

1 HB470
2 217560-3
3 By Representatives Brown (C), Dismukes, Kiel, Sullivan, Hanes
4 and Whorton
5 RFD: Judiciary
6 First Read: 08-MAR-22

8 SYNOPSIS: This bill would prohibit an occupational
9 licensing board from taking adverse action against
10 a physician who recommends a COVID-19 treatment
11 that is not FDA-approved.

12 This bill would require a patient's written,
13 informed consent to receive a physician's
14 recommended COVID-19 treatment if the treatment is
15 not FDA-approved.

16 This bill would require pharmacies to
17 fulfill prescriptions that are not FDA-approved to
18 treat COVID-19.

19 This bill would require health care
20 facilities to provide a patient's requested
21 off-label use COVID-19 treatment.

22 This bill would provide a cause of action
23 against an occupational licensing board, pharmacy,
24 or health care facility that violates the
25 provisions of this bill.

27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to COVID-19; to prohibit an occupational
5 licensing board from taking adverse action against a physician
6 who recommends certain COVID-19 treatments; to require a
7 patient's written, informed consent to certain COVID-19
8 treatments; to require health care facilities and pharmacies
9 to provide certain COVID-19 treatments that are not approved
10 by the FDA; and to create a cause of action.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. (a) For the purposes of this section, the
13 following terms shall have the following meanings:

14 (1) COVID-19. The virus known as the novel
15 coronavirus, SARS-COV-2, and the coronavirus disease 2019,
16 including any mutation or variant.

17 (2) LICENSE. The same meaning as defined in Section
18 41-9A-1, Code of Alabama 1975.

19 (3) OCCUPATIONAL LICENSING BOARD. The same meaning
20 as defined in Section 41-9A-1, Code of Alabama 1975.

21 (4) PHARMACY. The same meaning as defined in Section
22 34-23-1, Code of Alabama 1975.

23 (5) TREATMENT FOR COVID-19 or COVID-19 TREATMENT. A
24 procedure, protocol, drug, or remedy intended to prevent,
25 mitigate, or treat COVID-19. The term includes the use of a
26 drug, biological product, or device that has not been approved

1 by the United States Food and Drug Administration (FDA) to
2 treat COVID-19.

3 (6) WRITTEN, INFORMED CONSENT. A written document
4 that is signed by the patient, the patient's legal guardian,
5 or designated attorney-in-fact, or the patient's parent or
6 legal guardian if the patient is a minor, and includes, at a
7 minimum, all of the following:

8 a. An explanation of the current COVID-19 treatments
9 and products approved by the FDA.

10 b. Clear identification of the specific proposed
11 procedure, protocol, drug, or remedy that the patient wants to
12 use to treat COVID-19.

13 c. A description of the potential outcomes of
14 investigational use of a drug, biological product, or other
15 device, including the best, worst, and most likely outcomes.
16 The description must include the possibility that new,
17 unanticipated, different, or more severe symptoms may result
18 and death may be hastened by the proposed treatment.

19 d. A release of liability towards each treating
20 physician, licensed health care provider, hospital, and health
21 care facility, and the manufacturer of the drug, biological
22 product, device, or remedy.

23 (b) A licensing board shall not revoke, suspend,
24 fail to renew, or take action against a physician's license
25 based solely on a physician's recommended or prescribed
26 treatment for COVID-19 if the physician exercised independent
27 medical judgment, believes that the medical treatment is in

1 the best interest of the patient, and the patient provided
2 written, informed consent before receiving the treatment.

3 (c) A pharmacy shall not block or attempt to block a
4 patient's access to a drug, biological product, or device
5 prescribed by a physician to treat COVID-19 solely on the
6 basis that the FDA has not approved the drug, biological
7 product, or device to treat COVID-19.

8 (d) (1) Any physician who is subject to any adverse
9 action by a licensing board, as described in subsection (b),
10 may bring a civil cause of action against the licensing board
11 for a violation of this section. Available remedies include,
12 but are not limited to, the following:

13 a. Appropriate injunctive relief, including
14 reinstatement of license.

15 b. Reasonable attorney fees and court costs.

16 c. Any other relief necessary to ensure compliance
17 with this chapter.

18 (2) Any patient who is subject to a violation of
19 subsection (c) of this section may bring a cause of action
20 against the offending pharmacy before a circuit court of
21 competent jurisdiction to seek remedies, including, but not
22 limited to, each of the following:

23 a. A preliminary or permanent injunction to enforce
24 this section. No security in any form shall be required for an
25 action seeking a preliminary or permanent injunction.

26 b. Reasonable attorney fees and court costs.

1 c. Any other relief necessary to ensure compliance
2 with this chapter.

3 Section 2. (a) For the purposes of this section, the
4 following terms shall have the following meaning:

5 (1) COVID-19. The same meaning as defined in Section
6 1.

7 (2) HEALTH CARE FACILITY. Includes, but is not
8 limited to, a hospital, nursing home, or rural health clinic.

9 (3) OFF-LABEL USE. The use of a drug, biological
10 product, or device approved by the United States Food and Drug
11 Administration (FDA) in a manner other than the use approved
12 by the FDA.

13 (4) TREATMENT FOR COVID-19. The same meaning as
14 defined in Section 1.

15 (b) (1) A health care facility shall not deny the use
16 or administration of a treatment for COVID-19 that is
17 specifically requested by a patient, if the treatment is an
18 off-label use of an FDA-approved drug, biological product, or
19 device.

20 (2) Any patient who is denied access or
21 administration of a requested off-label treatment for COVID-19
22 in violation of this section may bring a cause of action
23 against the offending health care facility before a circuit
24 court of competent jurisdiction to seek remedies, including,
25 but not limited to, each of the following:

1 a. A preliminary or permanent injunction to enforce
2 this section. No security in any form shall be required for an
3 action seeking a preliminary or permanent injunction.

4 b. Any orders, decrees, or penalties the court finds
5 necessary to remedy at violation of this section.

6 c. Reasonable attorney fees and court costs,
7 including expert fees.

8 Section 3. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law.