

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 139

Introduced by Briese, 41; Williams, 36.

Read first time January 08, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to liability; to adopt the COVID-19 Liability
- 2 Protection Act; to provide severability; and to declare an
- 3 emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known and may be
2 cited as the COVID-19 Liability Protection Act.

3 Sec. 2. For purposes of the COVID-19 Liability Protection 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) COVID-19 state of emergency means (a) a public health emergency
10 related to COVID-19 declared by the Secretary of the United States
11 Department of Health and Human Services under section 319 of the Public
12 Health Service Act, 42 U.S.C. 247d, (b) a presidential declaration of
13 emergency related to COVID-19 under the National Emergencies Act or the
14 Robert T. Stafford Disaster Relief and Emergency Assistance Act, or (c) a
15 state of emergency related to COVID-19 proclaimed by the Governor of
16 Nebraska under section 81-829.40, other statutory authority, or by
17 executive order;

18 (3) First responder means state and local law enforcement personnel,
19 including University of Nebraska police department personnel, fire
20 department personnel, emergency medical personnel, ambulance service
21 provider personnel, emergency management personnel, and public works
22 personnel who may be deployed in response to a COVID-19 state of
23 emergency;

24 (4) Gross negligence means a conscious, voluntary act or omission in
25 reckless disregard of (a) a legal duty, (b) the consequences to another
26 party, or (c) applicable government standards or guidance;

27 (5) Health care facility means (a) any facility in which health care
28 services are provided, including, but not limited to, any health care
29 facility as defined in section 71-413, health care practitioner facility
30 as defined in section 71-414, hospice facility or program, elder group
31 home, assisted-living program, and any other licensed or state-approved

1 facility providing health care or (b) any field hospital, modular field-
2 treatment facility, or other facility designated by the Department of
3 Health and Human Services or the Nebraska Emergency Management Agency for
4 temporary use for the purpose of providing health care services related
5 to a COVID-19 state of emergency;

6 (6) Health care provider means (a) a person who is licensed,
7 registered, permitted, or certified in any state to provide health care
8 services, whether paid or unpaid, including persons engaged in
9 telemedicine or telehealth, and any employee, agent, or contractor of
10 such person, (b) an emergency medical technician who is licensed in any
11 state, or (c) a volunteer or military personnel who are approved by or
12 work under the direction of the Department of Health and Human Services
13 or the Nebraska Emergency Management Agency and who provide health care
14 services in response to a COVID-19 state of emergency in the State of
15 Nebraska;

16 (7) Health care service means any care, treatment, service, or
17 procedure to maintain, diagnose, or otherwise affect an individual's
18 physical or mental condition;

19 (8) Minimum medical condition means a diagnosis of COVID-19 that
20 requires inpatient hospitalization or results in death;

21 (9) Person means (a) any natural person, sole proprietorship,
22 partnership, limited liability partnership, corporation, limited
23 liability company, business trust, estate, trust, unincorporated
24 association, or joint venture, (b) the State of Nebraska and any
25 political subdivision of the state, (c) any school, college, university,
26 institution of higher education, religious organization, or charitable
27 organization, or (d) any other legal or commercial entity. Person
28 includes an employee, director, governing board, officer, agent,
29 independent contractor, or volunteer of a person listed in this
30 subdivision (9);

31 (10) Premises means and includes any physical place, any real

1 property, and any appurtenant building or structure serving a commercial,
2 residential, educational, religious, governmental, cultural, charitable,
3 or health care purpose;

4 (11) Public health guidance means and includes written or oral
5 guidance related to COVID-19 issued by any of the following: (a) The
6 Centers for Disease Control and Prevention of the United States
7 Department of Health and Human Services; (b) the Centers for Medicare and
8 Medicaid Services of the United States Department of Health and Human
9 Services; (c) the federal Occupational Safety and Health Administration;
10 (d) the office of the Governor; (e) any state agency, including the
11 Department of Health and Human Services; (f) any regional or local health
12 department located in Nebraska; or (g) any entity contracting with any of
13 the governmental entities listed in subdivisions (11)(a) through (f) of
14 this section; and

15 (12) Willful misconduct means an act or omission that is taken (a)
16 intentionally to achieve a wrongful purpose, (b) knowingly without legal
17 or factual justification, or (c) in disregard of a known or obvious risk
18 that is so great as to make it highly probable that the harm will
19 outweigh the benefit.

20 Sec. 3. A person shall not bring or maintain a civil action seeking
21 recovery for any injuries or damages sustained from exposure or potential
22 exposure to COVID-19 unless the plaintiff can prove, by clear and
23 convincing evidence, that the civil action relates to a minimum medical
24 condition resulting from gross negligence or willful misconduct.

25 Sec. 4. A person shall not bring or maintain a civil action seeking
26 recovery for any injuries or damages sustained from exposure or potential
27 exposure to COVID-19 if the act or omission alleged to violate a duty of
28 care was permitted by, in substantial compliance with, or consistent with
29 any federal or state statute, regulation, or order or public health
30 guidance related to COVID-19 that was applicable to the person or
31 activity at issue at the time of the alleged exposure or potential

1 exposure.

2 Sec. 5. A person who owns, occupies, possesses, or is in control of
3 a premises, including a tenant, lessee, or occupant of a premises, who
4 directly or indirectly invites or permits an individual onto a premises
5 for any purpose, shall not be liable in any civil action seeking recovery
6 for any injuries or damages sustained from the individual's exposure or
7 potential exposure to COVID-19, whether the exposure or potential
8 exposure occurs on the premises or during any activity managed by the
9 person who owns, occupies, possesses, or is in control of a premises,
10 unless the plaintiff can prove, by clear and convincing evidence, that
11 the person who owns, occupies, possesses, or is in control of the
12 premises engaged in gross negligence or willful misconduct that caused
13 the individual's minimum medical condition.

14 Sec. 6. (1) In addition to the liability protections provided in
15 sections 3, 4, and 5 of this act, a health care provider, health care
16 facility, or first responder shall not be liable in any civil action
17 seeking recovery for any injuries or damages for causing or contributing
18 to, directly or indirectly, a minimum medical condition of an individual
19 as a result of acts or omissions while providing or arranging health care
20 unless the plaintiff can prove, by clear and convincing evidence, that
21 the health care provider, health care facility, or first responder
22 engaged in gross negligence or willful misconduct.

23 (2) Subsection (1) of this section shall apply to any of the
24 following:

25 (a) Screening, assessing, diagnosing, caring for, or treating
26 individuals with a suspected or confirmed case of COVID-19;

27 (b) Prescribing, administering, or dispensing a pharmaceutical for
28 off-label use to treat a patient with a suspected or confirmed case of
29 COVID-19; and

30 (c) Acts or omissions while providing or arranging for health care
31 services to individuals unrelated to COVID-19 when those acts or

1 omissions support the state's response to COVID-19, including any of the
2 following:

3 (i) Delaying or canceling nonurgent or elective dental, medical, or
4 surgical procedures, or altering the diagnosis or treatment of an
5 individual in response to any federal or state statute, regulation, or
6 order or any public health guidance;

7 (ii) Diagnosing or treating patients outside the normal scope of the
8 health care provider's license or practice;

9 (iii) Using medical devices, equipment, or supplies outside of their
10 normal use for the provision of health care services, including using or
11 modifying medical devices, equipment, or supplies for an unapproved use;

12 (iv) Conducting tests or providing treatment to any individual
13 outside the premises of a health care facility;

14 (v) Acts or omissions undertaken by a health care provider, health
15 care facility, or first responder because of a lack of staffing,
16 facilities, medical devices, equipment, supplies, or other resources
17 attributable to COVID-19 that renders the health care provider, health
18 care facility, or first responder unable to provide the level or manner
19 of care to any person that otherwise would have been required in the
20 absence of COVID-19; or

21 (vi) Acts or omissions undertaken by a health care provider, health
22 care facility, or first responder relating to use or nonuse of personal
23 protective equipment.

24 Sec. 7. The COVID-19 Liability Protection Act shall not be
25 construed to (1) create, recognize, or ratify a claim or cause of action
26 of any kind, (2) eliminate or satisfy a required element of a claim or
27 cause of action of any kind, (3) affect the rights or limits under the
28 Nebraska Workers' Compensation Act, or (4) abrogate, amend, repeal,
29 alter, or affect any statutory or common law immunity or limitation of
30 liability or constitute a waiver of the sovereign immunity of the State
31 of Nebraska.

1 Sec. 8. Notwithstanding any other provision of law, any civil
2 action seeking recovery for any injuries or damages sustained from
3 exposure or potential exposure to COVID-19 shall be brought within two
4 years after the cause of action shall have accrued.

5 Sec. 9. The COVID-19 Liability Protection Act shall apply to any
6 cause of action accruing on or after the effective date of this act and
7 before the earlier of (1) December 31, 2022, or (2) one year after the
8 end of the COVID-19 state of emergency.

9 Sec. 10. If any section in this act or any part of any section is
10 declared invalid or unconstitutional, the declaration shall not affect
11 the validity or constitutionality of the remaining portions.

12 Sec. 11. Since an emergency exists, this act takes effect when
13 passed and approved according to law.