

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILLS NOS. 51 & 42
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
2 six new sections, to be known as sections 537.1000, 537.1005,
3 537.1010, 537.1015, 537.1020, and 537.1035, to read as follows:

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

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

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

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

13 (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

injury or risk of personal injury that occurred in the
course of the businesses, services, activities, or
accommodations of the individual or entity;

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

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

(b) Brought against a health care provider; and

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

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

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

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

(c) Alleging any harm, damage, breach, or tort
resulting in the personal injury alleged to have been caused
by, arising out of, or related to the design, manufacture,
importation, distribution, labeling, packaging, lease, sale,
or donation of a covered product;

(7) "COVID-19 related action", a COVID-19 exposure
action, a COVID-19 medical liability action, or a COVID-19
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

respective employers or agents of any such person or entity providing health care services, and any person, health care system, or other entity that takes measures to coordinate, arrange for, provide, verify, respond to, or address issues related to the delivery of health care services;

(12) "Individual or entity":

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

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

(c) State or local government;

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

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

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

(a) A legal duty; and

(b) The consequences to another party;

(16) "Religious organization", any church, synagogue, mosque, or any entity that has or would qualify for federal tax-exempt status as a nonprofit religious organization 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. A religious organization shall be
15 held liable under this subsection in a COVID-19 exposure
16 action for the acts or omissions of a third party if the
17 third party was an agent of the religious organization or
18 the religious organization had an obligation under general
19 common law principles to control the acts or omissions of
20 the third party.

21 3. There shall be a rebuttable presumption of an
22 assumption of risk by a plaintiff in a COVID-19 exposure
23 action when an individual or entity posts or maintains signs
24 or provides written notice which contains the warning notice
25 specified in this subsection. If a sign is posted or
26 maintained, the sign shall be placed in a clearly visible
27 location at the entrance of the business, service, activity,

or accommodation. The sign or written notice described in this subsection shall contain the following warning notice in a substantially similar form:

"WARNING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. For a plaintiff to prevail in a COVID-19 products 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. 1. In determining the percentage of
2 responsibility of any defendant, the trier of fact shall
3 determine that percentage as a percentage of the total fault
4 of all parties, including the plaintiff, who caused or
5 contributed to the total loss incurred by the plaintiff.

6 2. In determining the percentage of responsibility
7 pursuant to subsection 1 of this section, the trier of fact
8 shall consider:

9 (1) The nature of the conduct of each individual or
10 entity found to have caused or contributed to the loss
11 incurred by the plaintiff; and

12 (2) The nature and extent of the causal relationship
13 between the conduct of each such individual or entity and
14 the damages incurred by the plaintiff.

15 3. In any COVID-19 related action, punitive damages:

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

18 (2) Shall not exceed an amount in excess of nine times
19 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 a private educational institution for the refund of
81 tuition 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.