

ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021
COMMITTEE STATEMENT
LB139

Hearing Date: Thursday February 18, 2021
Committee On: Judiciary
Introducer: Briese
One Liner: Adopt the COVID-19 Liability Protection Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Brandt, DeBoer, Geist, Lathrop, Morfeld, Pansing Brooks, Slama
Nay:		
Absent:		
Present Not Voting:	1	Senator McKinney

Oral Testimony:

Proponents:

Senator Tom Briese
Mark Schorr

Emily Motto Bottorf
Mark Whitehead

Jerry Stilmock
Andy Hale
Heath Boddy
Colby Coash

Dallas Jones

Opponents:

Jonathan Urbom
Felicia Hilton
Todd Stubbendieck
Shayla Reed

Neutral:

Representing:

Introducer
Nebraska Chamber, Nebraska Medical Association, Greater Omaha Chamber, League of Nebraska Municipalities, Lincoln Chamber of Commerce, American Property Casualty Insurance Association, Nebraska Insurance Information Service, HyVee & Nebraska Trucking Association
Nebraska Defense Counsel Association
Nebraska Petroleum Marketers & Convenience Store Association, Nebraska Grocers Association
Nebraska Federation of Independent Business
Nebraska Hospital Association
Nebraska Health Care Association
Nebraska Association of School Boards, Nebraska Council of School Administrators & Nebraska Rural Community Schools Association
LIBA & Nebraskans for Workers Compensation Equity & Fairness

Representing:

Nebraska Association of Trial Attorneys
North Central States Regional Council of Carpenters
AARP Nebraska
Nebraska Association of Trial Attorneys

Representing:

Submitted Written Testimony:

Proponents:

Jon Cannon
Jerry Stilmock
Tom Venzor
Lynn Rex
Lori Meyers
Gary Anthonie
Marcia Mueting
Greg Adams
Korby Gilbertson

Kent Rogert
Julia Plucker
Heath Mello
Anthony Vargas

Opponents:

Angela Amack

Jason Hayes

Neutral:

Representing:

Nebraska Association of County Officials
Nebraska Bankers Association
Nebraska Catholic Conference
League of Nebraska Municipalities
Nebraska State AFL-CIO
Department of Health & Human Services
Nebraska Pharmacists Association
Nebraska Community College Association
Enterprise Rent A Car Company Midwest LLC, Nebraska
Realtors Association, Pinnacle Bank & Woodman of the
World Life Insurance Society
Leading Age Nebraska
Nebraska Credit Union League
University of Nebraska
Nebraska Association of Service Providers

Representing:

IBEW & Building Trades & Nebraska Professional Fire
Fighters Association
Nebraska State Education Association

Representing:

Summary of purpose and/or changes:

LB 139 would establish the COVID-19 Liability Protection Act. The Act requires a plaintiff to show by clear and convincing evidence that a COVID-19 exposure resulting in injuries or damages was caused by gross negligence or willful misconduct. The bill prohibits actions alleging violation of a duty of care if there was substantial compliance with statutes or public health guidance. LB 139 also provides liability protections for health care providers and facilities.

LB 139 establishes a 2 year statute of limitations and ends December 31, 2022 or a year after a COVID-19 emergency ends whichever is earlier. The bill also contains severability and emergency clauses.

Section by section

Section 1 Title: COVID-19 Liability Protection Act.

Section 2 Definitions: COVID-19; COVID-19 state of emergency; First Responder; Gross negligence; Health care facility; ;Health care provider; Health care service; Minimum medical; Person; Premises; Public health guidance; and willful misconduct.

Section 3 Requires a plaintiff to show by clear and convincing evidence that a minimum medical condition (hospitalization or death) was the result of gross negligence or willful misconduct in order to bring a suit resulting from exposure to COVID-19.

Section 4 Prohibits an action alleging a violation of a duty of care if there was substantial compliance with federal or state statutes or regulations, or public health guidance.

Section 5 Provides a limitation on liability for persons who own or occupy a premises, from lawsuits unless the plaintiff can show through clear and convincing evidence that the owner/occupier engaged in gross negligence or willful misconduct.

Section 6 Provides liability protections for first responders, and health care providers and facilities for screenings, prescribing off-label uses, delaying elective dental and medical procedures, or acts or omissions due to lack of resources due to COVID-19. Can be defeated by a showing of gross negligence or willful misconduct by clear and convincing evidence.

Section 7 Provides that the Act is not designed to create a cause of action, eliminate or satisfy elements of a claim, impact workers compensation actions, otherwise affect statutory or common law liability or immunity, or create a waiver of sovereign immunity.

Section 8 Establishes a two year statute of limitations on COVID-19 exposure actions.

Section 9 Act applies after the effective date of the Act and before either December 31, 2022 or a year after a COVID-19 emergency ends, whichever is earlier.

Section 10 Severability clause.

Section 11 Emergency clause.

Explanation of amendments:

Committee amendment AM 1293 is a white copy amendment that includes an amended version of LB 139 and LB 53. The amendment provides new definitions for "Covid-19", "Federal public health guidance" and "person" that includes various types of business organizations, the State and political subdivisions, and schools and universities. Person also includes officers and employees as well as agents and volunteers of the covered organizations. The amendment prohibits civil actions after the effective date if the alleged act or omission was in substantial compliance with federal health guidance. The amendment maintains the provisions in section 7 of the original proposal that provide that the Act does not create or recognize a cause of action, affect worker's compensation actions, change common law immunities or limitations of liability, or constitute a waiver of sovereign immunity.

AM 1293 also includes an amended version of LB 53 that establishes the Health Care Crisis Protocol Act. The committee amendment requires the Department of Health and Human Services to establish a health care crisis protocol containing listed criteria. The amendment also creates an advisory committee under the Department of Health and Human Services to advise and make recommendations on the protocol.

Section by section

Section 1 Title: COVID-19 Liability Act.

Section 2 Definitions: COVID-19, Federal public health guidance, and person, which includes businesses, the State and political subdivisions as well as schools and universities.

Section 3 Prohibits civil actions after the effective date if the alleged act or omission was in substantial compliance with federal health guidance.

Section 4 Provides that the Act is not construed to create or recognize a cause of action, affect worker's compensation actions, change common law immunities or limitations of liability, or constitute a waiver of sovereign immunity.

Section 5 Title: Health Care Crisis Protocol Act.

Section 6 Definitions: Chief Executive and Chief Medical Officer (DHHS), Critical care hospital, Emergency care and health care provider, and health care crisis protocol.

Section 7 Requires the chief executive and chief medical officer to establish rules and regulations to establish a health care protocol by July 1, 2022. The protocol should establish triage and medical services and resources allocations, with criteria to ensure the equitable and transparent application of the protocol. The protocol will also establish when the protocol is employed.

Section 8 The protocol does not alter standards for malpractice or professional negligence.

Section 9 Establishes an advisory committee to provide advice and recommendations on the establishment of the protocol. The amendment provides for membership of the committee from the healthcare community and details on terms of service and other issues. Provides a time frame for the recommendations.

Section 10 Emergency clause.

Steve Lathrop, Chairperson