

AMENDMENTS TO LB139

Introduced by Judiciary.

1           1. Strike the original sections and insert the following new  
2 sections:

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

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

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

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

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

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

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

18           (3)(a) Person means:

19           (i) Any natural person;

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

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

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

27           (v) Any other legal or commercial entity.

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

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

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

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

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

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

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

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

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

24       Sec. 6. For purposes of the Health Care Crisis Protocol Act:

25       (1) Chief executive officer means the chief executive officer of the  
26 Department of Health and Human Services;

27       (2) Chief medical officer means the chief medical officer  
28 established under section 81-3115;

29       (3) Critical access hospital has the same meaning as in section  
30 71-409;

31       (4) Emergency care provider has the same meaning as in section

1 38-1206.04;

2 (5) Health care crisis protocol means plans and protocols for triage  
3 and the application of medical services and resources for critically ill  
4 patients in the event that the demand for medical services and resources  
5 exceeds supply as a result of a pervasive or catastrophic disaster; and

6 (6) Health care provider has the same meaning as in section 44-2803.

7 Sec. 7. (1) On or before July 1, 2022, the chief executive officer  
8 and chief medical officer shall adopt and promulgate rules and  
9 regulations establishing a health care crisis protocol. The health care  
10 crisis protocol shall be updated from time to time thereafter as such  
11 officers deem appropriate.

12 (2) The health care crisis protocol shall establish criteria for  
13 triage and the application of medical services and resources for  
14 critically ill patients. Such criteria shall:

15 (a) Ensure that every patient has equitable access to any medical  
16 services or resources from which such patient may benefit;

17 (b) Be clear and transparent and as objective as possible;

18 (c) Minimize inequitable outcomes; and

19 (d) Be based upon biological factors related only to the likelihood  
20 or magnitude of benefit likely to be received from the provision of  
21 medical services and resources. Factors that have no bearing on the  
22 likelihood or magnitude of such benefit shall not be considered. Such  
23 factors that shall not be considered include, but are not limited to,  
24 race, disability, gender, sexual orientation, gender identity, ethnicity,  
25 ability to pay, socioeconomic status, English language proficiency,  
26 perceived social worth, perceived quality of life, immigration status,  
27 incarceration status, homelessness, the past use of medical services or  
28 resources, or the predicted future use of such resources.

29 (3) The health care crisis protocol shall establish the  
30 extraordinary circumstances in which the health care crisis protocol may  
31 be employed.

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

4           Sec. 9. (1)(a) On or before January 1, 2022, the chief executive  
5 officer shall establish an advisory committee that will provide  
6 recommendations for developing and implementing the health care crisis  
7 protocol. The advisory committee shall consist of ten to fifteen members  
8 appointed by the chief executive officer. The members shall be chosen  
9 from among persons that represent emergency management agencies, health  
10 care providers, health care consumers, the aging community, the  
11 disability community, public health experts, academic medical centers,  
12 critical access hospitals, and emergency care providers and persons with  
13 expertise in law and ethics.

14           (b) The members shall represent diverse geographic regions of the  
15 state, including urban and rural areas, and represent, to the extent  
16 possible, the racial and ethnic diversity of the state.

17           (c) The chief executive officer shall stagger the terms of the  
18 initial appointments by appointing four of the initial appointments for a  
19 term of one year, four for a term of two years, and the remainder for a  
20 term of three years. Thereafter members shall serve for terms of four  
21 years. Members may be reappointed.

22           (d) Members of the advisory committee shall serve without  
23 compensation and shall not be reimbursed for expenses associated with  
24 their service on the advisory committee.

25           (2) On or before April 30, 2022, the advisory committee shall make  
26 its recommendations to the chief executive officer and chief medical  
27 officer regarding development and implementation of the health care  
28 crisis protocol.

29           (3) On or before April 30, 2024, and on or before April 30 of each  
30 even-numbered year thereafter, the advisory committee shall review the  
31 health care crisis protocol and make recommendations to the chief

1 executive officer and chief medical officer regarding any changes that  
2 are needed. Such officers may seek recommendations from the advisory  
3 committee at other times as needed.

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