

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 139

FINAL READING

Introduced by Brieese, 41; Williams, 36.

Read first time January 08, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to public health and welfare; to adopt the
- 2 COVID-19 Liability Act; to adopt the Health Care Crisis Protocol
- 3 Act; and to declare an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

16 (3)(a) Person means:

17 (i) Any natural person;

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

21 (iii) The State of Nebraska and any political subdivision of the
22 state;

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

25 (v) Any other legal or commercial entity.

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

29 Sec. 3. A person may not bring or maintain a civil action seeking
30 recovery for any injuries or damages sustained from exposure or potential
31 exposure to COVID-19 on or after the effective date of this act if the

1 act or omission alleged to violate a duty of care was in substantial
2 compliance with any federal public health guidance that was applicable to
3 the person, place, or activity at issue at the time of the alleged
4 exposure or potential exposure.

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

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

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

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

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

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

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

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

25 Sec. 7. The health care crisis protocol may be activated only in
26 extraordinary circumstances when the level of demand for medical services
27 and resources exceeds the available resources required to deliver the
28 generally accepted standard of care and crisis operations will be in
29 effect for a sustained period.

30 Sec. 8. The health care crisis protocol does not change or alter
31 the standard for malpractice or professional negligence for health care

1 providers set forth in section 44-2810.

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

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

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

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