

By: Smith

H.B. No. 3748

A BILL TO BE ENTITLED

AN ACT

1
2 relating to liability of health care providers for certain claims
3 arising during a pandemic.

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

5 SECTION 1. (a) The legislature finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) provide for prompt and swift medical and health

1 care responses to the citizens of this state suffering from
2 COVID-19;

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

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

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

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

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

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

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

27 (3) "Pandemic disease" means an infectious disease

1 that spreads to a significant portion of the population of a
2 country, multiple countries, or the world and that poses a
3 substantial risk of a significant number of human fatalities,
4 illnesses, or permanent long-term disabilities.

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

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

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

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

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

25 (5) delaying, canceling, or not accepting in-person
26 appointments for office or clinical visits, diagnostic tests,
27 scheduled treatment, physical or occupational therapy, or any other

1 diagnosis or treatment of an illness or condition not related to a
2 pandemic disease;

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

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

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

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

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

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

25 (e) This section applies only to a claim arising from care,
26 treatment, or failure to provide care or treatment that occurred
27 during a period beginning on the date that the president of the

1 United States or the governor makes a disaster declaration related
2 to a pandemic disease and ending 60 days after the date that the
3 declaration terminates.

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

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