization against  
6 COVID-19 to a child less than eighteen (18) years of age;  
7 and

8 (C) adverse reactions suffered by a child less than eighteen  
9 (18) years of age who was administered an immunization  
10 against COVID-19;

11 (2) the child signs the document described in subdivision (1);  
12 and

13 (3) after reading and signing the document described in  
14 subdivision (1), the child gives informed consent for the  
15 physician to administer an immunization against COVID-19  
16 to the child.

17 SECTION 7. IC 21-14-1-1.5 IS ADDED TO THE INDIANA CODE  
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
19 1, 2022]: **Sec. 1.5. (a) The following definitions apply throughout  
20 this section:**

21 (1) "Discretionary funds" has the meaning set forth in  
22 IC 4-12-18-2.

23 (2) "Economic stimulus fund" refers to the economic stimulus  
24 fund created by IC 4-12-18-4.

25 (3) "Immunization passport" has the meaning set forth in  
26 IC 16-39-11-3.

27 (4) "State educational institution with a COVID-19 vaccine  
28 mandate" has the meaning set forth in IC 34-30-32-5.5.

29 (b) If a state educational institution requires the use of an  
30 immunization passport, or is a state educational institution with a  
31 COVID-19 vaccine mandate, the budget agency, after an advisory  
32 recommendation from the budget committee, may not allot to and  
33 shall withhold from the state educational institution all:

34 (1) discretionary funds in the economic stimulus fund; and

35 (2) funds appropriated by the general assembly to the state  
36 educational institution for purposes of COVID-19 relief.

37 (c) If a state educational institution no longer requires the use  
38 of an immunization passport, and is no longer a state educational  
39 institution with a COVID-19 vaccine mandate, the budget agency,  
40 after an advisory recommendation from the budget committee,  
41 may allot the funds described in subsection (b).

42 SECTION 8. IC 25-22.5-5.5-1, AS ADDED BY P.L.93-2020,



1 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2022]: Sec. 1. **(a) Except as provided in subsection (b)**, this  
3 chapter applies to physician noncompete agreements originally entered  
4 into on or after July 1, 2020.

5 **(b) Section 2(b) of this chapter applies to a physician**  
6 **noncompete agreement entered into or renewed after June 30,**  
7 **2022.**

8 SECTION 9. IC 25-22.5-5.5-2, AS ADDED BY P.L.93-2020,  
9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2022]: Sec. 2. **(a) Except as provided in subsection (b)**, to  
11 be enforceable, a physician noncompete agreement must include all of  
12 the following provisions:

13 (1) A provision that requires the employer of the physician to  
14 provide the physician with a copy of any notice that:

15 (A) concerns the physician's departure from the employer; and

16 (B) was sent to any patient seen or treated by the physician  
17 during the two (2) year period preceding the termination of the  
18 physician's employment or the expiration of the physician's  
19 contract. Provided, however, the patient names and contact  
20 information be redacted from the copy of the notice provided  
21 from the employer of the physician to the physician.

22 (2) A provision that requires the physician's employer to, in good  
23 faith, provide the physician's last known or current contact and  
24 location information to a patient who:

25 (A) requests updated contact and location information for the  
26 physician; and

27 (B) was seen or treated by the physician during the two (2)  
28 year period preceding the termination of the physician's  
29 employment or the expiration of the physician's contract.

30 (3) A provision that provides the physician with:

31 (A) access to; or

32 (B) copies of;

33 any medical record associated with a patient described in  
34 subdivision (1) or (2) upon receipt of the patient's consent.

35 (4) A provision that provides the physician whose employment  
36 has terminated or whose contract has expired with the option to  
37 purchase a complete and final release from the terms of the  
38 enforceable physician noncompete agreement at a reasonable  
39 price. However, in the event the physician elects not to exercise  
40 the purchase option, then the option to purchase provision may  
41 not be used in any manner to restrict, bar, or otherwise limit the  
42 employer's equitable remedies, including the employer's



1 enforcement of the physician noncompete agreement.

2 (5) A provision that prohibits the providing of patient medical  
3 records to a requesting physician in a format that materially  
4 differs from the format used to create or store the medical record  
5 during the routine or ordinary course of business, unless a  
6 different format is mutually agreed upon by the parties. Paper or  
7 portable document format copies of the medical records satisfy  
8 the formatting provisions of this chapter.

9 **(b) A physician noncompete agreement may not be enforced**  
10 **against a physician if a person takes an adverse employment action**  
11 **against a physician due to the physician's:**

12 **(1) opinion;**

13 **(2) statement; or**

14 **(3) treatment, nontreatment, or recommended treatment of a**  
15 **person;**

16 **with respect to COVID-19.**

17 SECTION 10. IC 25-22.5-6-5 IS ADDED TO THE INDIANA  
18 CODE AS A NEW SECTION TO READ AS FOLLOWS  
19 [EFFECTIVE JULY 1, 2022]: **Sec. 5. The board may not take**  
20 **disciplinary action against a physician licensed to practice**  
21 **medicine or osteopathic medicine based on the physician's failure**  
22 **or refusal to follow guidelines, recommendations, or rules relating**  
23 **to COVID-19.**

24 SECTION 11. IC 25-26-13-4, AS AMENDED BY P.L.5-2016,  
25 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
26 JULY 1, 2022]: Sec. 4. (a) The board may:

27 (1) adopt rules under IC 4-22-2 for implementing and enforcing  
28 this chapter;

29 (2) establish requirements and tests to determine the moral,  
30 physical, intellectual, educational, scientific, technical, and  
31 professional qualifications for applicants for pharmacists'  
32 licenses;

33 (3) refuse to issue, deny, suspend, or revoke a license or permit or  
34 place on probation or fine any licensee or permittee under this  
35 chapter;

36 (4) regulate the sale of drugs and devices in the state of Indiana;

37 (5) impound, embargo, confiscate, or otherwise prevent from  
38 disposition any drugs, medicines, chemicals, poisons, or devices  
39 which by inspection are deemed unfit for use or would be  
40 dangerous to the health and welfare of the citizens of the state of  
41 Indiana; the board shall follow those embargo procedures found  
42 in IC 16-42-1-18 through IC 16-42-1-31, and persons may not



- 1 refuse to permit or otherwise prevent members of the board or  
2 their representatives from entering such places and making such  
3 inspections;
- 4 (6) prescribe minimum standards with respect to physical  
5 characteristics of pharmacies, as may be necessary to the  
6 maintenance of professional surroundings and to the protection of  
7 the safety and welfare of the public;
- 8 (7) subject to IC 25-1-7, investigate complaints, subpoena  
9 witnesses, schedule and conduct hearings on behalf of the public  
10 interest on any matter under the jurisdiction of the board;
- 11 (8) prescribe the time, place, method, manner, scope, and subjects  
12 of licensing examinations which shall be given at least twice  
13 annually; and
- 14 (9) perform such other duties and functions and exercise such  
15 other powers as may be necessary to implement and enforce this  
16 chapter.
- 17 (b) The board shall adopt rules under IC 4-22-2 for the following:
- 18 (1) Establishing standards for the competent practice of  
19 pharmacy.
- 20 (2) Establishing the standards for a pharmacist to counsel  
21 individuals regarding the proper use of drugs.
- 22 (3) Establishing standards and procedures before January 1, 2006,  
23 to ensure that a pharmacist:
- 24 (A) has entered into a contract that accepts the return of  
25 expired drugs with; or
- 26 (B) is subject to a policy that accepts the return of expired  
27 drugs of;
- 28 a wholesaler, manufacturer, or agent of a wholesaler or  
29 manufacturer concerning the return by the pharmacist to the  
30 wholesaler, the manufacturer, or the agent of expired legend drugs  
31 or controlled drugs. In determining the standards and procedures,  
32 the board may not interfere with negotiated terms related to cost,  
33 expenses, or reimbursement charges contained in contracts  
34 between parties, but may consider what is a reasonable quantity  
35 of a drug to be purchased by a pharmacy. The standards and  
36 procedures do not apply to vaccines that prevent influenza,  
37 medicine used for the treatment of malignant hyperthermia, and  
38 other drugs determined by the board to not be subject to a return  
39 policy. An agent of a wholesaler or manufacturer must be  
40 appointed in writing and have policies, personnel, and facilities  
41 to handle properly returns of expired legend drugs and controlled  
42 substances.





1 (c) The board may grant or deny a temporary variance to a rule it  
2 has adopted if:

- 3 (1) the board has adopted rules which set forth the procedures and  
4 standards governing the grant or denial of a temporary variance;  
5 and  
6 (2) the board sets forth in writing the reasons for a grant or denial  
7 of a temporary variance.

8 (d) The board shall adopt rules and procedures, in consultation with  
9 the medical licensing board, concerning the electronic transmission of  
10 prescriptions. The rules adopted under this subsection must address the  
11 following:

- 12 (1) Privacy protection for the practitioner and the practitioner's  
13 patient.  
14 (2) Security of the electronic transmission.  
15 (3) A process for approving electronic data intermediaries for the  
16 electronic transmission of prescriptions.  
17 (4) Use of a practitioner's United States Drug Enforcement  
18 Agency registration number.  
19 (5) Protection of the practitioner from identity theft or fraudulent  
20 use of the practitioner's prescribing authority.

21 (e) The governor may direct the board to develop:

- 22 (1) a prescription drug program that includes the establishment of  
23 criteria to eliminate or significantly reduce prescription fraud; and  
24 (2) a standard format for an official tamper resistant prescription  
25 drug form for prescriptions (as defined in IC 16-42-19-7(1)).

26 The board may adopt rules under IC 4-22-2 necessary to implement  
27 this subsection.

28 (f) The standard format for a prescription drug form described in  
29 subsection (e)(2) must include the following:

- 30 (1) A counterfeit protection bar code with human readable  
31 representation of the data in the bar code.  
32 (2) A thermochromic mark on the front and the back of the  
33 prescription that:  
34 (A) is at least one-fourth (1/4) of one (1) inch in height and  
35 width; and  
36 (B) changes from blue to clear when exposed to heat.

37 (g) The board may contract with a supplier to implement and  
38 manage the prescription drug program described in subsection (e). The  
39 supplier must:

- 40 (1) have been audited by a third party auditor using the SAS 70  
41 audit or an equivalent audit for at least the three (3) previous  
42 years; and



1 (2) be audited by a third party auditor using the SAS 70 audit or  
 2 an equivalent audit throughout the duration of the contract;  
 3 in order to be considered to implement and manage the program.

4 (h) The board shall adopt rules under IC 4-22-2, or emergency rules  
 5 in the manner provided under IC 4-22-2-37.1 that take effect on July 1,  
 6 2016, concerning:

7 (1) professional determinations made under IC 35-48-4-14.7(d);  
 8 and

9 (2) the determination of a relationship on record with the  
 10 pharmacy under IC 35-48-4-14.7.

11 (i) The board may:

12 (1) review professional determinations made by a pharmacist; and

13 (2) **except as otherwise provided in this section**, take  
 14 appropriate disciplinary action against a pharmacist who violates  
 15 a rule adopted under subsection (h) concerning a professional  
 16 determination made;

17 under IC 35-48-4-14.7 concerning the sale of ephedrine and  
 18 pseudoephedrine.

19 **(j) The board may not take disciplinary action against a**  
 20 **pharmacist based on the pharmacist's failure or refusal to follow**  
 21 **guidelines, recommendations, or rules relating to COVID-19.**

22 SECTION 12. IC 34-6-2-141.5 IS ADDED TO THE INDIANA  
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2022]: **Sec. 141.5. "State educational**  
 25 **institution with a COVID-19 vaccine mandate", for purposes of**  
 26 **IC 34-30-32 and IC 34-30-33, has the meaning set forth in**  
 27 **IC 34-30-32-5.5.**

28 SECTION 13. IC 34-13-3-1 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 1. (a) This chapter**  
 30 **does not apply to a claim or cause of action:**

31 **(1) arising from COVID-19 (as defined in IC 34-30-32-2); or**

32 **(2) relating to harm from a COVID-19 protective product (as**  
 33 **defined in IC 34-30-33-2);**

34 **against a state educational institution with a COVID-19 vaccine**  
 35 **mandate (as defined in IC 34-30-32-5.5).**

36 ~~(a)~~ **(b)** This chapter applies only to a claim or suit in tort.

37 ~~(b)~~ **(c)** The provisions of this chapter also apply to IC 34-30-14.

38 SECTION 14. IC 34-30-32-1, AS ADDED BY P.L.1-2021,  
 39 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2022]: **Sec. 1. (a) This chapter does not apply to a state**  
 41 **educational institution with a COVID-19 vaccine mandate.**

42 ~~(a)~~ **(b)** This chapter applies only to a tort action.



1            ~~(b)~~ (c) This chapter applies to a cause of action that accrues on or  
2 after March 1, 2020.

3            SECTION 15. IC 34-30-32-5.5 IS ADDED TO THE INDIANA  
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2022]: **Sec. 5.5. As used in this chapter, "state**  
6 **educational institution with a COVID-19 vaccine mandate" means**  
7 **a state educational institution (as defined in IC 21-7-13-32) that**  
8 **requires a student to be vaccinated against COVID-19 as a**  
9 **condition of attending a class in person, regardless of whether**  
10 **medical, religious, or other exemptions are available to a student.**

11            SECTION 16. IC 34-30-33-1, AS ADDED BY P.L.1-2021,  
12 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2022]: Sec. 1. **(a) This chapter does not apply to a state**  
14 **educational institution with a COVID-19 vaccine mandate.**

15            **(b)** This chapter only applies to a tort action.

16            SECTION 17. IC 34-30-33-2, AS ADDED BY P.L.1-2021,  
17 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
18 JULY 1, 2022]: Sec. 2. The following definitions apply throughout this  
19 chapter:

- 20            (1) "COVID-19" means:
  - 21            (A) severe acute respiratory syndrome coronavirus 2 or a
  - 22            mutated form of severe acute respiratory syndrome
  - 23            coronavirus 2; or
  - 24            (B) the disease caused by severe acute respiratory syndrome
  - 25            coronavirus 2 or a mutated form of severe acute respiratory
  - 26            syndrome coronavirus 2.
- 27            (2) "COVID-19 protective product" means one (1) or more of the
- 28            following:
  - 29            (A) Personal protective equipment.
  - 30            (B) Medical devices, equipment, and supplies used to treat
  - 31            COVID-19, including medical devices, equipment, or supplies
  - 32            that are used or modified for an unapproved use to treat
  - 33            COVID-19 or to prevent the spread of COVID-19.
  - 34            (C) Medical devices, equipment, and supplies used outside of
  - 35            their normal use to treat COVID-19 or to prevent the spread of
  - 36            COVID-19.
  - 37            (D) Medications used to treat COVID-19, including
  - 38            medications prescribed or dispensed for off label use to
  - 39            attempt to treat COVID-19.
  - 40            (E) Tests, as approved by the federal Food and Drug
  - 41            Administration, to diagnose or determine immunity or
  - 42            exposure to COVID-19.



1 (F) A product designed to clean or disinfect to prevent the  
2 spread of COVID-19.

3 (G) Any component of an item described in this subdivision.

4 (3) "Manufacturer or supplier" means a person who designs,  
5 manufactures, labels, sells, distributes, or donates a COVID-19  
6 protective product.

7 (4) "State educational institution with a COVID-19 vaccine  
8 mandate" has the meaning set forth in IC 34-30-32-5.5.

