

LEGISLATIVE BILL 139

Approved by the Governor May 25, 2021

Introduced by Briese, 41; Williams, 36.

A BILL FOR AN ACT relating to public health and welfare; to adopt the COVID-19 Liability Act; to adopt the Health Care Crisis Protocol Act; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

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

Sec. 2. For purposes of the COVID-19 Liability 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) Federal 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; or

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

(3)(a) Person means:

(i) Any natural person;

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

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

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

(v) Any other legal or commercial entity.

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

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

Sec. 4. The COVID-19 Liability 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 rights or coverage limits under the Nebraska Workers' Compensation Act;

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

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

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

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

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

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

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

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

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

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