



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

STEVE MARSHALL  
ATTORNEY GENERAL

501 WASHINGTON AVE  
MONTGOMERY, AL

*Published July 26, 2021*

**PUBLIC NOTICE**

FROM: Steve Marshall, Alabama Attorney General *SM*

SUBJECT: COVID-19 Vaccinations & Act 2021-493

In recent weeks, this Office has experienced an increase in legal questions related to the COVID-19 vaccination. This public notice will summarize the state of the law on vaccination requirements and other related matters.

**Act 2021-493**

On May 24, 2021, the Governor signed into law Senate Bill 267 (now Act 2021-493) which accomplishes four things:

- 1) it prohibits state and local governmental entities from issuing or requiring the publication or sharing of immunization records not otherwise required by law;
- 2) it prohibits state and local governmental entities from requiring vaccination as a condition for receiving government services or for entry into a government building;
- 3) it prohibits institutions of education—both public and private—from requiring students to prove any new immunization status as a condition of attendance; and
- 4) it prohibits businesses from refusing to provide goods or services, or refusing to allow admission, to an individual based on the customer's immunization status or lack of immunization documentation.<sup>1</sup>

In other words, **no government, school, or business in Alabama may demand that a constituent, student, or customer, respectively, be vaccinated for COVID-19 or show proof of his or her vaccination for COVID-19.** The law's new protections are in addition to existing medical or religious-based exemptions from immunizations, as discussed more fully below.

### *Subsection (a)*

The first provision of the Act prohibits the issuance of vaccine passports by the state or any local government.<sup>ii</sup> It further prohibits the state or any local government from requiring the publication or sharing of immunization records of an individual, except for those immunization records already required by law for school children.<sup>iii</sup> This means that a state or local government actor may not release a list of those who have (or have not) received a vaccine and may not require an individual to show proof of his or her immunization status. By prohibiting the requirement of proof of immunization status, state and local governments are inherently prohibited from discriminating against an individual based upon his or her refusal to vaccinate against COVID-19 or to present immunization records.

### *Subsection (b)*

The second provision of the Act prohibits the state or any local government from requiring an individual to receive a vaccine or to show proof of immunization as a condition for receiving any government service or entry into a government building, except for those immunizations already required by law for school children.<sup>iv</sup> Though governmental entities may adopt policies that apply to unvaccinated individuals, such as mandating masks or proof of negative COVID test results, under this provision—because proof of vaccination cannot be required—these policies could not be enforced against those who choose not to provide their immunization status.

### *Subsection (c)*

The third provision of the Act limits which immunization records an institution of education may require of its students. Specifically, the institution may only require proof of vaccinations that were required by the institution as of January 1, 2021.<sup>v</sup> Note that subsection (c) contains no language limiting its application to public institutions, meaning that the prohibition on proving vaccination status as a condition of attendance applies to private institutions as well. A “condition of attendance” may be reasonably interpreted as an impediment to a student’s progression or completion of coursework or educational attainment. An institution of education should reasonably and meaningfully accommodate students who choose not to receive the COVID-19 vaccination, much as it would a student claiming a medical or religious exemption from any other required vaccine. Though institutions of education may adopt policies that apply to unvaccinated students, such as mandating masks or proof of negative COVID test results, under this provision—because proof of immunization cannot be required as a condition of attendance—these policies could not be enforced against those who choose not to provide their immunization status.

### *Subsection (d)*

The last provision of the Act prohibits any entity or individual doing business in the state from refusing to provide goods or services or allow admission to a consumer based on his or her immunization status or lack of immunization documentation (for *any* immunization).<sup>vi</sup> Note that subsection (d) protects consumers of goods and services and does not address employer-employee relationships. Thus, it cannot be read to prohibit private employers from requiring employees to vaccinate against COVID-19. While a business may inquire about the vaccination status of a consumer or request that unvaccinated consumers wear a mask or social distance, the business may not require proof of vaccination or discriminate against the consumer based on a refusal to confirm his or her vaccination status.

### **Religious Exemptions for Vaccination**

The First Amendment to the United States Constitution protects an individual's free exercise of religion from government intrusion.<sup>vii</sup> The Alabama Constitution provides an arguably stronger protection of religious exercise via the Alabama Religious Freedom Amendment which prohibits any burden on religious exercise by an instrumentality of the state.<sup>viii</sup> These constitutional protections extend to vaccination mandates, COVID-19 or otherwise. Further, the State has explicitly acknowledged in statute the importance of providing religious exemptions in the context of immunization.<sup>ix</sup>

Because the free exercise of religion is an explicit, constitutionally-protected right, courts must apply strict scrutiny to any government scheme that impedes it. To plead a valid free exercise claim, an individual must allege that the government has “impermissibly burdened” a “sincerely-held religious belief.”<sup>x</sup> The Eleventh Circuit has held that it is sufficient to allege enough factual matter (taken as true) to suggest the sincerity of a religious belief.<sup>xi</sup> An individual need only state the religious belief at issue and that it is, in fact, his or her belief.<sup>xii</sup>

**It is not necessary for an individual to claim a religious (or medical, for that matter) exemption to avoid mandatory vaccination for COVID-19 in the circumstances covered by Act 2021-493.**

### **Solicitation on Vaccination**

This Office has received inquiries related to COVID-19 “vaccination doorknockers,” also known as “Community Health Ambassadors” in some states. While this does not appear to be occurring in Alabama, be advised that you are under no obligation to engage with or share any personal information—including your COVID-19 vaccination status—with anyone identifying as a health ambassador or government volunteer.

---

<sup>i</sup> Act. No. 2021-493 (to be codified at Ala. Code §22-11B-5).

<sup>ii</sup> *Id.*

---

<sup>iii</sup> Id; ALA. CODE §§ 16-30-1 to 5 (2018) (Note that the Alabama Legislature has given the State Health Officer authorization to “designate diseases against which children must be immunized or for which they must be tested prior to, or, in certain instances after entry into the schools of Alabama.”).<sup>iii</sup>

<sup>iv</sup> Id.

<sup>v</sup> Id.

<sup>vi</sup> Id.

<sup>vii</sup> U.S. CONST. amend. I

<sup>viii</sup> ALA. CONST. Art. I, §3.01.

<sup>ix</sup> See ALA. CODE §22-21-10(g) (providing a medical and religious exemption from flu and pneumonia vaccines required for long-term care facility residents and employees).

<sup>x</sup> *Frazer v. Ill. Dep't of Employment Sec.*, 489 U.S. 829, 834 (1989).

<sup>xi</sup> *Watts v. Florida International University*, 495 F.3d 1289, 1295 (2007)..

<sup>xii</sup> Id. at 1295