

1 A bill to be entitled
2 An act relating to COVID-19 mandates and treatment
3 options; amending ss. 381.00316 and 381.00319, F.S.;
4 providing legislative findings and intent; providing
5 definitions; prohibiting business entities,
6 governmental entities, and educational institutions
7 from imposing COVID-19 testing, facial covering, and
8 vaccination mandates; prohibiting discrimination by
9 such entities based on knowledge or belief of a
10 person's COVID-19 vaccination or postinfection
11 recovery status or refusal to take a COVID-19 test;
12 providing an exception; authorizing the Department of
13 Legal Affairs and the Department of Health,
14 respectively, to impose specified fines for certain
15 violations; providing for remedies; providing
16 construction; creating s. 395.1057, F.S.; prohibiting
17 hospitals from interfering with a patient's right to
18 choose COVID-19 treatment alternatives; providing for
19 disciplinary action; creating s. 408.833, F.S.;
20 providing definitions; requiring the Agency for Health
21 Care Administration and the Department of Health to
22 jointly develop facial covering standards and publish
23 such standards on their respective websites by
24 specified dates; providing for emergency rulemaking;
25 requiring health care providers and health care

26 practitioners to adopt facial covering policies and
 27 procedures and publish or conspicuously display such
 28 policies and procedures in a certain manner by a
 29 specified date; prohibiting such providers and
 30 practitioners from requiring persons to wear facial
 31 coverings beginning on a specified date; providing for
 32 disciplinary action; creating s. 456.62, F.S.;
 33 requiring health care practitioners treating patients
 34 diagnosed with COVID-19 to obtain informed consent
 35 before prescribing any medications; providing
 36 requirements for such consent; requiring health care
 37 practitioners to record certain compliance or
 38 noncompliance in patients' medical records; providing
 39 construction; amending s. 465.0266, F.S.; exempting
 40 certain pharmacists from disciplinary action under
 41 certain conditions; providing an effective date.

42

43 Be It Enacted by the Legislature of the State of Florida:

44

45 Section 1. Section 381.00316, Florida Statutes, is amended
 46 to read:

47 381.00316 Discrimination based on COVID-19 vaccination or
 48 postinfection recovery status; refusal to wear a facial
 49 covering; COVID-19 test ~~vaccine documentation.~~

50 (1) (a) The Legislature finds that society is harmed by

51 discrimination based on COVID-19 vaccination or postinfection
52 recovery status because healthy persons are deprived of
53 participating in society and accessing employment opportunities.
54 The Legislature further finds and declares that remedies to
55 prevent such discrimination are in the best interest of this
56 state.

57 (b) It is the intent of the Legislature that Floridians be
58 free from facial covering and COVID-19 vaccination mandates of
59 any kind and discrimination based on COVID-19 vaccination or
60 postinfection recovery status or refusal to take a COVID-19
61 test. It is further the intent of the Legislature that
62 Floridians receive adequate informed consent regarding treatment
63 alternatives for COVID-19.

64 (2) As used in this section, the term:

65 (a) "Business entity" has the same meaning as in s.
66 606.03. The term also includes a charitable organization as
67 defined in s. 496.404, a corporation not for profit as defined
68 in s. 617.01401, a private club, or any other business operating
69 in this state.

70 (b) "Department" means the Department of Legal Affairs.

71 (c) "Facial covering" has the same meaning as in s.
72 408.833(1).

73 (d) "Governmental entity" means this state or any
74 political subdivision thereof, including the executive,
75 legislative, and judicial branches of government; the

76 independent establishments of the state, counties,
77 municipalities, districts, authorities, boards, or commissions;
78 or any agencies subject to chapter 286. The term does not
79 include an educational institution as defined in s.
80 381.00319(1).

81 (3)(1) A business entity, as defined in s. 768.38 to
82 include any business operating in this state, may not require
83 any person patrons or customers to provide any documentation
84 certifying COVID-19 vaccination or postinfection recovery or
85 require any person to take a COVID-19 test to gain admission or
86 access to, entry upon, or service from the business entity
87 operations in this state, or as a condition of contracting,
88 hiring, promotion, or continued employment with the business
89 entity. A business entity may not refuse to hire or discharge
90 any person, deprive or tend to deprive any person of employment
91 opportunities or adversely affect any person's status as an
92 employee or as an applicant for employment, or otherwise
93 discriminate against any person with respect to compensation,
94 terms, conditions, or privileges of employment based on
95 knowledge or belief of the person's COVID-19 vaccination or
96 postinfection recovery status or the person's failure to take a
97 COVID-19 test. This subsection does not otherwise restrict
98 business entities businesses from instituting screening
99 protocols consistent with authoritative or controlling
100 government-issued guidance to protect public health.

101 ~~(4)(2)~~ A governmental entity ~~as defined in s. 768.38~~ may
 102 not require any person ~~persons~~ to provide any documentation
 103 certifying COVID-19 vaccination or postinfection recovery or
 104 require any person to take a COVID-19 test to gain admission or
 105 access to, entry upon, or service from the governmental entity's
 106 operations in this state, or as a condition of contracting,
 107 hiring, promotion, or continued employment with the governmental
 108 entity. A governmental entity may not refuse to hire or
 109 discharge any person, deprive or tend to deprive any person of
 110 employment opportunities or adversely affect any person's status
 111 as an employee, or otherwise discriminate against any person
 112 with respect to compensation, terms, conditions, or privileges
 113 of employment based on the knowledge or belief of the person's
 114 COVID-19 vaccination or postinfection recovery status or the
 115 person's failure to take a COVID-19 test. This subsection does
 116 not otherwise restrict governmental entities from instituting
 117 screening protocols consistent with authoritative or controlling
 118 government-issued guidance to protect public health.

119 (5)(a) Notwithstanding paragraph (b), or any other law to
 120 the contrary, a business entity or a governmental entity may not
 121 require any person to wear a facial covering and may not deny
 122 any person admission or access to, entry upon, or service from
 123 the entity or otherwise discriminate against any person based on
 124 the person's refusal to wear a facial covering.

125 (b) This subsection does not apply to a health care

126 provider or a health care practitioner as those terms are
127 defined in s. 408.833(1), provided that such provider or
128 practitioner is in compliance with s. 408.833.

129 ~~(3) An educational institution as defined in s. 768.38 may~~
130 ~~not require students or residents to provide any documentation~~
131 ~~certifying COVID-19 vaccination or postinfection recovery for~~
132 ~~attendance or enrollment, or to gain access to, entry upon, or~~
133 ~~service from such educational institution in this state. This~~
134 ~~subsection does not otherwise restrict educational institutions~~
135 ~~from instituting screening protocols consistent with~~
136 ~~authoritative or controlling government-issued guidance to~~
137 ~~protect public health.~~

138 (6)(a)-(4) The department may impose an administrative a
139 fine not to exceed \$5,000 per each individual and separate
140 violation of this section.

141 (b) Fines collected pursuant to this subsection must be
142 deposited into the General Revenue Fund.

143 (c) This subsection does not limit the right of any person
144 aggrieved by a violation of this section to recover damages or
145 other relief under any other applicable law.

146 (d) If a governmental entity fails to comply with
147 subsection (4) or subsection (5), an employee terminated based
148 on such noncompliance may be eligible for reemployment
149 assistance under chapter 443, in addition to any other remedy
150 available to the employee for a violation of this section.

151 (e) For purposes of an investigation or proceeding
 152 conducted by the department, the department may administer
 153 oaths, take depositions, make inspections when authorized by
 154 law, issue subpoenas supported by affidavit, serve subpoenas and
 155 other process, and compel the attendance of witnesses and the
 156 production of books, papers, documents, and other evidence.
 157 Challenges to and enforcement of subpoenas or orders shall be in
 158 accordance with s. 120.569.

159 ~~(5) This section does not apply to a health care provider~~
 160 ~~as defined in s. 768.38; a service provider licensed or~~
 161 ~~certified under s. 393.17, part III of chapter 401, or part IV~~
 162 ~~of chapter 468; or a provider with an active health care clinic~~
 163 ~~exemption under s. 400.9935.~~

164 ~~(7)(6)~~ The department may adopt rules pursuant to ss.
 165 120.536 and 120.54 to implement this section.

166 Section 2. Section 381.00319, Florida Statutes, is amended
 167 to read:

168 381.00319 Prohibition on facial covering and COVID-19
 169 vaccination and testing mandates ~~for students.~~

170 (1) For purposes of this section, the term:

171 (a) "COVID-19" means the novel coronavirus identified as
 172 SARS-CoV-2; any disease caused by SARS-CoV-2, its viral
 173 fragments, or a virus mutating therefrom; and all conditions
 174 associated with the disease which are caused by SARS-CoV-2, its
 175 viral fragments, or a virus mutating therefrom ~~has the same~~

176 ~~meaning as in s. 381.00317(1).~~

177 (b) "Educational institution" means a public or private
 178 school, including a preschool, elementary school, middle school,
 179 junior high school, secondary school, career center, or
 180 postsecondary school ~~has the same meaning as in s. 112.0441(1).~~

181 (c) "Facial covering" has the same meaning as in s.
 182 408.833(1).

183 ~~(c) "Parent" has the same meaning as in s. 1000.21(5).~~

184 (2) (a) Notwithstanding any other law to the contrary, An
 185 educational institution or elected or appointed local official
 186 may not impose a COVID-19 vaccination mandate on for any person
 187 student.

188 (b) An educational institution may not require any person
 189 to provide any documentation certifying COVID-19 vaccination or
 190 postinfection recovery or require any person to take a COVID-19
 191 test to gain admission or access to, entry upon, or service from
 192 the educational institution in this state. An educational
 193 institution may not otherwise discriminate against any person
 194 based on the person's COVID-19 vaccination or postinfection
 195 recovery status or the person's failure to take a COVID-19 test.

196 (3) (a) Notwithstanding paragraph (b), or any other law to
 197 the contrary, an educational institution may not require any
 198 person to wear a facial covering and may not deny any person
 199 admission or access to, entry upon, or service from the
 200 institution or otherwise discriminate against any person based

201 on the person's refusal to wear a facial covering.

202 (b) This subsection does not apply to an educational
 203 institution when a facial covering is used as required safety
 204 equipment in a course of study consistent with occupational or
 205 laboratory safety requirements.

206 (4) (a) The Department of Health may impose an
 207 administrative fine not to exceed \$5,000 per each individual and
 208 separate violation of this section.

209 (b) Fines collected pursuant to this subsection must be
 210 deposited into the General Revenue Fund.

211 (c) This subsection does not limit the right of any person
 212 aggrieved by a violation of this section to recover damages or
 213 other relief under any other applicable law.

214 (d) For purposes of an investigation or proceeding
 215 conducted by the Department of Health, the department may
 216 administer oaths, take depositions, make inspections when
 217 authorized by law, issue subpoenas supported by affidavit, serve
 218 subpoenas and other process, and compel the attendance of
 219 witnesses and the production of books, papers, documents, and
 220 other evidence, respectively. Challenges to and enforcement of
 221 subpoenas or orders shall be in accordance with s. 120.569

222 ~~(3) A parent of a student, a student who is an emancipated~~
 223 ~~minor, or a student who is 18 years of age or older may bring an~~
 224 ~~action against the educational institution to obtain a~~
 225 ~~declaratory judgment that an act or practice violates this~~

226 ~~section and to seek injunctive relief. A prevailing parent or~~
 227 ~~student, as applicable, must be awarded reasonable attorney fees~~
 228 ~~and court costs.~~

229 ~~(4) This section expires June 1, 2023.~~

230 Section 3. Section 395.1057, Florida Statutes, is created
 231 to read:

232 395.1057 Patients' right to choose COVID-19 treatment
 233 alternatives.—In accordance with s. 456.62, a hospital may not
 234 interfere with a patient's right to choose COVID-19 treatment
 235 alternatives as recommended by a health care practitioner with
 236 privileges at the hospital. Any hospital that violates this
 237 section by preventing a health care practitioner from exercising
 238 his or her sound judgment is subject to agency disciplinary
 239 action under s. 395.1065(2).

240 Section 4. Section 408.833, Florida Statutes, is created
 241 to read:

242 408.833 Facial covering requirements in health care
 243 facilities.—

244 (1) As used in this section, the term:

245 (a) "Department" means the Department of Health.

246 (b) "Facial covering" means a cloth or surgical face mask,
 247 a face shield, or any other device that covers the mouth and
 248 nose.

249 (c) "Health care practitioner" has the same meaning as in
 250 s. 456.001. The term does not include a health care practitioner
 251 who is employed by a health care provider.

252 (d) "Health care provider" means a health care provider as
 253 defined in s. 408.07; a service provider licensed or certified
 254 under s. 393.17, part III of chapter 401, or part IV of chapter
 255 468; a provider with an active health care clinic exemption
 256 under s. 400.9935; an optical establishment permitted under s.
 257 484.007; a massage establishment licensed under s. 480.043; a
 258 pharmacy as defined in s. 465.003; or an office registered under
 259 s. 459.0138.

260 (2)(a) By July 1, 2023, the agency and the department
 261 shall jointly develop standards for the appropriate use of
 262 facial coverings for infection control in health care settings.

263 (b) The agency and the department shall publish such
 264 standards on their respective websites and provide a link on
 265 their respective websites to report violations of such
 266 standards.

267 (c) The agency and the department shall adopt emergency
 268 rules to jointly develop such standards. Emergency rules adopted
 269 under this subsection are exempt from s. 120.54(4)(c) and shall
 270 remain in effect until replaced by rules adopted under the
 271 nonemergency rulemaking procedures of the Administrative
 272 Procedure Act.

273 (3) By August 1, 2023, health care providers and health

274 care practitioners must adopt facial covering policies and
275 procedures based on the standards developed under subsection (2)
276 and publish such policies and procedures on the homepages of
277 their respective websites or conspicuously display such policies
278 and procedures in the lobbies of their respective practice
279 settings.

280 (4) Effective August 1, 2023, health care providers and
281 health care practitioners may not require any person to wear a
282 facial covering in any circumstance unless it is in accordance
283 with the policies and procedures adopted under subsection (3).

284 (5) Effective August 1, 2023, a health care provider or a
285 health care practitioner that violates this section is subject
286 to disciplinary action by the agency or the department, as
287 applicable.

288 Section 5. Section 456.62, Florida Statutes, is created to
289 read:

290 456.62 Communication of COVID-19 treatment alternatives.—

291 (1) A health care practitioner treating a patient
292 diagnosed with COVID-19 shall obtain the informed consent of the
293 patient or the patient's legal representative before prescribing
294 any medication for the treatment of COVID-19.

295 (2) Informed consent shall include an explanation of
296 alternative medications for the treatment of COVID-19 and the
297 relative advantages, disadvantages, and risks associated with
298 alternative medications to the extent necessary to allow the

299 patient or the patient's legal representative to make a prudent
 300 decision regarding treatment.

301 (3) In determining which alternative medications to
 302 include in the informed consent, the health care practitioner
 303 shall consider any medications currently authorized or approved
 304 by the United States Food and Drug Administration for the
 305 treatment of COVID-19 and use his or her best clinical judgment
 306 to identify any alternative medications that could reasonably be
 307 expected to benefit the patient.

308 (4) In providing such information, the health care
 309 practitioner shall consider the physical state of the patient
 310 and the patient's ability to understand the information.

311 (5) A health care practitioner shall record his or her
 312 compliance or noncompliance with this section in the patient's
 313 medical record.

314 (6) This section does not supersede any other provision of
 315 law regarding informed consent.

316 Section 6. Section 465.0266, Florida Statutes, is amended
 317 to read:

318 465.0266 Common database. ~~Nothing contained in~~ This
 319 chapter does not ~~shall be construed to~~ prohibit the dispensing
 320 by a pharmacist licensed in this state or another state of a
 321 prescription contained in a common database, and such dispensing
 322 may ~~shall~~ not constitute a transfer as defined in s. 465.026(1) -
 323 (6), provided that the following conditions are met:

324 (1) All pharmacies involved in the transactions pursuant
 325 to which the prescription is dispensed are under common
 326 ownership and utilize a common database.

327 (2) All pharmacies involved in the transactions pursuant
 328 to which the prescription is dispensed and all pharmacists
 329 engaging in dispensing functions are properly licensed,
 330 permitted, or registered in this state or another state.

331 (3) The common database maintains a record of all
 332 pharmacists involved in the process of dispensing a
 333 prescription.

334 (4) The owner of the common database maintains a policy
 335 and procedures manual that governs its participating pharmacies,
 336 pharmacists, and pharmacy employees and that is available to the
 337 board or its agent upon request. The policy and procedures
 338 manual shall include the following information:

339 (a) A best practices model detailing how each pharmacy and
 340 each pharmacist accessing the common database will comply with
 341 applicable federal and state laws, rules, and regulations.

342 (b) The procedure for maintaining appropriate records for
 343 regulatory oversight for tracking a prescription during each
 344 stage of the filling and dispensing process, identifying the
 345 pharmacists involved in filling and dispensing the prescription
 346 and counseling the patient, and responding to any requests for
 347 information made by the board under s. 465.0156.

348 (c) The policy and procedure for providing adequate

349 security to protect the confidentiality and integrity of patient
350 information.

351 (d) A quality assurance program designed to objectively
352 and systematically monitor, evaluate, and improve the quality
353 and appropriateness of patient care through the use of the
354 common database.

355

356 Any pharmacist dispensing a prescription has at all times the
357 right and obligation to exercise his or her independent
358 professional judgment. Any pharmacist properly dispensing an
359 alternative medication prescribed for the treatment of COVID-19
360 pursuant to s. 456.62 is not subject to disciplinary action by
361 the board or the department, as applicable. Notwithstanding
362 ~~other provisions in~~ this section, a ~~no~~ pharmacist licensed in
363 this state ~~participating in the~~ dispensing ~~of~~ a prescription
364 pursuant to this section is not ~~shall be~~ responsible for the
365 acts and omissions of another person participating in the
366 dispensing process provided such person is not under the direct
367 supervision and control of the pharmacist licensed in this
368 state.

369 Section 7. This act shall take effect June 1, 2023.