

1 HB510  
2 219115-1  
3 By Representatives Mooney, Holmes, Fincher, Hanes and Whorton  
4 RFD: Health  
5 First Read: 17-MAR-22

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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 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.

26 This bill would also provide that a health  
27 care facility, pharmacy, and licensing board that

1           complies with this bill is immune from civil  
2           liability related to certain COVID-19 treatments.

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4                           A BILL  
5                           TO BE ENTITLED  
6                           AN ACT

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8           Relating to COVID-19; to prohibit an occupational  
9   licensing board from taking adverse action against a physician  
10 who recommends certain COVID-19 treatments; to require a  
11 patient's written, informed consent to certain COVID-19  
12 treatments; to require health care facilities and pharmacies  
13 to provide certain COVID-19 treatments that are not approved  
14 by the FDA; to provide immunity to licensing boards,  
15 pharmacies, and health care facilities; and to create a cause  
16 of action.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

23           (2) LICENSE. The same meaning as defined in Section  
24 41-9A-1, Code of Alabama 1975.

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

1 (4) PHARMACY. The same meaning as defined in Section  
2 34-23-1, Code of Alabama 1975.

3 (5) TREATMENT FOR COVID-19 or COVID-19 TREATMENT. A  
4 procedure, protocol, drug, or remedy intended to prevent,  
5 mitigate, or treat COVID-19. The term includes the use of a  
6 drug, biological product, or device that has not been approved  
7 by the United States Food and Drug Administration (FDA) to  
8 treat COVID-19.

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

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

16 b. Clear identification of the specific proposed  
17 procedure, protocol, drug, or remedy that the patient wants to  
18 use to treat COVID-19.

19 c. A description of the potential outcomes of  
20 investigational use of a drug, biological product, or other  
21 device, including the best, worst, and most likely outcomes.  
22 The description must include the possibility that new,  
23 unanticipated, different, or more severe symptoms may result  
24 and death may be hastened by the proposed treatment.

25 d. A release of liability towards each treating  
26 physician, licensed health care provider, hospital, and health

1 care facility, and the manufacturer of the drug, biological  
2 product, device, or remedy.

3 (b) A licensing board shall not revoke, suspend,  
4 fail to renew, or take action against a physician's license  
5 based solely on a physician's recommended or prescribed  
6 treatment for COVID-19 if the physician exercised independent  
7 medical judgment, believes that the medical treatment is in  
8 the best interest of the patient, and the patient provided  
9 written, informed consent before receiving the treatment.

10 (c) A pharmacy shall not block or attempt to block a  
11 patient's access to a drug, biological product, or device  
12 prescribed by a physician to treat COVID-19 solely on the  
13 basis that the FDA has not approved the drug, biological  
14 product, or device to treat COVID-19.

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

20 a. Appropriate injunctive relief, including  
21 reinstatement of license.

22 b. Reasonable attorney fees and court costs.

23 c. Any other relief necessary to ensure compliance  
24 with this chapter.

25 (2) Any patient who is subject to a violation of  
26 subsection (c) of this section may bring a cause of action  
27 against the offending pharmacy before a circuit court of

1 competent jurisdiction to seek remedies, including, but not  
2 limited to, each of the following:

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

6 b. Reasonable attorney fees and court costs.

7 c. Any other relief necessary to ensure compliance  
8 with this chapter.

9 (e) (1) A pharmacy or pharmacist who fills a  
10 prescription for a COVID-19 treatment pursuant to this section  
11 is immune from any civil liability resulting from the use of  
12 the prescription drug, biological product, or device.

13 (2) A licensing board shall be immune from any civil  
14 liability resulting from a patient's use of a recommended or  
15 prescribed treatment for COVID-19, if the prescribing  
16 physician is licensed by that board.

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

19 (1) COVID-19. The same meaning as defined in Section  
20 1.

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

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

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

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

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

14 a. A preliminary or permanent injunction to enforce  
15 this section. No security in any form shall be required for an  
16 action seeking a preliminary or permanent injunction.

17 b. Any orders, decrees, or penalties the court finds  
18 necessary to remedy a violation of this section.

19 c. Reasonable attorney fees and court costs,  
20 including expert fees.

21 (c) A health care facility that administers an  
22 off-label treatment for COVID-19 pursuant to this section is  
23 immune from any civil liability resulting from the treatment.

24 Section 3. This act shall become effective  
25 immediately following its passage and approval by the  
26 Governor, or its otherwise becoming law.