

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE NO. 2 FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 51 & 42

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

0961S.08P

ADRIANE D. CROUSE, Secretary

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to civil actions, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto six new sections, to be known as sections 537.1000, 537.1005, 537.1010, 537.1015, 537.1020, and 537.1035, to read as follows:

537.1000. As used in sections 537.1000 to 537.1035, the following terms mean:

(1) "Businesses, services, activities, or accommodations", any act by an individual or entity, irrespective of whether the act is carried on for profit;

(2) "Covered product", a pandemic or epidemic product, drug, biological product, device, or an individual component thereof to combat COVID-19, excluding any vaccine or gene therapy;

(3) "COVID-19", any disease, health condition, or threat of harm caused by the severe acute respiratory syndrome coronavirus 2 or a virus mutating therefrom;

(4) "COVID-19 exposure action", a civil action:

14 (a) Brought by a person who suffered personal injury
15 or a representative of a person who suffered personal injury;

16 (b) Brought against an individual or entity engaged in
17 businesses, services, activities, or accommodations; and

18 (c) Alleging that an actual, alleged, feared, or
19 potential for exposure to COVID-19 caused the personal
20 injury or risk of personal injury that occurred in the
21 course of the businesses, services, activities, or
22 accommodations of the individual or entity;

23 (5) "COVID-19 medical liability action", a civil
24 action:

25 (a) Brought by a person who suffered personal injury,
26 or a representative of a person who suffered personal injury;

27 (b) Brought against a health care provider; and

28 (c) Alleging any harm, damage, breach, or tort
29 resulting in the personal injury alleged to have been caused
30 by, arising out of, or related to a health care provider's
31 act or omission in the course of arranging for or providing
32 COVID-19 related health care services if such health care
33 provider's decisions or activities with respect to such
34 person are impacted as a result of COVID-19;

35 (6) "COVID-19 products liability action", a civil
36 action:

37 (a) Brought by a person who suffered personal injury
38 or a representative of a person who suffered personal injury;

39 (b) Brought against an individual or entity engaged in
40 the design, manufacturing, importing, distribution,
41 labeling, packaging, lease, sale, or donation of a covered
42 product; and

43 (c) Alleging any harm, damage, breach, or tort
44 resulting in the personal injury alleged to have been caused
45 by, arising out of, or related to the design, manufacture,

46 importation, distribution, labeling, packaging, lease, sale,
47 or donation of a covered product;

48 (7) "COVID-19 related action", a COVID-19 exposure
49 action, a COVID-19 medical liability action, or a COVID-19
50 products liability action;

51 (8) "COVID-19 related health care services", any act
52 or omission by a health care provider, regardless of the
53 location, that relates to:

54 (a) The diagnosis, prevention, or treatment of COVID-
55 19;

56 (b) The assessment or care of an individual with a
57 confirmed or suspected case of COVID-19; or

58 (c) The care of any individual who is admitted to,
59 presents to, receives services from, or resides at, a health
60 care provider for any purpose if such health care provider's
61 decisions or activities with respect to such individual are
62 impacted as a result of COVID-19;

63 (9) "Employer", any person serving as an employer or
64 acting directly in the interest of an employer in relation
65 to an employee. The term "employer" shall include a public
66 entity, but shall not include any labor organization, other
67 than when acting as an employer, or any person acting in the
68 capacity of officer or agent of such labor organization;

69 (10) "Harm":

70 (a) Physical and nonphysical contact that results in
71 personal injury to an individual; and

72 (b) Economic and noneconomic losses;

73 (11) "Health care provider", any physician, hospital,
74 health maintenance organization, ambulatory surgical center,
75 long-term care facility including those licensed under
76 chapter 198, dentist, registered or licensed practical
77 nurse, optometrist, podiatrist, pharmacist, chiropractor,

78 professional physical therapist, psychologist, physician-in-
79 training, any person authorized to practice consumer
80 directed services, personal care assistance services, or
81 home-based care, any person providing behavioral or mental
82 health services, any person or entity that provides health
83 care services pursuant to a license or certificate, and the
84 respective employers or agents of any such person or entity
85 providing health care services, and any person, health care
86 system, or other entity that takes measures to coordinate,
87 arrange for, provide, verify, respond to, or address issues
88 related to the delivery of health care services;

89 (12) "Individual or entity":

90 (a) Any natural person, employee, public employee,
91 employer, corporation, company, trade, business, firm,
92 partnership, joint stock company, educational institution,
93 labor organization, or similar organization or group of
94 organizations;

95 (b) Any nonprofit organization, foundation, society,
96 or association organized for religious, charitable,
97 educational, or other purposes; or

98 (c) State or local government;

99 (13) "Local government", any county, city, town,
100 village, or other political subdivision of this state,
101 including any school district or charter school as well as
102 the bi-state authority created in chapter 70;

103 (14) "Personal injury", actual or potential physical
104 injury to an individual or death caused by a physical injury
105 and includes mental suffering, emotional distress, or
106 similar injuries suffered by an individual in connection
107 with a physical injury;

108 (15) "Recklessness", a conscious, voluntary act or
109 omission in reckless disregard of:

110 (a) A legal duty; and

111 (b) The consequences to another party;

112 (16) "Religious organization", any church, synagogue,
113 mosque, or any entity that has or would qualify for federal
114 tax-exempt status as a nonprofit religious organization
115 under Section 501(c) of the Internal Revenue Code;

116 (17) "Willful misconduct", an act or omission that is
117 taken:

118 (a) Intentionally to achieve a wrongful purpose; or

119 (b) In disregard of a known or obvious risk that is so
120 great as to make it highly probable that the harm will
121 outweigh the benefit.

537.1005. 1. Notwithstanding any other provision of
2 law to the contrary, and except as otherwise provided in
3 this section, no individual or entity engaged in businesses,
4 services, activities, or accommodations shall be liable in
5 any COVID-19 exposure action unless the plaintiff can prove
6 by clear and convincing evidence that:

7 (1) The individual or entity engaged in recklessness
8 or willful misconduct that caused an actual exposure to
9 COVID-19; and

10 (2) The actual exposure to COVID-19 caused the
11 personal injury of the plaintiff.

12 2. No religious organization shall be liable in any
13 COVID-19 exposure action unless the plaintiff can prove
14 intentional misconduct.

15 3. There shall be a rebuttable presumption of an
16 assumption of risk by a plaintiff in a COVID-19 exposure
17 action when an individual or entity posts or maintains signs
18 or provides written notice which contains the warning notice
19 specified in this subsection. If a sign is posted or
20 maintained, the sign shall be placed in a clearly visible

21 location at the entrance of the business, service, activity,
22 or accommodation. The sign or written notice described in
23 this subsection shall contain the following warning notice
24 in a substantially similar form:

25 "WARNING

26 Under Missouri law, any individual entering the
27 premises or engaging the services of the business
28 waives all civil liability against the individual
29 or entity for any damages based on inherent risks
30 associated with an exposure or potential exposure
31 to COVID-19, except for recklessness or willful
32 misconduct."

33 No religious organization shall be required to post or
34 maintain a sign or provide written notice containing the
35 warning notice specified in this subsection.

36 4. Adoption of or changes to policies, practices, or
37 procedures of an individual or entity in order to address or
38 mitigate the spread of COVID-19 after the time of the
39 actual, alleged, feared, or potential for exposure to COVID-
40 19, shall not be considered evidence of liability or
41 culpability.

42 5. Nothing in this section shall require an individual
43 or entity to establish a written or published policy
44 addressing the spread of COVID-19, including any policy
45 requiring or mandating a vaccination or requiring proof of
46 vaccination.

47 6. No individual or entity shall be held liable in a
48 COVID-19 exposure action for the acts or omissions of a
49 third party, unless:

50 (1) The individual or entity had an obligation under
51 general common law principles to control the acts or
52 omissions of the third party; or

53 (2) The third party was an agent of the individual or
54 entity.

537.1010. 1. Notwithstanding any other provision of
2 law to the contrary, and except as provided in subsection 2
3 of this section, no health care provider shall be liable in
4 a COVID-19 medical liability action unless the plaintiff can
5 prove:

6 (1) Recklessness or willful misconduct by the health
7 care provider; and

8 (2) That the alleged harm, damage, breach, or tort
9 resulting in the personal injury was caused by the alleged
10 recklessness or willful misconduct.

11 2. For purposes of this section, an elective procedure
12 that is delayed with good cause shall not be considered
13 recklessness or willful misconduct.

537.1015. 1. Notwithstanding any other provision of
2 law to the contrary, and except as otherwise provided in
3 this section, no individual or entity who designs,
4 manufactures, imports, distributes, labels, packages,
5 leases, sells, or donates a covered product shall be liable
6 in a COVID-19 products liability action if the individual or
7 entity:

8 (1) Does not make the covered product in the ordinary
9 course of business;

10 (2) Does make the covered product in the ordinary
11 course of business, however the emergency due to COVID-19
12 requires the covered product to be made in a modified
13 manufacturing process that is outside the ordinary course of
14 business; or

15 (3) Does make the covered product in the ordinary
16 course of business and use of the covered product is
17 different than its recommended purpose and used in response
18 to the emergency due to COVID-19.

19 2. For a plaintiff to prevail in a COVID-19 products
20 liability action over the use or misuse of a covered
21 product, the plaintiff shall prove by clear and convincing
22 evidence:

23 (1) Recklessness or willful misconduct by the
24 individual or entity; and

25 (2) That the alleged harm, damage, breach, or tort
26 resulting in the personal injury was caused by the alleged
27 recklessness or willful misconduct.

28 3. The provisions of this section shall not apply to
29 any fraud in connection with the advertisement of any
30 covered product.

31 4. The provisions of this section shall apply to any
32 claim for damages that has a causal relationship with the
33 administration to or use by an individual of a covered
34 product, including a causal relationship with the design,
35 development, clinical testing or investigation, manufacture,
36 labeling, distribution, formulation, packaging, marketing,
37 promotion, sale, purchase, lease, donation, dispensing,
38 prescribing, administration, licensing, or use of such
39 covered product.

40 5. The provisions of this section shall apply only if
41 the covered product was administered or used for the
42 treatment of or protection against COVID-19.

43 6. The provisions of this section shall apply to a
44 covered product regardless of whether such covered product
45 is obtained by donation, commercial sale, or any other means

46 of distribution by or in partnership with federal, state, or
47 local public health officials or the private sector.

537.1020. In any COVID-19 related action, punitive
2 damages:

3 (1) May be awarded in accordance with sections 510.261
4 to 510.265 and subsection 8 of section 538.210; and

5 (2) Shall not exceed an amount in excess of nine times
6 the amount of compensatory damages awarded.

537.1035. 1. The provisions of sections 537.1000 to
2 537.1035 shall expire four years after the effective date of
3 this act.

4 2. Except as otherwise explicitly provided for in the
5 provisions of sections 537.1000 to 537.1035, nothing in
6 sections 537.1000 to 537.1035 expands any liability
7 otherwise imposed or limits any defense otherwise available.

8 3. A statutory cause of action for damages arising out
9 of an actual, feared, or potential for exposure to COVID-19,
10 an act or omission by a health care provider in the course
11 of arranging for or providing COVID-19 related health care
12 services, or the design, manufacturing, importing,
13 distribution, labeling, packaging, lease, sale, or donation
14 of a covered product is hereby created in sections 537.1000
15 to 537.1035, replacing any such common law cause of action
16 and, except as described in subdivisions (1) to (10) of this
17 subsection, sections 537.1000 to 537.1035 preempts and
18 supersedes any state law, including statutes, regulations,
19 rules, or standards that are enacted, promulgated, or
20 established under common law, related to the recovery for
21 personal injuries caused by actual, alleged, feared, or
22 potential for exposure to COVID-19, personal injuries caused
23 by, arising out of, or related to an act or omission by a
24 health care provider in the course of arranging for or

25 providing COVID-19 related health care services, or personal
26 injuries caused by the design, manufacturing, importing,
27 distribution, labeling, packaging, lease, sale, or donation
28 of a covered product.

29 (1) Nothing in sections 537.1000 to 537.1035 shall be
30 construed to affect the applicability of any provision of
31 law that imposes stricter limits on damages or liabilities
32 for personal injury or otherwise affords greater protection
33 to defendants in any COVID-19 related action, than are
34 provided in sections 537.1000 to 537.1035. Any such
35 provision of law shall be applied in addition to the
36 requirements of sections 537.1000 to 537.1035 and not in
37 lieu thereof.

38 (2) Nothing in sections 537.1000 to 537.1035 shall be
39 construed to affect the applicability of chapters 213, 285,
40 and 287.

41 (3) Nothing in sections 537.1000 to 537.1035 shall be
42 construed to impair, limit, or affect the authority of the
43 state or local government to bring any criminal, civil, or
44 administrative enforcement action against any individual or
45 entity.

46 (4) Nothing in sections 537.1000 to 537.1035 shall be
47 construed to affect the applicability of any provision of
48 law that creates a cause of action for intentional
49 discrimination on the basis of race, color, national origin,
50 religion, sex including pregnancy, disability, genetic
51 information, or age.

52 (5) Nothing in sections 537.1000 to 537.1035 shall be
53 construed to require or mandate a vaccination or affect the
54 applicability of any provision of law that creates a cause
55 of action for a vaccine-related personal injury.

56 (6) Nothing in sections 537.1000 to 537.1035 shall
57 prohibit an individual or entity from instituting a cause of
58 action regarding an order issued by the state or a local
59 government that requires an individual or entity engaged in
60 businesses, services, activities, or accommodations to
61 temporarily or permanently cease operation of such
62 businesses, services, activities, or accommodations.

63 (7) Nothing in sections 537.1000 to 537.1035 shall be
64 construed to affect the applicability of any provision of
65 law providing for a cause of action for breach of a contract
66 insuring against business interruption or for any action
67 brought pursuant to section 375.296, alleging that an
68 insurer has failed or refused to pay a contract insuring
69 against business interruption. In any such cause of action,
70 an insurer shall be entitled to raise all affirmative
71 defenses to which it is entitled.

72 (8) Nothing in sections 537.1000 to 537.1035 shall be
73 construed to affect the applicability of any provision of
74 law providing for a cause of action alleging price gouging,
75 noneducational related canceled events, or payment of
76 membership fees.

77 (9) Nothing in sections 537.1000 to 537.1035 shall be
78 construed to affect the applicability of any provision of
79 law providing for a cause of action for breach of a contract
80 against an educational institution for the refund of tuition
81 or costs.

82 (10) Nothing in sections 537.1000 to 537.1035 shall be
83 construed to affect the applicability of chapters 441, 534,
84 and 535 relating to residential property.

85 4. A COVID-19 exposure action shall not be commenced
86 in any court of this state later than two years after the

87 date of the actual, alleged, feared, or potential for
88 exposure to COVID-19.

89 5. A COVID-19 medical liability action shall not be
90 commenced in any court of this state later than one year
91 after the date of the discovery of the alleged harm, damage,
92 breach, or tort unless tolled for proof of fraud,
93 intentional concealment, or the presence of a foreign body
94 which has no therapeutic or diagnostic purpose or effect in
95 the person of the injured person.

96 6. A COVID-19 products liability action shall not be
97 commenced in any court of this state later than two years
98 after the date of the alleged harm, damage, breach, or tort
99 unless tolled for proof of fraud or intentional concealment.

Section B. Because of the impact of the COVID-19
2 pandemic on the economic recovery of this state, section A
3 of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace and
5 safety, and is hereby declared to be an emergency act within
6 the meaning of the constitution, and section A of this act
7 shall be in full force and effect upon its passage and
8 approval.

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