SB312

218498-2

By Senators Orr and McClendon

RFD: Healthcare

First Read: 15-MAR-22

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

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

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

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

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

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

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

A BILL

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Appropriate injunctive relief, including reinstatement of license.

b. Reasonable attorney fees and court costs.

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

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

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

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

b. Reasonable attorney fees and court costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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