

By Senator Wise

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1                                   A bill to be entitled  
2           An act relating to arbitration agreements governing  
3           certain medical negligence claims; creating s.  
4           682.025, F.S.; defining terms; providing that  
5           arbitration agreements written in conformity with the  
6           Florida Arbitration Code are consistent with the  
7           public policy of this state; providing that an  
8           arbitration agreement that violates the requirements  
9           of the Florida Arbitration Code is voidable at the  
10          option of the consumer until the initiation of  
11          arbitration; prohibiting an arbitration agreement from  
12          restricting or abolishing any substantive or due  
13          process right or restricting in any way damages or  
14          remedies available to a patient or nursing home  
15          resident; requiring each arbitration agreement to  
16          include a provision for selecting arbitrators by  
17          mutual agreement of the patient or nursing home  
18          resident and the health care provider; requiring the  
19          court to appoint arbitrators who are acceptable to  
20          both parties if the parties are unable to reach an  
21          agreement for selecting the arbitrators; requiring the  
22          provider to explain the pre-dispute agreement in  
23          detail to the consumer; providing that the pre-dispute  
24          agreement may be rescinded at any time before the  
25          initiation of arbitration by the consumer or the  
26          provider by notifying the other in writing of the  
27          recession; requiring each pre-dispute agreement and  
28          post-dispute agreement to contain certain specified  
29          provisions; requiring that the provider give a copy of

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30 the pre-dispute agreement to the patient or nursing  
31 home resident; prohibiting a health care provider from  
32 refusing to serve a patient if the patient declines to  
33 sign an arbitration agreement or chooses to rescind  
34 the arbitration agreement; prohibiting a health care  
35 provider from presenting arbitration agreements to  
36 patients under certain circumstances; requiring a  
37 provider to give a patient a specified period of time  
38 to review the post-dispute agreement and to consult an  
39 attorney; providing an effective date.

40  
41 WHEREAS, some medical malpractice insurers encourage health  
42 care providers to use arbitration agreements as a condition of  
43 providing medical malpractice insurance to health care  
44 providers, and

45 WHEREAS, some nursing homes and health care providers  
46 require patients and nursing home residents to execute  
47 arbitration agreements prior to the delivery of services and  
48 medical care, and

49 WHEREAS, many insurance plans restrict the choice patients  
50 have in choosing health care providers and nursing homes,  
51 leaving patients with no ability to fairly negotiate a contract  
52 for services, and

53 WHEREAS, the Legislature created a comprehensive statutory  
54 scheme for health care providers in chapter 766, F.S., and for  
55 nursing homes in chapter 400, F.S., to ensure the availability  
56 of health care services in Florida by stabilizing the  
57 availability of liability insurance by statutorily governing the  
58 rights of patients and duties of health care providers and

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59 nursing homes in a comprehensive way, and

60 WHEREAS, contracts for services that change the rights of  
61 the parties affect the stability of the insurance rates and the  
62 health care system and services that are overseen and regulated  
63 by the state of Florida, and

64 WHEREAS, the Legislature intends that an arbitration  
65 agreement be a voluntary agreement between a patient and a  
66 health care provider or nursing home, and not a prerequisite to  
67 medical services or care, and

68 WHEREAS, the Legislature intends that medical malpractice  
69 insurers not require health care providers or others to require  
70 the use of arbitration agreements without certain safeguards  
71 that are designed to protect patients' and nursing home  
72 residents' rights, and

73 WHEREAS, the Legislature intends that health care providers  
74 and nursing homes not require consumers and patients to sign any  
75 contract for services that changes the rights of the consumer or  
76 patient as provided in chapter 766 or chapter 400, F.S., or that  
77 requires a pre-dispute arbitration in advance of providing care,  
78 NOW, THEREFORE,

79

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

81

82 Section 1. Section 682.025, Florida Statutes, is created to  
83 read:

84 682.025 Contracts for medical services and nursing home  
85 care; arbitration agreements.—

86 (1) As used in this section, the term:

87 (a) "Consumer" means a patient of a provider or a nursing

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88 home resident. The term includes a legal guardian of the  
89 consumer or any other person who is legally authorized to enter  
90 into a pre-dispute agreement or post-dispute agreement with a  
91 provider on behalf of a consumer.

92 (b) "Dispute" means a medical negligence claim under  
93 chapter 766 or a claim against a nursing home pursuant to the  
94 common law, s. 400.023, or s. 400.0233.

95 (c) "Provider" means a health care facility licensed under  
96 chapter 395, a health care practitioner as defined in s.  
97 456.001, or a nursing home facility licensed under part II of  
98 chapter 400.

99 (d) "Pre-dispute agreement" means an arbitration agreement  
100 executed by a consumer and a provider before the occurrence of  
101 events forming the basis of a dispute.

102 (e) "Post-dispute agreement" means an arbitration agreement  
103 executed by a consumer and a provider after the occurrence of  
104 events forming the basis of a dispute.

105 (2) Any pre-dispute agreement or post-dispute agreement  
106 between a consumer and a provider which conforms to this chapter  
107 is enforceable and consistent with the public policy of this  
108 state. An arbitration agreement that violates the requirements  
109 of this chapter is voidable at the option of the consumer until  
110 the initiation of arbitration.

111 (3) A pre-dispute agreement or post-dispute agreement may  
112 not restrict or abolish any substantive or due process right or  
113 restrict in any way the damages or remedies available to the  
114 consumer.

115 (4) A pre-dispute agreement or post-dispute agreement must  
116 provide an opportunity to select the arbitrators by mutual

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117 agreement of the consumer and the provider after the arbitration  
118 has been initiated. The pre-dispute agreement and the post-  
119 dispute agreement may not restrict the panel from which the  
120 arbitrator is selected. The court shall appoint one or more  
121 arbitrators who are acceptable to the consumer and provider if  
122 the consumer and the provider are unable to reach an agreement  
123 selecting the arbitrator.

124 (5) (a) Each pre-dispute agreement must be explained in  
125 detail to the consumer by the provider.

126 (b) A pre-dispute agreement may be rescinded at any time  
127 before the initiation of arbitration by the consumer or the  
128 provider by notifying the other in writing of the recession.

129 (c) The pre-dispute agreement must:

130 1. Include the following provision in the arbitration  
131 agreement:

132  
133 It is understood that any dispute relating to  
134 negligence or problems with care, that is as to  
135 whether any services rendered under this agreement  
136 were unnecessary or unauthorized or were improperly,  
137 negligently, or incompetently rendered, will be  
138 determined by submission to arbitration as provided by  
139 the law of this state, and not by a lawsuit or resort  
140 to court process except as allowed by the law of this  
141 state for judicial review of arbitration agreements.  
142 Both parties to this contract, by entering into it,  
143 are foregoing their constitutional right to have the  
144 dispute decided in a court of law before a jury, and  
145 instead are accepting the use of arbitration. The

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146 consumer has the right to seek legal counsel  
147 concerning this agreement and has the right to rescind  
148 this agreement by written notice to the provider at  
149 any time before the beginning of the arbitration.

151 2. Be in a separate document apart from other documents  
152 provided to the consumer by the provider and be clearly and  
153 conspicuously identified as an arbitration agreement.

154 3. Include the signature of an individual who has witnessed  
155 the provider's explanation of the arbitration agreement to the  
156 consumer.

157 4. Include, immediately before the signature line provided  
158 for the consumer, the following statement in at least 16-point  
159 bold red type:

161 NOTICE: BY SIGNING THIS ARBITRATION AGREEMENT, YOU ARE  
162 AGREEING TO HAVE ANY DISPUTE DECIDED BY A NEUTRAL  
163 ARBITRATOR AND YOU ARE GIVING UP YOUR CONSTITUTIONAL  
164 RIGHT TO A JURY OR COURT TRIAL.

165  
166 YOU HAVE THE RIGHT TO CONSULT WITH AN ATTORNEY  
167 REGARDING THIS AGREEMENT. YOU HAVE THE RIGHT TO  
168 RESCIND THIS AGREEMENT IN WRITING AT ANY TIME BEFORE  
169 BEGINNING AN ARBITRATION PROCEEDING.

170  
171 A PROVIDER MAY NOT REFUSE TO PROVIDE SERVICES TO YOU  
172 SOLELY BECAUSE YOU REFUSED TO SIGN THE ARBITRATION  
173 AGREEMENT OR RESCINDED AN ARBITRATION AGREEMENT.

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175 (d) The provider must give a copy of the pre-dispute  
176 agreement to the consumer at the time it is signed by the  
177 consumer and representative of the provider.

178 (e) A provider may not refuse to provide services to any  
179 consumer solely because the consumer refused to sign the pre-  
180 dispute agreement or exercised the right of rescission.

181 (f) A provider may not submit the pre-dispute agreement to  
182 a consumer for approval if the consumer's medical condition  
183 requires emergency treatment services and care as defined by s.  
184 395.002 or the condition prevents the consumer from making a  
185 rational decision whether or not to execute the pre-dispute  
186 agreement.

187 (6) (a) A provider must give the consumer 72 hours to review  
188 a post-dispute agreement and to consult with an attorney, if  
189 necessary, before signing the post-dispute agreement.

190 (b) The post-dispute agreement must:

191 1. Be in a separate document apart from other documents  
192 provided to the consumer by the provider and be clearly and  
193 conspicuously identified as an arbitration agreement.

194 2. Include, immediately before the signature line provided  
195 for the consumer, the following statement in at least 16-point  
196 bold red type:

197  
198 NOTICE: BY SIGNING THIS ARBITRATION AGREEMENT, YOU ARE  
199 AGREEING TO HAVE A DISPUTE DECIDED BY A NEUTRAL  
200 ARBITRATOR AND YOU ARE GIVING UP YOUR CONSTITUTIONAL  
201 RIGHT TO A JURY OR COURT TRIAL.

202  
203 YOU HAVE THE RIGHT TO REVIEW THIS AGREEMENT FOR 72

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204       HOURS BEFORE SIGNING THE ARBITRATION AGREEMENT AND TO  
205       CONSULT WITH AN ATTORNEY REGARDING THE ARBITRATION  
206       AGREEMENT IF YOU BELIEVE IT NECESSARY TO DO SO.

207       Section 2. This act shall take effect July 1, 2010.