

E AND R AMENDMENTS TO LB 139

Introduced by McKinney, 11, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Sections 1 to 4 of this act shall be known and may be
4 cited as the COVID-19 Liability Act.

5 Sec. 2. For purposes of the COVID-19 Liability Act:

6 (1) COVID-19 means the novel coronavirus identified as SARS-CoV-2,
7 the disease caused by the novel coronavirus SARS-CoV-2 or a virus
8 mutating therefrom, and the health conditions or threats associated with
9 the disease caused by the novel coronavirus SARS-CoV-2 or a virus
10 mutating therefrom;

11 (2) Federal public health guidance means and includes written or
12 oral guidance related to COVID-19 issued by any of the following:

13 (a) The Centers for Disease Control and Prevention of the United
14 States Department of Health and Human Services;

15 (b) The Centers for Medicare and Medicaid Services of the United
16 States Department of Health and Human Services; or

17 (c) The federal Occupational Safety and Health Administration; and

18 (3)(a) Person means:

19 (i) Any natural person;

20 (ii) Any sole proprietorship, partnership, limited liability
21 partnership, corporation, limited liability company, business trust,
22 estate, trust, unincorporated association, or joint venture;

23 (iii) The State of Nebraska and any political subdivision of the
24 state;

25 (iv) Any school, college, university, institution of higher
26 education, religious organization, or charitable organization; or

27 (v) Any other legal or commercial entity.

1 (b) Person includes an employee, director, governing board, officer,
2 agent, independent contractor, or volunteer of a person listed in
3 subdivision (3)(a) of this section.

4 Sec. 3. A person may not bring or maintain a civil action seeking
5 recovery for any injuries or damages sustained from exposure or potential
6 exposure to COVID-19 on or after the effective date of this act if the
7 act or omission alleged to violate a duty of care was in substantial
8 compliance with any federal public health guidance that was applicable to
9 the person, place, or activity at issue at the time of the alleged
10 exposure or potential exposure.

11 Sec. 4. The COVID-19 Liability Act shall not be construed to:

12 (1) Create, recognize, or ratify a claim or cause of action of any
13 kind;

14 (2) Eliminate or satisfy a required element of a claim or cause of
15 action of any kind;

16 (3) Affect rights or coverage limits under the Nebraska Workers'
17 Compensation Act;

18 (4) Abrogate, amend, repeal, alter, or affect any statutory or
19 common law immunity or limitation of liability; or

20 (5) Constitute a waiver of the sovereign immunity of the State of
21 Nebraska or any political subdivision of the state.

22 Sec. 5. Sections 5 to 9 of this act shall be known and may be cited
23 as the Health Care Crisis Protocol Act.

24 Sec. 6. For purposes of the Health Care Crisis Protocol Act, health
25 care crisis protocol means the plans and protocols for triage and the
26 application of medical services and resources for critically ill patients
27 in the event that the demand for medical services and resources exceeds
28 supply as a result of a pervasive or catastrophic disaster as provided in
29 the Health Care Crisis Protocol for the State of Nebraska published by
30 the Nebraska Medical Emergency Operations Center, dated May 10, 2021.

31 Sec. 7. The health care crisis protocol may be activated only in

1 extraordinary circumstances when the level of demand for medical services
2 and resources exceeds the available resources required to deliver the
3 generally accepted standard of care and crisis operations will be in
4 effect for a sustained period.

5 Sec. 8. The health care crisis protocol does not change or alter the
6 standard for malpractice or professional negligence for health care
7 providers set forth in section 44-2810.

8 Sec. 9. (1) Each hospital shall have the health care crisis protocol
9 available for inspection by the public.

10 (2) The Department of Health and Human Services shall publish a copy
11 of the health care crisis protocol on the department's web site for
12 inspection by the public.

13 (3) For purposes of this section, hospital means a hospital licensed
14 under the Health Care Facility Licensure Act.

15 Sec. 10. Since an emergency exists, this act takes effect when
16 passed and approved according to law.

17 2. On page 1, strike beginning with "liability" in line 1 through
18 line 3 and insert "public health and welfare; to adopt the COVID-19
19 Liability Act; to adopt the Health Care Crisis Protocol Act; and to
20 declare an emergency."