A BILL FOR AN ACT relating to liability; to adopt the COVID-19 Liability Protection Act; to provide severability; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 10 of this act shall be known and may be cited as the COVID-19 Liability Protection Act.

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

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

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

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

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

(5) Health care facility means (a) any facility in which health care services are provided, including, but not limited to, any health care facility as defined in section 71-413, health care practitioner facility as defined in section 71-414, hospice facility or program, elder group home, assisted-living program, and any other licensed or state-approved
facility providing health care or (b) any field hospital, modular field-
treatment facility, or other facility designated by the Department of
Health and Human Services or the Nebraska Emergency Management Agency for
temporary use for the purpose of providing health care services related
to a COVID-19 state of emergency;

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

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

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

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

(10) Premises means and includes any physical place, any real
property, and any appurtenant building or structure serving a commercial,
residential, educational, religious, governmental, cultural, charitable, or health care purpose;

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

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

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

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

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

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

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

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

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

(c) Acts or omissions while providing or arranging for health care services to individuals unrelated to COVID-19 when those acts or
omissions support the state's response to COVID-19, including any of the following:

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

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

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

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

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

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

Sec. 7. The COVID-19 Liability Protection Act shall not be construed to (1) create, recognize, or ratify a claim or cause of action of any kind, (2) eliminate or satisfy a required element of a claim or cause of action of any kind, (3) affect the rights or limits under the Nebraska Workers' Compensation Act, or (4) abrogate, amend, repeal, alter, or affect any statutory or common law immunity or limitation of liability or constitute a waiver of the sovereign immunity of the State of Nebraska.
Sec. 8. Notwithstanding any other provision of law, any civil action seeking recovery for any injuries or damages sustained from exposure or potential exposure to COVID-19 shall be brought within two years after the cause of action shall have accrued.

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

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

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