The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 252
INTRODUCER:	Fiscal Policy Committee and Senator Burton
SUBJECT:	Protection from Discrimination Based on Health Care Choices
DATE:	April 21, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Favorable**
2.	Looke	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 252 amends several statutes in order to prohibit mask mandates; mandates on emergency use authorizations (EUA) vaccinations, messenger ribonucleic acid (mRNA) vaccinations, and COVID-19 vaccinations; and COVID-19 testing mandates in educational institutions, business entities, and governmental entities. The bill prohibits these entities and institutions from requiring proof of a vaccination with one of the specified types of vaccinations, postinfection recovery from COVID-19, or a COVID-19 test to gain access to, entry upon, or service from the entity or institution. The bill also prohibits business and governmental entities from certain employment practices based on an employee's, or a potential employee's, vaccination or postinfection status or the refusal to take a COVID-19 test. The bill's provisions relating to mRNA vaccines are repealed on June 1, 2025.

Additionally, the bill prohibits business entities, governmental entities, and educational institutions from requiring a person to wear a mask, a face shield, or any other facial covering that covers the nose and mouth or denying a person access to, entry upon, service from, or admission to such entity or institution or otherwise discriminating against any person based on his or her refusal to wear a mask, face shield, or other facial covering. The bill provides exceptions to these prohibitions for health care providers and practitioners, as long as the provider or practitioner meets specific requirements established by the bill, and for when a mask or facial covering is required safety equipment. Business entities and governmental entities that violate these provisions are subject to discipline by the Department of Legal Affairs (DLA) while educational institutions are subject to discipline by the Department of Health (DOH). Such discipline may include fines of up to $5,000 for each violation.

The bill establishes requirements for mandating masks in health care settings. The bill requires the DOH and the Agency for Health Care Administration (AHCA) to jointly develop standards for the use of facial coverings in such settings by July 1, 2023, and requires each health care provider and health care practitioner who operates or manages an office to establish policies and procedures for facial coverings by August 1, 2023, that are consistent with the standards adopted by the DOH and the AHCA if they require any individual to wear a mask.

The bill prohibits governmental entities and educational institutions from adopting, implementing, or enforcing an international health organization guidelines unless authorized by state law, rule, or executive order issued pursuant to a declared emergency.

The bill also creates and amends several statutes related to the provision of health care for COVID-19 including:

- Prohibiting a hospital from interfering with COVID-19 treatment alternatives that are recommended by a health care practitioner with privileges at the hospital;
- Requiring a health care practitioner to obtain specified informed consent from a patient before prescribing any medication for the treatment of COVID-19 to the patient; and
- Prohibiting a pharmacist from being disciplined for properly dispensing medications prescribed for the treatment of COVID-19.

The bill provides that, except as otherwise provided, the bill's effective date is June 1, 2023.

II. Present Situation:

COVID-19 Vaccines

Timeline

In December of 2020, less than one year after the World Health Organization declared the COVID-19 outbreak to be a pandemic,[1] the United States Food and Drug Administration (FDA) granted the first Emergency Use Authorization (EUA) for a COVID-19 vaccine developed by Pfizer-BioNTech.[2] A week later, the FDA issued a second EUA for another COVID-19 vaccine developed by Moderna.[3]

Over the course of 2021, the FDA expanded the EUAs to include more of the population, such as children ages five and older, and to allow for more people to be eligible to receive booster vaccines.[4] On August 23, 2021, the FDA officially approved the Pfizer vaccine for individuals age 16 and older.[5] The Moderna vaccine was approved for individuals 18 and older on January 31, 2022.[6] On June 17, 2022, the FDA authorized the use of both vaccines for children down to

[1] Declared on March 11, 2020. See U.S. Department of Defense, Coronavirus Timeline, available at https://www.defense.gov/Spotlights/Coronavirus-DOD-Response/Timeline/, (last visited March. 28, 2023).
[2] COVID-19 Vaccines, United States Department of Health and Human Services, available at https://www.hhs.gov/coronavirus/covid-19-vaccines/index.html, (last visited March 28, 2023).
[3] Id.
[4] Id.
[5] Id.
[6] Id.

six months of age and authorized the use of Bivalent COVID-19 vaccines for children six months and older on December 8, 2022.[7]

As of March 1, 2023, more than 672 million doses of the COVID-19 vaccine have been given in the United States.[8]

Federal COVID-19 Vaccine Mandates

COVID-19 Vaccination Mandates for Employment

Since the FDA's full approval of COVID-19 vaccinations, some employers have begun to mandate vaccination.[9] For example on August 6, 2021, United Airlines became the first major airline to announce a COVID-19 vaccination mandate for its employees.[10] The airline terminated more than 230 employees who have not complied with the mandate.[11]

Testing Mandate for Employers with more than 100 Employees

The Occupational Safety and Health Administration (OSHA) is a regulatory agency within the United States Department of Labor, created "to ensure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education and assistance."[12] The Occupational Safety and Health Act (OSH Act) regulates most private sector employers as well as certain public sector employers. The OSH Act applies to employees of an organization, and does not apply to self-employed workers, immediate family members of farm employers, volunteers, or unpaid students.[13] The OSHA is authorized to set emergency temporary standards in certain limited circumstances which take effect immediately and are in effect until superseded by a permanent standard. "OSHA must determine that workers are in grave danger and that an emergency standard is needed to protect them. Then, OSHA publishes the emergency temporary standard in the Federal Register, where it also serves as a proposed permanent standard." The validity of an emergency temporary standard may be challenged in a U.S. Court of Appeals.[14]

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[7] Id.
[8] Safety of COVID-19 Vaccines, Centers for Disease Control and Prevention, available at https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html, (last visited March 28, 2023).
[9] NBC News, *From McDonald's to Goldman Sachs, here are the companies mandating vaccines for all or some employees* (August 3, 2021), available at https://www.nbcnews.com/business/business-news/here-are-companies-mandating-vaccines-all-or-some-employees-n1275808 (last visited March 28, 2023).
[10] United, *COVID-19 vaccine required for United employees*, (Aug. 6, 2021) available at https://www.united.com/en/us/newsroom/announcements/COVID-19-vaccine-required-for-United-employees (last visited March 28, 2023).
[11] Fox Business, *United Airlines in the process of firing 232 unvaccinated employees*, (October 13, 2021), available at https://www.foxbusiness.com/lifestyle/united-airlines-firing-unvaccinated-employees (last visited March 28, 2023).
[12] Occupation Health and Safety Administration (OSHA), United States Department of Labor, *About OSHA,* https://www.osha.gov/aboutosha (last visited March 28, 2023).
[13] OSHA, *All About OSHA*, 8, https://www.osha.gov/sites/default/files/publications/all_about_OSHA.pdf (last visited March 28, 2023.)
[14] OSHA, *OSHA Standards Development*, available at https://www.osha.gov/laws-regs/standards-development (last visited March 28, 2023).

On November 5, 2021, OSHA published an emergency temporary standard that requires every employer having 100 or more employees to implement a COVID-19 vaccination mandate.[15] All employers having 100 or more employees were required to ensure that their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work and to wear personal protective equipment. Employees may be exempt from the requirement due to religious beliefs or having a severe allergic reaction to the vaccine or its ingredients. These employers were also required to provide paid time off to employees who decide to be vaccinated, to allow the employee time to receive the vaccination and recover in the event of experiencing any short-term side effects from the shot. The penalty for violation of the emergency temporary standard was up to $14,000 per violation. The employer was required to comply with the emergency temporary standard by January 4, 2022. On January 13, 2022, the United States Supreme Court issued a stay for the vaccine requirement finding that petitioners challenging the requirement were likely to succeed in their claim.[16] Subsequently, OSHA withdrew the vaccination and testing temporary standard effective January 26, 2022.[17]

Vaccine Mandate for Health Care Workers

On November 5, 2021, the federal Centers for Medicare and Medicaid Services (CMS) published an interim final rule to require that a health care employer[18] participating in Medicare or Medicaid implement a COVID-19 vaccination mandate.[19] The vaccination mandate applies to employees, licensed practitioners, students and trainees, volunteers, and contractors (individuals who provide care, treatment, or other services for the provider and/or its residents, under contract or by other arrangement).[20] A person may be exempt from the requirement due to religious beliefs or having a severe allergic reaction to the vaccine or its ingredients. The United States Supreme Court stayed a preliminary injunction issued by the lower court on January 13, 2022, and subsequently declined to hear an appeal of the case effectively upholding the mandate.[21]

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[15] 86 Fed. Reg. 61402 (Nov. 5, 2021).
[16] Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin., 211 L. Ed. 2d 448, 142 S. Ct. 661 (2022)
[17] United Sates Department of Labor, OSHA, Emergency Temporary Standard, COVID-19 Vaccination and Testing ETS, available at https://www.osha.gov/coronavirus/ets2#:~:text=The%20U.S.%20Department%20of%20Labor's,from%20workplace%20exposure%20to%20coronavirus., (last visited March 28, 2023).
[18] The following entities are included: ambulatory surgical centers (ASCs); hospices; psychiatric residential treatment facilities; programs of all-inclusive care for the elderly (PACE); hospitals; long term care facilities; intermediate care facilities for individuals with intellectual disabilities; home health agencies; comprehensive outpatient rehabilitation facilities; critical access hospitals; clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services; community mental health centers; home infusion therapy suppliers; rural health clinics; federally qualified health centers; and end-stage renal disease facilities.
[19] 86 Fed. Reg. 61555 (Nov. 5, 2021).
[20] The requirement does not apply to staff working remotely 100 percent of the time, or to staff providing offsite support services, if they have no direct contact with patients or other staff who are subject to the requirement. Similarly, it does not apply to one-time or infrequent non-health service providers or contractors who have no contact with patients or staff who are subject to the requirement.
[21] Biden v. Missouri, 211 L. Ed. 2d 433, 142 S. Ct. 647 (2022)

Vaccine Mandate for Federal Employees and Contractors

On September 29, 2021, the President of the United States issued an Executive Order requiring that every new federal contract after October 15, 2021, include a requirement to impose a COVID-19 vaccination requirement on the employees of federal contractors.[22] This Executive Order was stayed by a preliminary injunction issued by an En Banc panel of the United States Fifth District Court of Appeals.[23]

Florida's COVID-19 Vaccination Prohibitions

In special session 2021B, the Florida Legislature passed HB 1-B[24] which prohibited COVID-19 vaccination mandates in governmental entities and educational institutions and required businesses to provide employees the ability to opt-out of a vaccine mandate imposed by the business. Specifically, the bill:

- For private employers:
  - Prohibited private employers from mandating COVID-19 vaccination without providing employees the ability to opt-out of the mandate.
  - Required private employers that choose to impose a COVID-19 vaccination mandate to authorize all of the following exemptions: medical, which includes pregnancy or anticipated pregnancy; religious; COVID-19 immunity; periodic testing; or use of employer-provided personal protective equipment. These exemptions must be submitted to the employer on forms adopted by the DOH or substantially similar forms.
  - Authorized the Attorney General to receive and investigate complaints and impose administrative fines of up to $50,000 per violation, if an employee was terminated for refusing vaccination and the employer failed to follow the exemption procedures.
- Prohibited public educational institutions and governmental entities from requiring COVID-19 vaccination as a condition of employment and authorized the DOH to impose a fine not to exceed $5,000 per violation.
- Specified that employees improperly terminated on the basis of COVID-19 vaccination mandates may be eligible for reemployment benefits and established that reemployment benefits may not be denied or discontinued based on a new job offer that would require COVID-19 vaccination.
- Prohibited educational institutions and elected or appointed local officials from mandating COVID-19 vaccination for students, allowed parents and students to bring an action against educational institutions for declaratory and injunctive relief, and required courts to award attorney fees and court costs to prevailing parents and students.
- Prohibited school boards and local officials from requiring students to wear a face mask, face shield, or other face covering without providing for parental exemption from such requirements and limited the quarantining of asymptomatic students and teachers for exposure to COVID-19.

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[22] *Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors* (September 9, 2021), available at: https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/ (last visited Nov. 8, 2021). *See* Safer Federal Workforce, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, available at https://www.saferfederalworkforce.gov/overview/ (last visited Nov. 10, 2021).

[23] Feds for Med. Freedom v. Biden, No. 22-40043, 2023 WL 2609247 (5th Cir. Mar. 23, 2023)

[24] Ch. 2021-272, L.O.F.

Under current law, these provisions will sunset on June 1, 2023.

Emergency Use Authorization

Emergency use authorization was designed to allow the FDA to help strengthen the nation's public health protections against chemical, biological, radiological, and nuclear (CBRN) threats, including infectious diseases, by facilitating the availability and use of medical countermeasures needed during public health emergencies. Under section 564 of the Federal Food, Drug, and Cosmetic Act, when the Secretary of HHS declares that an emergency use authorization is appropriate, the FDA may authorize unapproved medical products or unapproved uses of approved medical products to be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by CBRN threat agents when certain criteria are met, including a finding that there are no adequate, approved, and available alternatives. The HHS declaration to support such use must be based on one of four types of determinations of threats or potential threats by the Secretary of HHS, Homeland Security, or Defense. Other than the COVID-19 and Monkeypox EUAs, other current EUAs include anthrax, Ebola virus, freeze dried plasma, H7N9 Influenza, Middle East Respiratory Syndrome Coronavirus, Nerve Agents, and Zika Virus.[25]

Messenger Ribonucleic Acid (mRNA) Vaccines

Messenger RNA is a molecule that contains the instructions or recipe that directs cells in the human body to make a protein using their natural machinery. To enter cells smoothly, mRNA travels within a protective bubble called a Lipid Nanoparticle. Once inside, mRNA causes cells to read the mRNA as a set of instructions, building proteins that match parts of the pathogen called antigens. The immune system sees these foreign antigens as invaders, dispatching defenders called antibodies and T-cells, and training the immune system for potential future attacks. So, if and when the real virus comes along, the body might recognize it, sounding the alarm to help defend against infection and illness.

Though many people first became aware of mRNA technology because of COVID-19 vaccines, the technology is not new to the scientific community. For decades, scientists have studied mRNA, looking for ways to unlock its potential to prevent and treat disease. While the mechanism of action for mRNA technology is relatively simple, researchers have worked for years to develop technologies to allow mRNA to work in the real world.[26]

Current research is ongoing for mRNA vaccines for various infectious diseases, including HIV, Hepatitis C, Influenza, Malaria, and Tuberculosis. Additionally, researchers are working on mRNA vaccines for cancer and genetic diseases as well as treatments for food an environmental allergies.[27]

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[25] Emergency Use Authorization, U.S. Food and Drug Administration, last updated April 20, 2023, available at https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#othercurrenteuas, (last visited April 20, 2023).

[26] Pfizer, *Harnessing the Potential of mRNA*, available at https://www.pfizer.com/science/innovation/mrna-technology, (last visited April 20, 2023).

[27] Penn Medicine, *The Future of mRNA Vaccines*, available at https://www.pennmedicine.org/mrna, (last visited April 20, 2023).

FDA-Approved COVID-19 Medications

Currently, there are three COVID-19 medications approved by the FDA:

- Actemra (Tocilizumab) is approved for the treatment of COVID-19 in hospitalized adults who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO).
- Veklury (Remdesivir) is approved for the treatment of COVID-19 in adults and pediatric patients (28 days of age and older and weighing at least 3 kilograms) with positive results of direct SARS-CoV-2 viral testing, who are:
  - Hospitalized; or
  - Not hospitalized and have mild-to-moderate COVID-19 and are at high risk for progression to severe COVID-19, including hospitalization or death.
- Olumiant (baricitinib) is approved for the treatment of COVID-19 in hospitalized adults requiring supplemental oxygen, non-invasive or invasive mechanical ventilation, or ECMO.[28]

The following types of medications are authorized for treating COVID-19 under an emergency use authorization.

Antiviral Drugs

Antiviral drugs are prescription medicines (pills, liquid, an inhaled powder, or an intravenous solution) that fight against viruses in your body. These include Paxlovid (nirmatrelvir and ritonavir) and Lagevrio (molnupiravir).

Immune Modulators

Immune modulators are a category of drugs that help activate, boost, or suppress the immune function. In the case of COVID-19 infection, the immune system can become hyperactive which may result in worsening of disease. Immune modulators can help suppress this hyperinflammation. These medications include:

- Kineret (anakinra), authorized for the treatment of COVID-19 in hospitalized adults with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk of progressing to severe respiratory failure and likely to have an elevated plasma soluble urokinase plasminogen activator receptor (suPAR).
- Olumiant (baricitinib), authorized for the treatment of COVID-19 in pediatric patients two to less than 18 years of age requiring supplemental oxygen, invasive mechanical ventilation, or extracorporeal membrane oxygen (ECMO).
- Actemra (tocilizumab), authorized for the treatment of COVID-19 in hospitalized pediatric patients two to less than 18 years of age who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO).

[28] United States Food and Drug Administration, Coronavirus (COVID-19) Drugs, available at https://www.fda.gov/drugs/emergency-preparedness-drugs/coronavirus-covid-19-drugs, (last visited March 30, 2023)

SARS-COV-2-targeting Monoclonal Antibodies

SARS-COV-2-targeting monoclonal antibodies (mAbs) are laboratory-produced antibodies that can help the immune system's attack on SARS-COV-2. These mAbs block entry into human cells, thus neutralizing the virus like other infectious organisms, SARS-CoV-2 can mutate over time, resulting in genetic variation in the population of circulating viral strains. Some variants can cause resistance to one or more of the mAb therapies authorized to treat COVID-19.

Due to the high frequency of variants circulating within the United States that are not susceptible to the following mAbs, the some mAbs are not currently authorized in any U.S. region until further notice by FDA and may not be administered for the pre-exposure prophylaxis for prevention or the treatment of COVID-19 under the EUA.

Sedatives

Sedatives are drugs that maintain sedation, generally via continuous intravenous infusion, in patients who are intubated and require mechanical ventilation in an intensive care unit setting. The only sedative authorized for emergency use is Propofol-Lipuro 1 percent.

Renal Replacement Therapies

Continuous renal replacement therapy (CRRT) is a type of "dialysis," which is a machine treatment that filters and purifies the blood when a patient's kidneys are damaged or are not functioning normally. CRRT is used for patients with kidney injury in acute care settings.

SARS-CoV-2 led to an increased population with critical illness and multiple organ failure, including acute kidney injury, increasing the need for CRRT. In addition, there was an insufficient supply of replacement solutions to meet the emergency need to provide CRRT in critically ill patients.[29]

III. Effect of Proposed Changes:

CS/SB 252 consolidates mask mandate prohibitions and COVID-19 vaccine and testing mandate prohibitions for business entities and governmental entities in s. 381.00316, F.S., and for educational institutions in s. 381.00319, F.S. Additionally, the bill saves s. 1002.20, F.S., related to face covering mandates in schools, from repeal.

Legislative Findings and Intent

The bill provides that it is the intent of the Legislature that Floridians be free from mandated facial coverings, COVID-19 vaccination mandates of any kind, and discrimination based on COVID-19 vaccination status, and receive adequate information regarding treatment alternatives for COVID-19. The bill also provides Legislative findings that society is harmed by discrimination based on COVID-19 vaccination status because healthy persons are deprived of participating in society and accessing employment opportunities and that remedies to prevent such discrimination are in the best interest of the state.

[29] *Supra* n. 25

Definitions Related to Sections 381.00316 and 381.00319, F.S.

The bill defines the following terms:

- "Business entity" has the same meaning as in s. 606.03, F.S.,[30] and also includes a charitable organization as defined in s. 496.404, a corporation not for profit as defined in s. 617.01401, a private club, or any other business operating in this state.
- "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, F.S. The term does not include an educational institution as defined in s. 381.00319, F.S.
- "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.
- "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.
- "COVID-19 vaccine" means a preparation designed to stimulate the human body's immune response against COVID-19.
- "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).
- "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.

COVID-19 Vaccine and Testing Mandate Prohibitions

The bill prohibits a business entity, governmental entity, or educational institution from requiring any person to provide any documentation certifying vaccination with any of the defined vaccines or postinfection recovery from COVID-19, or requiring a COVID-19 test, in order to gain access, entry upon, or service from entity or institution.

The bill prohibits:

- Requiring the above documentation or testing as a condition of contracting, hiring, promotion, or continued employment;
- Using a knowledge or belief of a person's vaccination with any of the listed vaccines or COVID-19 postinfection status, or a person's failure to take a COVID-19 test, to:
  - Refuse to hire, or discharge, the person;
  - Deprive or attempt to deprive the person of employment opportunities;
  - Adversely affect the person's status as an employee or as an applicant; or
  - Otherwise discriminate against the person.

[30] Defined as any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.

The bill provides that if a governmental entity fails to comply with the above provisions, an employee terminated based on such noncompliance is eligible for reemployment assistance under ch. 443, F.S., in addition to any other remedies available for such violation.

Additionally, the bill requires that for matters related to any vaccine other than a defined vaccine, a defined entity or institution must provide for reasonable religious and medical accommodations in compliance with federal law.

The bill provides that the definitions for "messenger ribonucleic acid vaccine" in ss. 381.00316 and 381.00319, F.S., expire on June 1, 2025, effectively eliminating the prohibitions for that type of vaccine on that date.

Mask Mandate Prohibitions

The bill prohibits business entities, governmental entities, and educational institutions from requiring a person to wear a face mask, face shield, or any other facial covering that covers the mouth and nose and prohibits such entities and institutions from denying a person access to, entry upon, service from, or admission to, or otherwise discriminating against the person based on the person's refusal to wear such a mask or facial covering. The bill provides exceptions to the mandate prohibition for:

- A health care provider or health care practitioner, as defined in s. 408.824, F.S.,[31] provided the provider or practitioner is in compliance with that section; and
- A business entity, governmental entity, or educational institution when a face mask, a face shield, or any other fail 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 DOH.[32] The bill requires the DOH to adopt standards using emergency rulemaking procedures and exempts rules adopted this way from expiring pursuant to s. 120.54(4)(c), F.S.

Enforcement Provisions

The bill places the DLA in charge of enforcing the mandate prohibitions for business and governmental entities and the DOH in charge of enforcing the prohibitions for educational institutions. Each individual and separate violation of the respective section may incur a fine of up to $5,000 imposed by the respective agency. Fines collected pursuant to the sections must be deposited into the General Revenue Fund. The bill grants the DLA and DOH investigative authority including to 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. The bill specifies that challenges to and enforcement of subpoenas or orders shall be in accordance with s. 120.569, F.S., and that nothing in the respective sections limits the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

[31] This section is created by the bill and is discussed below.
[32] The bill specifies that, for an educational institution, the mask or face shield must be required safety equipment in a course of study.

Mask Mandates in Health Care Settings

Effective upon the bill becoming a law, CS/SB 252 creates s. 408.824, F.S., to establish requirements for mask mandates in health care settings.

Definitions

The bill establishes definitions including:

- "Facial covering" to mean a cloth or surgical face mask, a face shield, or any other facial covering that covers the mouth and nose.
- "Health care practitioner" to have the same meaning as in s. 456.001, F.S.
- "Health care provider" to mean a health care provider as defined in s. 408.07, F.S.; a service provider licensed or certified under s. 393.17, part III of chapter 401, or part IV of chapter 468, F.S.; or a provider with an active health care clinic exemption under s. 400.9935, F.S.
- "Office" to mean an office maintained for the practice of a health care practitioner's profession, as provided in his or her practice act.

AHCA and DOH rules

The bill requires the AHCA and the DOH to jointly develop standards for the appropriate use of facial coverings for infection control in health care settings by July 1, 2023. The standards must be posted on the AHCA and the DOH's website and must include an easily accessible link to report complaints for violations of the standards. The bill requires the AHCA and the DOH to adopt rules to implement the standards and authorizes emergency rulemaking procedures established in s. 120.54(4), F.S.,[33] to adopt the rules. Any emergency rules adopted are exempt from the 90 day expiration requirement in s. 154.54(4)(c), F.S., and stay in place until rules are adopted using standard rulemaking procedures.

Individual Provider and Practitioner Standards

The bill requires that by August 1, 2023, each health care provider and each health care practitioner who runs or manages an office to establish facial covering policies and procedures for their respective health care settings if they require any individual to wear a mask. These policies and procedures must be consistent with the standards adopted by the AHCA and the DOH. The policies and procedures must be accessible to the public on the homepages of their respective websites or conspicuously displayed in the lobby of the health care setting.

Effective August 1, 2023, the bill prohibits health care practitioners and providers from requiring facial coverings for any reason unless the requirement is in accordance with the standards adopted by the DOH and the AHCA and with its policies and procedures. Any health care practitioner or provider that violates the section is subject to disciplinary action by the AHCA, his or her regulatory board, or the DOH if there is no board, as applicable.

[33] Emergency rulemaking procedures allow an agency to adopt rules by any procedure which is fair under the circumstances as long as the procedure meets specified minimum procedural requirements, the agency only takes action necessary to protect the public interest, and the agency publishes specific findings. Typically, emergency rules are not effective for a period longer than 90 days and are not renewable unless the rule is challenged or is awaiting legislative ratification. Nothing prohibits an agency from adopting an identical rule through standard rulemaking procedures.

International Health Organizations

The bill prohibits a governmental entity or an educational institution from adopting, implementing, or enforcing 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, F.S.

COVID-19 Treatment Provisions

The bill establishes several provisions related to the treatment of COVID-19.

Treatment of COVID-19 in Hospitals

The bill creates s. 395.1057, F.S., to prohibit a hospital from interfering with a patient's right to choose COVID-19 treatment alternatives as recommended by a health care practitioner with privileges at the hospital as long as the practitioner has the informed consent of the patient as detailed below. A hospital that violates this provision is subject to AHCA disciplinary action.

Dispensing of COVID-19 Medications

The bill amends s. 465.0266, F.S., to prohibit the DOH or the Board of Pharmacy from disciplining a pharmacist who properly dispenses an alternative medication prescribed for the treatment of COVID-19, solely for such dispensing.

COVID-19 Treatment Informed Consent

The bill creates s. 456.62, F.S., to require that a health care practitioner treating a patient diagnosed with COVID-19 must obtain the informed consent of the patient or the patient's legal representative before prescribing any medication for the treatment of COVID-19. The 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. In determining which alternative medications to present the health care practitioner must include any medications currently authorized or approved by the FDA for the treatment of COVID-19 and use his or her best clinical judgment to identify any alternative medications that could be reasonably expected to benefit the patient.

The bill provides that, except as otherwise provided, the bill's effective date is June 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 252 may have an indeterminate negative fiscal impacts on businesses and private educational institutions that violate the requirements established in the bill. The bill may also have a negative fiscal impact on health care providers and practitioners related to creating and enforcing policies and procedures and other meeting requirements for masking.

C. Government Sector Impact:

CS/SB 252 may have an indeterminate negative fiscal impact on governmental entities and public educational institutions that violated the requirements established by the bill. The bill may have a negative fiscal impact on the AHCA and the DOH related to adopting and posting standards for masking. The bill may have an indeterminate positive fiscal impact if the DOH or the DLA collects fines for violations of the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.00316, 381.00319, 465.0266, and 1002.20.

This bill creates the following sections of the Florida Statutes: 381.00321, 395.1057, 408.824, and 456.62.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy on April 20, 2023:
The CS:

- Adds new definitions for Emergency Use Authorization vaccine and Messenger Ribonucleic Acid vaccine;
- Expands mandate prohibitions to include all defined vaccines;
- Sunsets the definition for mRNA vaccines on June 1, 2025;
- Requires that for all other vaccines the specified entities and institutions must provide for reasonable accommodations in accordance with federal law;
- Requires the DOH to create standards for masks when required in occupational and laboratory settings; and
- Prohibits local governments from adopting international health organization guidelines in certain circumstances.

B. Amendments:

None.