By Senator Brandes

24-01546B-21

A bill to be entitled
An act relating to COVID-19-related claims against
health care providers; creating s. 768.381, F.S.;
defining terms; providing preliminary procedures for
civil actions based on COVID-19-related claims;
providing the standard of proof required at trial for
such claims; providing immunity from liability for
COVID-19-related claims under certain circumstances;
requiring COVID-19-related claims to commence within a
specified timeframe; providing construction; providing
applicability; providing severability; providing for
retroactive application; providing an effective date.

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

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

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

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

WHEREAS, the Secretary of the United States Department of
Health and Human Services declared on January 31, 2020, that a
public health emergency exists in the United States due to
confirmed cases of COVID-19 in this country, and
WHEREAS, on March 1, 2020, the State of Florida Department of Health, in coordination with Governor Ron DeSantis, first declared a public health emergency based on the spread of COVID-19, and

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

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

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

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

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

WHEREAS, medical experts have been racing to develop vaccines and to learn how COVID-19 is transmitted and how best to treat those infected with the disease, and
WHEREAS, the Federal Government, along with state and local 
governments, has sought to slow the spread of COVID-19 through 
travel bans and restrictions, quarantines, lockdowns, social 
distancing, and the closure of businesses or limitations on 
business activities, including limitations on the provision of 
medical services, and

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

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

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

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

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

WHEREAS, the Legislature finds that it is an overpowering 
public necessity to enact legislation that will deter unfounded
lawsuits against health care providers based on COVID-19-related
claims, while allowing meritorious claims to proceed, and
WHEREAS, the Legislature finds that it is necessary to
require those filing lawsuits against health care providers to
consider the extraordinary circumstances arising out of the
public health emergency caused by the pandemic, NOW, THEREFORE,

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

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

768.381 COVID-19-related claims against health care providers.—

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

(a) “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.

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

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

2. The health care provider failed to properly interpret or
apply the standards or guidance with respect to the provision of
health care or related services, or lack thereof, or the
allocation of scarce resources, or assistance with daily living;

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

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

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

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

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

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

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

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

1. A provider as defined in s. 408.803.

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

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

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

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

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

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

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

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

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

(a) By failing to substantially follow authoritative or
applicable government-issued health standards or guidance
relating to COVID-19;

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

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

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

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

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

(6) APPLICABILITY.—This section applies to causes of action
that accrue no later than 1 year after the termination or
expiration of the state public health emergency relating to
COVID-19 which was declared by the State Surgeon General or any
nationwide emergency declaration by the Federal Government, whichever is later.

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

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

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