

SECOND EXTRAORDINARY SESSION

SENATE BILL NO. 1

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY AND SENATOR WHITE.

Read 1st time November 13, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5946S.02I

AN ACT

To repeal section 44.045, RSMo, and to enact in lieu thereof three new sections relating to civil actions arising during a declared state of emergency, with an emergency clause.

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

Section A. Section 44.045, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 44.045, 537.768, and 537.790, to read as follows:

44.045. 1. [Subject to approval by the state emergency management agency] During an emergency [declared by the governor], any health care provider [licensed, registered, or certified in this state or any state who agrees to be so deployed as provided in this section may be deployed to provide] **who provides** care as necessitated by the emergency, including care necessitated by mutual aid agreements between political subdivisions and other public and private entities under section 44.090[. During an emergency declared by the governor, health care providers deployed by the governor or any state agency], shall not be liable for any civil damages or administrative sanctions for any failure, in the delivery **or nondelivery** of health care necessitated by the emergency [during deployment], to exercise the skill and learning of an ordinarily careful health care provider in similar circumstances, but shall be liable for damages [due to willful and wanton], **including exemplary damages and damages for aggravating circumstances, when a person has sustained serious injury as a result of malicious misconduct or conduct that intentionally caused damage to the plaintiff for acts or omissions in rendering such care. Evidence of negligence including, but not limited to,**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 **indifference to or conscious disregard for the safety of others shall not**
19 **constitute malicious misconduct or intentional conduct.**

20 2. [In a declared state of emergency, the department of health and senior
21 services and the division of professional registration within the department of
22 commerce and insurance may release otherwise confidential contact and
23 licensure, registration, or certification information relating to health care
24 professionals to state, local, and private agencies to facilitate deployment.] For
25 **purposes of this section, the following terms mean:**

26 (1) **"Health care provider", any physician; hospital; health**
27 **maintenance organization; ambulatory surgical center; long-term care**
28 **facility including those licensed under chapter 198; dentist; registered**
29 **or licensed practical nurse; optometrist; podiatrist; pharmacist;**
30 **chiropractor; professional physical therapist; psychologist; physician-**
31 **in-training; any person authorized to provide consumer directed**
32 **services, personal care assistance services, or home based care, and the**
33 **respective employers or agents of any such person or entity providing**
34 **such services; any other person or entity that provides health care**
35 **services under the authority of a license or certificate, and the**
36 **employers or agents of any such person or entity; and any person,**
37 **health care system, or other entity that takes measures to coordinate,**
38 **arrange for, provide, verify, respond to, or address issues related to the**
39 **delivery of health care services;**

40 (2) **"Serious injury":**

41 (a) **A positive diagnosis of an injury or illness resulting in**
42 **medical treatment and inpatient hospitalization;**

43 (b) **Permanent impairment of a bodily function; or**

44 (c) **Death.**

45 3. **The provisions of this section shall apply to all civil actions**
46 **filed on or after the effective date of this act, and shall apply to all**
47 **claims described in this section based on acts or omissions occurring**
48 **during the state of emergency.**

537.768. 1. **As used in this section, the following terms mean:**

2 (1) **"Covered product", any product, or individual component**
3 **thereof, used in response to an emergency;**

4 (2) **"Emergency", the same meaning as defined in section 44.010;**

5 (3) **"Person", the same meaning as defined in section 144.010.**

6 2. **Notwithstanding the provisions of sections 537.760 to 537.765**

7 to the contrary, any person who designs, manufactures, labels, sells,
8 distributes, or donates a covered product in direct response to an
9 emergency shall not be liable in a civil action arising out of the
10 manufacture, design, importation, distribution, packaging, labeling,
11 lease, or sale of a covered product if the person:

12 (1) Does not make the covered product in the ordinary course of
13 the person's business;

14 (2) Does make the covered product in the ordinary course of the
15 person's business, however the emergency requires the covered product
16 to be made in a modified manufacturing process that is outside the
17 ordinary course of the person's business; or

18 (3) Does make the covered product in the ordinary course of the
19 person's business and use of the covered product is different than its
20 recommended purpose and used in response to the emergency.

21 3. Any person who selects or dispenses a covered product in
22 response to an emergency shall not be liable in any civil action for
23 injuries, death, or damages claimed to have arisen from the selection,
24 dispensation, or use of the covered product.

25 4. For a plaintiff to file and sustain a claim over the use or
26 misuse of a covered product, the plaintiff shall prove by clear and
27 convincing evidence that a person:

28 (1) Had actual knowledge that the product was defective and
29 that there was a substantial likelihood that the defect would cause the
30 injury that is the basis of the action; and

31 (2) Acted with a deliberate and flagrant disregard for the safety
32 of others; or

33 (3) Intentionally harmed the plaintiff.

34 5. Nothing in this section:

35 (1) Creates, recognizes, or ratifies a claim or cause of action of
36 any kind;

37 (2) Eliminates a required element of any claim;

38 (3) Affects rights, remedies, or protections under chapter 287,
39 including the exclusive application of such law; or

40 (4) Amends, repeals, alters, or affects any other immunity or
41 limitation of liability.

42 6. The provisions of this section shall apply to all civil actions
43 filed on or after the effective date of this act, and shall apply to all

44 claims described in this section based on acts or omissions occurring
45 during the emergency.

537.790. 1. As used in this section, the following terms mean:

2 (1) "Communicable disease", an illness due to an infectious agent
3 or its toxic products and transmitted, directly or indirectly, to a
4 susceptible host from an infected person, animal, or arthropod, through
5 the agency of an intermediate host or a vector, or through the
6 inanimate environment;

7 (2) "Emergency", the same meaning as defined in section 44.010;

8 (3) "Exposure claim", any claim or cause of action for damages,
9 losses, indemnification, contribution, or other relief arising out of or
10 based on exposure or potential exposure to a communicable disease or
11 other substance;

12 (4) "Person", the same meaning as defined in section 144.010;

13 (5) "Premises", real property in the possession and under the
14 control of a premises owner where the premises serves a commercial,
15 residential, educational, religious, governmental, cultural, charitable,
16 or health care purpose;

17 (6) "Premises owner", a person who, in whole or in part, owns,
18 leases, rents, maintains, or controls any premises;

19 (7) "Public health authority", an authority which is generally
20 accepted to have the expertise to issue statements that are based on
21 scientific or peer-reviewed evidence on public health matters.

22 2. Notwithstanding the provisions of section 537.787 to the
23 contrary, a premises owner shall not be liable for an exposure claim
24 which was related to an emergency and sustained on the premises
25 unless the plaintiff can prove by clear and convincing evidence that the
26 premises owner intentionally harmed the plaintiff without just cause
27 or acted with a deliberate and flagrant disregard for the safety of
28 others.

29 3. A premises owner who uses their premises, in whole or in part,
30 in a manner different than its normal use to assist in direct response
31 to an emergency, shall not be liable for an exposure claim on the
32 premises.

33 4. Any premises owner that operates in substantial compliance
34 with, or is reasonably consistent with, federal or state law or
35 regulation, executive order, health order of the director of the Missouri

36 department of health and senior services, or rule, regulation,
37 ordinance, or public health guidance issued by a public health
38 authority, which was applicable at the time the conduct or the risk
39 allegedly caused harm, shall not be liable for a claim related to conduct
40 intended to reduce an exposure claim.

41 **5. The provisions of this section shall apply to all civil actions**
42 **filed on or after the effective date of this act, and shall apply to all**
43 **claims described in this section based on acts or omissions occurring**
44 **during the emergency.**

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

✓

Bill

Copy