

CHAPTER 2023-43

Committee Substitute for Senate Bill No. 252

An act relating to protection from discrimination based on health care choices; amending s. 381.00316, F.S.; providing legislative intent and findings; defining terms; prohibiting business entities and governmental entities from requiring a person to provide certain documentation or requiring a COVID-19 test to gain access to, entry upon, or service from such entities or as a condition of contracting, hiring, promotion, or continued employment; prohibiting business and governmental entities from refusing to hire persons, discharging persons, depriving or attempting to deprive persons of employment opportunities, adversely affecting persons with respect to employment, or otherwise discriminating against any person based on knowledge or belief of a person's vaccination or COVID-19 postinfection recovery status or failure to take a COVID-19 test; requiring such entities to provide exemptions and reasonable accommodations for religious and medical reasons; prohibiting such entities from requiring persons to wear face coverings in order to gain access to, entry upon, service from, or admission to such entities or from otherwise discriminating against persons based on their refusal to wear a facial covering; providing exceptions; requiring the Department of Health to adopt certain emergency rules; providing administrative penalties; authorizing the Department of Legal Affairs to take specified actions for purposes of conducting investigations or proceedings; requiring that collected fines be deposited in the General Revenue Fund; providing construction; providing that certain terminated employees are eligible for reemployment assistance; amending s. 381.00319, F.S.; revising and defining terms; revising provisions related to the prohibition on COVID-19-related mandates by educational institutions; prohibiting educational institutions from imposing certain vaccine mandates on any person; prohibiting educational institutions from requiring a person to provide certain documentation or requiring a COVID-19 test to gain admission to, access to, entry upon, or service from such institutions or as a condition of contracting, hiring, promotion, or continued employment; prohibiting educational institutions from discharging persons, refusing to hire persons, depriving or attempting to deprive persons of employment opportunities, adversely affecting persons with respect to employment, or otherwise discriminating against any person based on the knowledge or belief of a person's vaccination or COVID-19 postinfection recovery status or failure to take a COVID-19 test; requiring educational institutions to provide exemptions and reasonable accommodations for religious and medical reasons; prohibiting educational institutions from requiring persons to wear face coverings, from denying persons access to, entry upon, service from, or admission to such institutions, or from otherwise discriminating against persons based on their refusal to wear a facial covering; providing exceptions; requiring the Department of Health to adopt certain emergency rules; providing administrative penalties;

authorizing the department to take specified actions for purposes of conducting investigations or proceedings; requiring that collected fines be deposited in the General Revenue Fund; providing construction; authorizing the department to adopt rules; creating s. 381.00321, F.S.; prohibiting governmental entities and educational institutions from adopting, implementing, or enforcing certain public health policies or guidelines unless authorized by state law, rule, or executive order; creating s. 395.1057, F.S.; prohibiting hospitals from interfering with patients' right to choose COVID-19 treatment alternatives if certain conditions are met; providing for disciplinary action; creating s. 408.824, F.S.; defining terms; requiring the Agency for Health Care Administration and the Department of Health to jointly develop standards for the appropriate use of facial coverings in health care settings by a specified date; requiring the agency and the department to adopt emergency rules for such standards; requiring the agency and the department to post such standards on their respective websites and provide a link for reporting related violations; requiring certain health care practitioners and all health care providers to establish facial covering policies and procedures by a specified date; providing requirements for such policies and procedures; requiring such health care practitioners and health care providers to make their policies and procedures easily accessible on their respective websites or conspicuously display them in the lobby of their health care service setting or settings, as applicable; beginning on a specified date, prohibiting health care practitioners and health care providers from requiring persons to wear a facial covering for any reason unless the requirement is in accordance with specified policies and procedures; providing for disciplinary action; creating s. 456.62, F.S.; requiring health care practitioners treating patients diagnosed with COVID-19 to obtain patients' informed consent before prescribing any medications for treatment of COVID-19; providing a requirement for obtaining such informed consent; requiring health care practitioners to include certain information and use their best clinical judgment when making certain determinations related to alternative medications for treatment of COVID-19; requiring health care practitioners to take into consideration certain factors when providing such information to the patient; requiring health care practitioners to indicate certain information in their patients' medical records; providing construction; amending s. 465.0266, F.S.; exempting certain pharmacists from disciplinary action under certain circumstances; amending s. 1002.20, F.S.; conforming provisions to changes made by the act; abrogating the future repeal of specified provisions; providing for the future repeal of specified provisions; providing effective dates.

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

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

381.00316 Discrimination by governmental and business entities based on health care choices; prohibition COVID-19 vaccine documentation.—

(1)(a) It is the intent of the Legislature that Floridians be free from mandated facial coverings, mandates of any kind relating to vaccines as provided in this section, and discrimination based on such vaccination status.

(b) The Legislature finds that society is harmed by discrimination based on vaccination status as provided in this section when healthy persons are prevented from participating in society and accessing employment opportunities. The Legislature further finds that remedies to prevent such discrimination are in the best interest of this state.

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

(a) “Business entity” has the same meaning as in s. 606.03. The term also includes a charitable organization as defined in s. 496.404, a corporation not for profit as defined in s. 617.01401, or any other business operating in this state.

(b) “COVID-19” means the novel coronavirus identified as SARS-CoV-2; any disease caused by SARS-CoV-2, its viral fragments, or a virus mutating therefrom; and all conditions associated with the disease which are caused by SARS-CoV-2, its viral fragments, or a virus mutating therefrom.

(c) “COVID-19 vaccine” means a preparation designed to stimulate the human body’s immune response against COVID-19.

(d) “Department” means the Department of Legal Affairs.

(e) “Emergency use authorization vaccine” means any vaccine that is authorized for emergency use under 21 U.S.C. 360bbb-3(a)(1) and qualifies as an unapproved product under 21 U.S.C. 360bbb-3(a)(2)(A).

(f) “Governmental entity” means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies that are subject to chapter 286. The term does not include an educational institution as defined in s. 381.00319.

(g) “Messenger ribonucleic acid vaccine” means any vaccine that uses laboratory-produced messenger ribonucleic acid to trigger the human body’s immune system to generate an immune response.

(3)(a)(1) A business entity, as defined in s. 768.38 to include any business operating in this state, may not require ~~any person patrons or customers~~ to provide any documentation certifying COVID-19 vaccination with any vaccine defined under subsection (2) or postinfection recovery from COVID-19, or require a COVID-19 test, to gain access to, entry upon, or service from the business operations in this state or as a condition of contracting, hiring, promotion, or continued employment with the business entity.

(b) A business entity may not discharge or refuse to hire a person; deprive or attempt to deprive a person of employment opportunities; adversely affect a person's status as an employee or as an applicant for employment; or otherwise discriminate against a person based on knowledge or belief of the person's status relating to vaccination with any vaccine defined under subsection (2) or COVID-19 postinfection recovery, or a person's failure to take a COVID-19 test.

(c) For matters relating to vaccines other than those defined under subsection (2), a business entity shall provide for exemptions and reasonable accommodations for religious and medical reasons in accordance with federal law.

(d) A licensed facility as defined in s. 395.002 may not discriminate in providing health care to a patient based solely on that patient's vaccination status with a COVID-19 vaccine. This subsection does not otherwise restrict businesses from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.

(4)(a)(2) A governmental entity as defined in s. 768.38 may not require any person persons to provide any documentation certifying COVID-19 vaccination with any vaccine defined under subsection (2) or postinfection recovery from COVID-19, or require a COVID-19 test, to gain access to, entry upon, or service from the governmental entity's operations in this state or as a condition of contracting, hiring, promotion, or continued employment with the governmental entity.

(b) A governmental entity may not discharge or refuse to hire a person; deprive or attempt to deprive a person of employment opportunities; adversely affect a person's status as an employee; or otherwise discriminate against a person based on the knowledge or belief of the person's status relating to vaccination with any vaccine defined under subsection (2) or a person's failure to take a COVID-19 test.

(c) For matters relating to vaccines other than those defined under subsection (2), a governmental entity shall provide for exemptions and reasonable accommodations for religious and medical reasons in accordance with federal law.

(5)(a) A business entity or governmental entity may not require a person to wear a face mask, a face shield, or any other facial covering that covers the mouth and nose. A business entity or governmental entity may not deny any person access to, entry upon, service from, or admission to such entity or otherwise discriminate against a person based on such person's refusal to wear a face mask, a face shield, or any other facial covering that covers the mouth and nose.

(b) Paragraph (a) does not apply to:

1. A health care provider or health care practitioner as those terms are defined in s. 408.824, provided that such health care provider or health care practitioner is in compliance with that section.

2. A business entity or governmental entity when a face mask, a face shield, or any other facial covering that covers the mouth and nose is required safety equipment consistent with occupational or laboratory safety requirements, in accordance with standards adopted by the Department of Health. The Department of Health shall adopt emergency rules to develop such standards. Emergency rules adopted under this subparagraph are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act This subsection does not otherwise restrict governmental entities from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.

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

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

(b) For purposes of conducting an investigation or a proceeding, the department may administer oaths, take depositions, make inspections when authorized by law, issue subpoenas supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. Challenges to and enforcement of subpoenas or orders shall be in accordance with s. 120.569.

(c) Fines collected pursuant to this section must be deposited into the General Revenue Fund.

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

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

~~(5) This section does not apply to a health care provider as defined in s. 768.38; a service provider licensed or certified under s. 393.17, part III of~~

~~chapter 401, or part IV of chapter 468; or a provider with an active health care clinic exemption under s. 400.9935.~~

(9)(6) The department may adopt rules pursuant to ss. 120.536 and 120.54 to implement this section.

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

381.00319 Prohibition on mask mandates and COVID-19 vaccination and testing mandates for educational institutions students.—

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

(a) “COVID-19” has the same meaning as in s. ~~381.00316~~ 381.00317(1).

(b) “COVID-19 vaccine” has the same meaning as in s. 381.00316.

(c) “Educational institution” means a public or private school, including a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school ~~has the same meaning as in s. 112.0441(1).~~

(d) “Emergency use authorization vaccine” has the same meaning as in s. 381.00316.

(e) “Messenger ribonucleic acid vaccine” has the same meaning as in s. 381.00316.

~~(e) “Parent” has the same meaning as in s. 1000.21(5).~~

~~(2)(a) Notwithstanding any other law to the contrary, An educational institution or elected or appointed local official may not impose a COVID-19 vaccination mandate on for any person requiring vaccination with any vaccine defined under subsection (1) student.~~

(b) An educational institution in this state may not require any person to provide any documentation certifying vaccination with any vaccine defined under subsection (1) or postinfection recovery from COVID-19, or require a COVID-19 test, to gain admission or access to, entry upon, or service from the educational institution or as a condition of contracting, hiring, promotion, or continued employment with the educational institution. An educational institution may not discharge or refuse to hire a person; deprive or attempt to deprive a person of employment opportunities; adversely affect a person’s status as an employee or as an applicant for employment; or otherwise discriminate against a person based on knowledge or belief of the person’s status relating to vaccination with any vaccine defined under subsection (1) or COVID-19 postinfection recovery, or a person’s failure to take a COVID-19 test.

(c) For matters relating to vaccines other than those defined under subsection (1), an educational institution shall provide for exemptions and

reasonable accommodations for religious and medical reasons in accordance with federal law.

(3)(a) An educational institution may not require a person to wear a face mask, a face shield, or any other facial covering that covers the mouth and nose. An educational institution may not deny any person access to, entry upon, service from, or admission to such educational institution or otherwise discriminate against a person based on such person's refusal to wear a face mask, a face shield, or any other facial covering that covers the mouth and nose.

(b) Paragraph (a) does not apply to:

1. A health care provider or health care practitioner as those terms are defined in s. 408.824, provided such health care provider or health care practitioner is in compliance with that section.

2. An educational institution when a face mask, a face shield, or any other facial covering that covers the mouth and nose is used as required safety equipment in a course of study consistent with occupational or laboratory safety requirements, in accordance with standards adopted by the Department of Health. The Department of Health shall adopt emergency rules to develop such standards. Emergency rules adopted under this subparagraph are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

(4)(a) Notwithstanding s. 768.39, the Department of Health may impose an administrative fine not to exceed \$5,000 for each individual and separate violation of this section.

(b) For the purpose of conducting an investigation or a proceeding, the Department of Health may administer oaths, take depositions, make inspections when authorized by law, issue subpoenas supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. Challenges to and enforcement of subpoenas or orders shall be in accordance with s. 120.569.

(c) Fines collected pursuant to this section must be deposited in the General Revenue Fund.

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

(6) The Department of Health may adopt rules to implement this section.

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

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

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

Section 3. Section 381.00321, Florida Statutes, is created to read:

381.00321 International health organization policies.—A governmental entity as defined in s. 381.00316 or an educational institution as defined in s. 381.00319 may not adopt, implement, or enforce an international health organization’s public health policies or guidelines unless authorized to do so under state law, rule, or executive order issued by the Governor under s. 252.36.

Section 4. Section 395.1057, Florida Statutes, is created to read:

395.1057 Patients’ right to choose COVID-19 treatment alternatives.—A hospital may not interfere with a patient’s right to choose COVID-19 treatment alternatives as recommended by a health care practitioner with privileges at the hospital if the health care practitioner has obtained informed consent from the patient in accordance with s. 456.62. Any hospital that violates this section by preventing a health care practitioner from exercising his or her sound judgment is subject to agency disciplinary action under s. 395.1065(2).

Section 5. Effective upon this act becoming a law, section 408.824, Florida Statutes, is created to read:

408.824 Facial covering requirements for health care practitioners and health care providers.—

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

(a) “Department” means the Department of Health.

(b) “Facial covering” means a cloth or surgical face mask, a face shield, or any other facial covering that covers the mouth and nose.

(c) “Health care practitioner” has the same meaning as in s. 456.001.

(d) “Health care provider” means a provider as defined in s. 408.803; a service provider licensed or certified under s. 393.17, part III of chapter 401, or part IV of chapter 468; a provider with an active health care clinic exemption under s. 400.9935; an optical establishment permitted under s. 484.007; a massage establishment licensed under s. 480.043; a pharmacy as defined in s. 465.003; or an office registered under s. 458.328 or s. 459.0138.

(e) “Office” means an office maintained for the practice of a health care practitioner’s profession, as provided in his or her practice act.

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

(b) The agency and the department shall adopt emergency rules for the standards developed under paragraph (a). Emergency rules adopted under this section are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

(c) The agency and the department shall publish the standards developed under paragraph (a) on their respective websites and provide a link for persons to report violations of the standards.

(3) By August 1, 2023, each health care practitioner who owns or operates an office and each health care provider shall establish facial covering policies and procedures for their respective health care settings, if such health care practitioner or health care provider requires any individual to wear a facial covering for any reason. Such policies and procedures must comply with the standards developed under subsection (2) and must be accessible from the home page of such health care practitioner's or health care provider's website or conspicuously displayed in the lobby of its health care service setting or settings.

(4) Effective August 1, 2023:

(a) Health care practitioners and health care providers may not require any person to wear a facial covering for any reason unless the requirement is in accordance with the standards developed under subsection (2) and the policies and procedures established under subsection (3).

(b) A health care practitioner or a health care provider in violation of paragraph (a) or subsection (3) is subject to disciplinary action by the agency or a board as defined in s. 456.001, or the department if there is no board, as applicable.

Section 6. Section 456.62, Florida Statutes, is created to read:

456.62 Communication of COVID-19 treatment alternatives.—

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

(2) To obtain informed consent, the health care practitioner must provide an explanation of alternative medications for the treatment of COVID-19 and the relative advantages, disadvantages, and risks associated with such alternative medications to the extent necessary to allow the patient or the patient's legal representative to make a prudent decision regarding treatment.

(3) In determining which alternative medications to present to a patient for purposes of obtaining informed consent, the health care practitioner must include any medications currently authorized or approved by the United States Food and Drug Administration for the treatment of COVID-19 and use his or her best clinical judgment to identify any alternative medications that could reasonably be expected to benefit the patient.

(4) In providing such information regarding alternative medications, the health care practitioner shall take into consideration the physical state of the patient and the patient's ability to understand the information.

(5) A health care practitioner treating a patient diagnosed with COVID-19 shall indicate on such patient's medical record the health care practitioner's compliance or noncompliance with this section.

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

Section 7. Section 465.0266, Florida Statutes, is amended to read:

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

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

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

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

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

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

(b) The procedure for maintaining appropriate records for regulatory oversight for tracking a prescription during each stage of the filling and dispensing process, identifying the pharmacists involved in filling and

dispensing the prescription and counseling the patient, and responding to any requests for information made by the board under s. 465.0156.

(c) The policy and procedure for providing adequate security to protect the confidentiality and integrity of patient information.

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

Any pharmacist dispensing a prescription has at all times the right and obligation to exercise his or her independent professional judgment. Any pharmacist properly dispensing an alternative medication prescribed for the treatment of COVID-19 is not subject to disciplinary action by the board or the department based solely on such dispensing. Notwithstanding ~~other provisions in this section, a~~ no pharmacist licensed in this state ~~participating in the dispensing of a prescription pursuant to this section is not~~ shall be responsible for the acts and omissions of another person participating in the dispensing process provided such person is not under the direct supervision and control of the pharmacist licensed in this state.

Section 8. Paragraph (n) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(n) *Face covering mandates and quarantine mandates in response to COVID-19.*—

1. A district school board, a district school superintendent, an elected or appointed local official, or any district school board employee may not:

a. Require a student to wear a face mask, a face shield, or any other facial covering that fits over the mouth or nose. However, a parent, at the parent's sole discretion, may allow his or her child to wear a face mask, a face shield, or any other facial covering that fits over the mouth or nose. This prohibition does not apply to safety equipment required as part of a course of study consistent with occupational or laboratory safety requirements.

b. Prohibit a student from attending school or school-sponsored activities, prohibit a student from being on school property, or subject a student to restrictions or disparate treatment, based on an exposure to COVID-19, so long as the student remains asymptomatic and has not received a positive test for COVID-19 as defined in s. 381.00319(1) ~~s. 381.00317(1)~~.

A parent of a student, a student who is an emancipated minor, or a student who is 18 years of age or older may bring an action against the school district to obtain a declaratory judgment that an act or practice violates this subparagraph and to seek injunctive relief. A prevailing parent or student, as applicable, must be awarded reasonable attorney fees and court costs.

2. A district school board, a district school superintendent, an elected or appointed local official, or any school district employee may not prohibit an employee from returning to work or subject an employee to restrictions or disparate treatment based on an exposure to COVID-19 so long as the employee remains asymptomatic and has not received a positive test for COVID-19 as defined in s. 381.00319(1) ~~s. 381.00317(1)~~.

~~3.—This paragraph expires June 1, 2023.~~

Section 9. Sections 381.00316(2)(g) and 381.00319(1)(e), Florida Statutes, as created by this act, are repealed June 1, 2025.

Section 10. Except as otherwise provided in this act, and except for this section, which shall take effect upon this act becoming a law, this act shall take effect June 1, 2023.

Approved by the Governor May 11, 2023.

Filed in Office Secretary of State May 11, 2023.