87R3751 BRG-F

By:  Smith H.B. No. 3748

A BILL TO BE ENTITLED

AN ACT

relating to liability of health care providers for certain claims arising during a pandemic.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  (a) The legislature finds that:

(1)  the widespread effect of Coronavirus Disease 2019 ("COVID-19") in this state has resulted in a state of disaster as declared by the governor under Section 418.014, Government Code;

(2)  the frequency and severity of such cases in this state have severely taxed the physicians and health care providers, including health care institutions, stressed the state's health care system, and created shortages of medical staff, therapeutics, hospital beds, testing equipment, and safety supplies;

(3)  physicians and health care providers often have inadequate facilities to respond to the disaster;

(4)  physicians and health care providers often have inadequate test kits and monitoring devices to properly assess all those presenting themselves for care or treatment;

(5)  because of the number and severity of cases, many physicians and health care providers in this state have been forced to prioritize care and treatment;

(6)  many physicians and health care providers have placed themselves, their loved ones, and their livelihoods at risk by trying to respond to the disaster;

(7)  at the current time, there is no certainty as far as how long this crisis will last;

(8)  a pandemic, including the COVID-19 pandemic, requires an enormous response from governments working in coordination with physicians and health care providers in the community;

(9)  protecting physicians and health care providers from unnecessary liability supports their efforts during a pandemic, including the COVID-19 pandemic;

(10)  there is a strong public interest to be served by this Act; and

(11)  while some prior rights will be impaired by this Act, the impairment is not significant and the interest of protecting the public and ensuring adequate care vastly outweighs those rights.

(b)  Because of the conditions stated in Subsection (a) of this section, the purpose of Section 74.155, Civil Practice and Remedies Code, as added by this Act, is to improve and modify the system by which health care liability claims are determined in order to:

(1)  promote the public health, safety, and welfare of all citizens and ensure access to care and treatment during a pandemic by broadly protecting physicians and health care providers, including health care institutions, in this state from liability that may relate to the care or treatment of individuals associated with a pandemic, including COVID-19;

(2)  provide for prompt and swift medical and health care responses to the citizens of this state suffering from COVID-19;

(3)  recognize that many physicians and health care providers responding to these situations may not have the full benefits of the medical devices and facilities they would in non-disaster situations;

(4)  encourage physicians and health care providers from other states to respond, if necessary, to the COVID-19 disaster in this state as declared by the president of the United States and by the governor; and

(5)  ensure that the focus and resources of physicians and health care providers in responding to the COVID-19 disaster are being addressed.

SECTION 2.  Subchapter D, Chapter 74, Civil Practice and Remedies Code, is amended by adding Section 74.155 to read as follows:

Sec. 74.155.  LIABILITY OF PHYSICIANS, HEALTH CARE PROVIDERS, AND FIRST RESPONDERS DURING PANDEMIC. (a) In this section:

(1)  "Disaster declaration" means a declaration of a state of disaster or emergency by the president of the United States, a declaration of a state of disaster by the governor under Chapter 418, Government Code, and any amendment, modification, or extension of the declaration.

(2)  "First responder" has the meaning assigned by Section 421.095, Government Code.

(3)  "Pandemic disease" means an infectious disease that spreads to a significant portion of the population of a country, multiple countries, or the world and that poses a substantial risk of a significant number of human fatalities, illnesses, or permanent long-term disabilities.

(b)  Except in a case of reckless conduct or intentional, wilful, or wanton misconduct, a physician, health care provider, or first responder is not liable for an injury, including economic and noneconomic damages, or death arising from care, treatment, or failure to provide care or treatment relating to or impacted by a pandemic disease or a disaster declaration related to a pandemic disease, including:

(1)  screening, assessing, diagnosing, or treating an individual who is infected or suspected of being infected with a pandemic disease;

(2)  prescribing, administering, or dispensing a drug or medicine for off-label or investigational use to treat an individual who is infected or suspected of being infected with a pandemic disease;

(3)  diagnosing or treating an individual who is infected or suspected of being infected with a pandemic disease outside the normal area of the physician's or provider's specialty, if any;

(4)  delaying or canceling nonurgent or elective medical, surgical, or dental procedures;

(5)  delaying, canceling, or not accepting in-person appointments for office or clinical visits, diagnostic tests, scheduled treatment, physical or occupational therapy, or any other diagnosis or treatment of an illness or condition not related to a pandemic disease;

(6)  using medical devices, equipment, or supplies outside of their normal use, including using or modifying such devices, equipment, or supplies for an unapproved use, to treat an individual who is infected or suspected of being infected with a pandemic disease;

(7)  conducting tests on or providing treatment to an individual who is infected or suspected of being infected with a pandemic disease outside the premises of a health care facility;

(8)  acts or omissions caused by a lack of personnel or staffing, facilities, medical devices, supplies, or other resources attributable to a pandemic disease that renders a physician, health care provider, or first responder unable to provide the same level or manner of care to any individual that otherwise would have been acquired in the absence of the disease; and

(9)  acts or omissions arising from the use or nonuse of personal protective equipment.

(c)  This section does not alter the scope of practice of a physician, health care provider, or first responder under the laws of this state.

(d)  The immunity provided by this section is in addition to any other immunity or limitations of liability provided by law.

(e)  This section applies only to a claim arising from care, treatment, or failure to provide care or treatment that occurred during a period beginning on the date that the president of the United States or the governor makes a disaster declaration related to a pandemic disease and ending 60 days after the date that the declaration terminates.

SECTION 3.  Section 74.155, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrued on or after March 7, 2020. A cause of action that accrued before March 7, 2020, is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.