

By Senator Brandes

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1 A bill to be entitled

2 An act relating to COVID-19-related claims against
3 health care providers; creating s. 768.381, F.S.;
4 defining terms; providing preliminary procedures for
5 civil actions based on COVID-19-related claims;
6 providing the standard of proof required at trial for
7 such claims; providing immunity from liability for
8 COVID-19-related claims under certain circumstances;
9 requiring COVID-19-related claims to commence within a
10 specified timeframe; providing construction; providing
11 applicability; providing severability; providing for
12 retroactive application; providing an effective date.

13
14 WHEREAS, an outbreak of the disease known as COVID-19,
15 which is caused by a novel coronavirus that was not previously
16 found in humans, occurred in Hubei province, China, in late
17 2019, and has currently been detected in more than 89 countries,
18 including the United States, and

19 WHEREAS, COVID-19 is a severe respiratory disease that can
20 result in illness or death and is caused by the person-to-person
21 spread of the novel coronavirus, and

22 WHEREAS, COVID-19, as a viral agent capable of causing
23 extensive loss of life or serious disability, is deadly, and

24 WHEREAS, the transmission of COVID-19 is a threat to human
25 health in this state, and

26 WHEREAS, the Secretary of the United States Department of
27 Health and Human Services declared on January 31, 2020, that a
28 public health emergency exists in the United States due to
29 confirmed cases of COVID-19 in this country, and

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30 WHEREAS, on March 1, 2020, the State of Florida Department
31 of Health, in coordination with Governor Ron DeSantis, first
32 declared a public health emergency based on the spread of COVID-
33 19, and

34 WHEREAS, the United States Centers for Disease Control and
35 Prevention has issued health guidance to all state and local
36 governments and all citizens, and

37 WHEREAS, in March 2020, the Centers for Medicare and
38 Medicaid Services recommended the deferral of nonessential
39 surgeries and other procedures, and

40 WHEREAS, the guidance from the Centers for Medicare and
41 Medicaid Services to defer medical procedures was based in part
42 on its recognition that the conservation of critical health care
43 resources is essential, and

44 WHEREAS, on March 20, 2020, the Governor issued Executive
45 Order 20-72, which prohibited health care providers "from
46 providing any medically unnecessary, non-urgent or non-emergency
47 procedure or surgery which, if delayed, does not place a
48 patient's immediate health, safety, or well-being at risk, or
49 will, if delayed, not contribute to the worsening of a serious
50 or life-threatening medical condition," and

51 WHEREAS, on April 29, 2020, the Governor issued Executive
52 Order 20-112, which allowed health care providers to perform
53 procedures prohibited by the earlier order if the health care
54 provider had adequate supplies of personal protective equipment
55 and satisfied other conditions, and

56 WHEREAS, medical experts have been racing to develop
57 vaccines and to learn how COVID-19 is transmitted and how best
58 to treat those infected with the disease, and

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59 WHEREAS, the Federal Government, along with state and local
60 governments, has sought to slow the spread of COVID-19 through
61 travel bans and restrictions, quarantines, lockdowns, social
62 distancing, and the closure of businesses or limitations on
63 business activities, including limitations on the provision of
64 medical services, and

65 WHEREAS, health care providers, including hospitals,
66 doctors, nurses, and other health care facilities and workers,
67 have struggled to acquire personal protective equipment and
68 other supplies to protect against the risk of COVID-19
69 transmission and medications used in the treatment of the
70 disease, and

71 WHEREAS, the circumstances of the COVID-19 pandemic have
72 made it difficult or impossible for health care providers to
73 maintain ideal levels of staffing, and

74 WHEREAS, health care providers are essential to the
75 residents of this state's survival of the pandemic, and health
76 care providers have continued to treat patients despite the
77 potential, and still not fully known, risks of exposure to
78 COVID-19, and

79 WHEREAS, while many actions may seem reasonable during the
80 pandemic, some may attempt to construe these actions differently
81 in hindsight when calm is restored, and

82 WHEREAS, as the pandemic continues and recovery begins,
83 health care providers must be able to remain focused on serving
84 the health care needs of their respective communities and not on
85 the potential for unfounded lawsuits, and

86 WHEREAS, the Legislature finds that it is an overpowering
87 public necessity to enact legislation that will deter unfounded

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88 lawsuits against health care providers based on COVID-19-related
89 claims, while allowing meritorious claims to proceed, and

90 WHEREAS, the Legislature finds that it is necessary to
91 require those filing lawsuits against health care providers to
92 consider the extraordinary circumstances arising out of the
93 public health emergency caused by the pandemic, NOW, THEREFORE,
94

95 Be It Enacted by the Legislature of the State of Florida:

96

97 Section 1. Section 768.381, Florida Statutes, is created to
98 read:

99 768.381 COVID-19-related claims against health care
100 providers.-

101 (1) DEFINITIONS.-As used in this section, the term:

102 (a) "COVID-19" means the novel coronavirus identified as
103 SARS-CoV-2; any disease caused by SARS-CoV-2, its viral
104 fragments, or a virus mutating therefrom; and all conditions
105 associated with the disease which are caused by SARS-CoV-2, its
106 viral fragments, or a virus mutating therefrom.

107 (b) "COVID-19-related claim" means a civil liability claim,
108 whether pled as negligence, breach of contract, or otherwise,
109 against a health care provider which directly, indirectly, or in
110 effect alleges that:

111 1. The health care provider failed to follow clinical
112 authoritative or government-issued health standards or guidance
113 relating to COVID-19;

114 2. The health care provider failed to properly interpret or
115 apply the standards or guidance with respect to the provision of
116 health care or related services, or lack thereof, or the

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117 allocation of scarce resources, or assistance with daily living;

118 3. The health care provider was negligent in the provision
119 of a novel or experimental COVID-19 treatment; or

120 4. In the absence of applicable standards and guidance
121 specific to COVID-19, the health care provider failed to follow
122 clinical authoritative or government-issued health standards or
123 guidance relating to infectious diseases in preventing the
124 transmission of COVID-19 or in diagnosing or treating a person
125 for COVID-19.

126 (c) "Government-issued health standards or guidance" means
127 any of the following that are related to COVID-19 or other
128 infectious diseases and that describe the manner in which a
129 health care provider must operate at the time of the alleged act
130 or omission:

131 1. A federal, state, or local law, regulation, or
132 ordinance;

133 2. A written order or other document published by a
134 federal, state, or local government or regulatory body;

135 3. Standards or guidance issued by the Agency for Health
136 Care Administration or the United States Centers for Disease
137 Control and Prevention, the National Institutes of Health, the
138 United States Food and Drug Administration, or the Centers for
139 Medicare and Medicaid Services; or

140 4. Guidance issued by a clinical professional organization
141 which was used by the Federal Government in developing a
142 response to COVID-19.

143 (d) "Health care provider" means any of the following:

144 1. A provider as defined in s. 408.803.

145 2. A clinical laboratory providing services in this state

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146 or services to health care providers in this state, if the
147 clinical laboratory is certified by the Centers for Medicare and
148 Medicaid Services under the federal Clinical Laboratory
149 Improvement Amendments and the federal rules adopted thereunder.

150 3. A federally qualified health center as defined in 42
151 U.S.C. s. 1396d(1) (2) (B), as that definition exists on the
152 effective date of this act.

153 4. Any site providing health care services which was
154 established for the purpose of responding to the COVID-19
155 pandemic pursuant to any federal or state order, declaration, or
156 waiver.

157 5. A health care practitioner as defined in s. 456.001.

158 6. A health care professional licensed under part IV of
159 chapter 468.

160 7. A home health aide as defined in s. 400.462(15).

161 (2) PRELIMINARY PROCEDURES.—

162 (a) In any civil action against a health care provider
163 based on a COVID-19-related claim, the complaint must be pled
164 with particularity by alleging facts in sufficient detail to
165 support each element of the claim. An affidavit of a physician
166 is not required as part of the pleading.

167 (b) If the complaint is not pled with particularity, the
168 court must dismiss the action.

169 (3) STANDARD OF PROOF.—A plaintiff who brings an action for
170 a COVID-19-related claim against a health care provider must
171 prove by the greater weight of the evidence that the health care
172 provider was grossly negligent or engaged in intentional
173 misconduct:

174 (a) By failing to substantially follow authoritative or

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175 applicable government-issued health standards or guidance
176 relating to COVID-19;

177 (b) In interpreting or applying the standards or guidance
178 with respect to the provision of health care or related
179 services, or lack thereof, or the allocation of scarce resources
180 or assistance with daily living; or

181 (c) In the provision of a novel or experimental COVID-19
182 treatment.

183
184 A health care provider is immune from liability for a COVID-19-
185 related claim if supplies, materials, equipment, or personnel
186 necessary to comply with the applicable government-issued health
187 standards or guidance at issue were not readily available or
188 were not available at a reasonable cost.

189 (4) LIMITATIONS PERIOD.—An action for a COVID-19-related
190 claim against a health care provider must commence within 1 year
191 after the later of the date of death due to COVID-19,
192 hospitalization related to COVID-19, or the first diagnosis of
193 COVID-19 which forms the basis of the action. However, a
194 claimant whose cause of action for a COVID-19-related claim
195 accrued before the effective date of this act must commence such
196 action within 1 year after the effective date of this act.

197 (5) CONFLICTING LAWS.—This section shall prevail over any
198 conflicting provisions of law to the extent of the conflict,
199 except for claims brought under chapter 440.

200 (6) APPLICABILITY.—This section applies to causes of action
201 that accrue no later than 1 year after the termination or
202 expiration of the state public health emergency relating to
203 COVID-19 which was declared by the State Surgeon General or any

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204 nationwide emergency declaration by the Federal Government,
205 whichever is later.

206 Section 2. If any provision of this act or its application
207 to any person or circumstance is held invalid, the invalidity
208 does not affect other provisions or applications of the act
209 which can be given effect without the invalid provision or
210 application, and to this end the provisions of this act are
211 severable.

212 Section 3. This act applies retroactively. However, this
213 act does not apply in a civil action against a particular named
214 health care provider which is commenced before the effective
215 date of this act.

216 Section 4. This act shall take effect upon becoming a law.