

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILLS NOS. 51 & 42
AN ACT

To amend chapter 537, RSMo, by adding thereto nine new sections relating to civil actions, with a penalty provision and 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 nine new sections, to be known as sections 537.1000, 537.1005,
3 537.1010, 537.1015, 537.1020, 537.1025, 537.1030, 537.1035, and
4 537.1040, to read as follows:

537.1000. As used in sections 537.1000 to 537.1040,
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;

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

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

13 (a) Brought by a person who suffered personal injury
14 or is at risk of suffering personal injury, or a
15 representative of a person who suffered personal injury or
16 is at risk of suffering personal injury;

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

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

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

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

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

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

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

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

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

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

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

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

55 (a) The diagnosis, prevention, or treatment of COVID-
56 19;

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

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

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

70 (10) "Harm":

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

73 (b) Economic and noneconomic losses;

74 (11) "Health care provider", any physician, hospital,
75 health maintenance organization, ambulatory surgical center,
76 long-term care facility including those licensed under
77 chapter 198, dentist, registered or licensed practical
78 nurse, optometrist, podiatrist, pharmacist, chiropractor,
79 professional physical therapist, psychologist, physician-in-
80 training, any person authorized to practice consumer
81 directed services, personal care assistance services, or
82 home-based care, any person providing behavioral or mental
83 health services, any person or entity that provides health
84 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) "Willful misconduct", an act or omission that is
taken:

(a) Intentionally to achieve a wrongful purpose;

(b) Knowingly without legal or factual justification;

and

118 (c) In disregard of a known or obvious risk that is so
119 great as to make it highly probable that the harm will
120 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. There shall be a conclusive presumption of an
13 assumption of risk by a plaintiff in a COVID-19 exposure
14 action when an individual or entity posts or maintains signs
15 which contain the warning notice specified in this
16 subsection. Such signs shall be placed in a clearly visible
17 location at the entrance of the business, service, activity,
18 or accommodation. The sign described in this subsection
19 shall contain the following warning notice in a
20 substantially similar form:

21 "WARNING

22 Under Missouri law, any individual entering the
23 premises waives all civil liability against the
24 individual or entity for any damages based on
25 inherent risks associated with an exposure or
26 potential exposure to COVID-19, except for
27 recklessness or willful misconduct."

28 3. Adoption of or changes to policies, practices, or
29 procedures of an individual or entity in order to address or
30 mitigate the spread of COVID-19 after the time of the

31 actual, alleged, feared, or potential for exposure to COVID-
32 19, shall not be considered evidence of liability or
33 culpability.

34 4. Nothing in this section shall require an individual
35 or entity to establish a written or published policy
36 addressing the spread of COVID-19.

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

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

43 (2) The third party was an agent of the individual or
44 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 by clear and convincing evidence:

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 directly caused by the
10 alleged recklessness or willful misconduct.

11 2. For purposes of this section, acts, omissions, or
12 decisions resulting from a resource or staffing shortage or
13 from new or modified health and safety procedures, including
14 deferral of medical procedures and treatment, shall not be
15 considered 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 file and sustain a claim in a
20 COVID-19 products liability action over the use or misuse of
21 a covered product, the plaintiff shall prove by clear and
22 convincing 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 directly caused by the
27 alleged recklessness or willful misconduct.

28 3. The provisions of subsection 1 of this section
29 shall not apply to any fraud in connection with the
30 advertisement of any covered product.

31 4. The provisions of subsection 1 of this section
32 shall apply to any claim for damages that has a causal
33 relationship with the administration to or use by an
34 individual of a covered product, including a causal
35 relationship with the design, development, clinical testing
36 or investigation, manufacture, labeling, distribution,
37 formulation, packaging, marketing, promotion, sale,

purchase, lease, donation, dispensing, prescribing,
administration, licensing, or use of such covered product.

5. The provisions of subsection 1 of this section
shall apply only if the covered product was administered or
used for the treatment of or protection against COVID-19 or
the category of health conditions or threats to health
resulting from COVID-19.

6. The provisions of this section shall apply to a
covered product regardless of whether such covered product
is obtained by donation, commercial sale, or any other means
of distribution by or in partnership with federal, state, or
local public health officials or the private sector.

537.1020. 1. Notwithstanding the provisions of
section 537.067 to the contrary, an individual or entity
against whom a final judgment is entered in any COVID-19
related action shall be liable solely for the portion of the
judgment that corresponds to the relative and proportionate
responsibility of that individual or entity. In determining
the percentage of responsibility of any defendant, the trier
of fact shall determine that percentage as a percentage of
the total fault of all individuals or entities, including
the plaintiff, who caused or contributed to the total loss
incurred by the plaintiff.

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

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

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

21 3. Notwithstanding subsection 1 of this section to the
22 contrary, in any COVID-19 related action the liability of a
23 defendant is joint and several if the trier of fact
24 specifically determines that the defendant:

25 (1) Acted with specific intent to injure the
26 plaintiff; or

27 (2) Knowingly committed fraud.

28 4. Nothing in this section affects the right, under
29 any other law, of a defendant to contribution with respect
30 to another defendant determined under subsection 3 of this
31 section to have acted with specific intent to injure the
32 plaintiff or to have knowingly committed fraud.

33 5. In any COVID-19 related action:

34 (1) The award of compensatory damages shall be limited
35 to economic losses incurred as the result of the personal
36 injury, harm, damage, breach, or tort, except that the court
37 may award damages for noneconomic losses if the trier of
38 fact determines that the personal injury, harm, damage,
39 breach, or tort was caused by the willful misconduct of the
40 individual or entity;

41 (2) Punitive damages:

42 (a) May be awarded in accordance with sections 510.261
43 to 510.265 and subsection 8 of section 538.210; and

44 (b) Shall not exceed the amount of compensatory
45 damages awarded; and

46 (3) The amount of monetary damages awarded to a
47 plaintiff shall be reduced by the amount of compensation
48 received by the plaintiff from another source in connection
49 with the personal injury, harm, damage, breach, or tort,
50 such as insurance or reimbursement by a government.

537.1025. In any COVID-19 related action that is filed
2 in a court of this state and is maintained as a class action:

3 (1) An individual or entity shall only be a member of
4 the class if the individual or entity affirmatively elects
5 to be a member; and

6 (2) The court, in addition to any other notice
7 required by applicable state law, shall direct notice of the
8 action to each member of the class, which shall include:

9 (a) A concise and clear description of the nature of
10 the action;

11 (b) The jurisdiction where the case is pending; and

12 (c) The fee arrangement with class counsel, including
13 the hourly fee being charged or if the fee is on a
14 contingency basis, the percentage of the final award which
15 will be paid, including an estimate of the total amount that
16 would be paid if the requested damages were to be granted,
17 and if the cost of the litigation is being financed, a
18 description of the financing arrangement.

537.1030. 1. If any person transmits or causes
2 another to transmit in any form and by any means a demand
3 for remuneration in exchange for settling, releasing,
4 waiving, or otherwise not pursuing a claim that is, or could
5 be, brought as part of a COVID-19 related action, the party
6 receiving such a demand shall have a cause of action for the
7 recovery of damages occasioned by such demand and for
8 declaratory judgment if the claim for which the demand was
9 transmitted was meritless.

10 2. Damages available under subsection 1 of this
11 section shall include:

12 (1) Compensatory damages, including costs incurred in
13 responding to the demand; and

14 (2) Punitive damages, if the court determines that the
15 defendant had knowledge or was reckless with regard to the
16 fact that the claim was meritless.

17 3. In an action commenced under subsection 1 of this
18 section, if the plaintiff is a prevailing party, the court
19 shall allow, in addition to any judgment awarded to a
20 plaintiff, reasonable attorney's fees and costs of the
21 action to be paid by the defendant.

22 4. (1) Whenever the attorney general has reasonable
23 cause to believe that any person or group of persons is
24 engaged in a pattern or practice of transmitting demands for
25 remuneration in exchange for settling, releasing, waiving,
26 or otherwise not pursuing a claim that is, or could be,
27 brought as part of a COVID-19 related action and that is
28 meritless, the attorney general may commence a civil action
29 in any appropriate court of this state.

30 (2) In a civil action under subdivision (1) of this
31 subsection, the court may, to vindicate the public interest,
32 assess a civil penalty against the respondent in an amount
33 not exceeding fifty thousand dollars per transmitted demand
34 for remuneration in exchange for settling, releasing,
35 waiving, or otherwise not pursuing a claim that is meritless.

537.1035. 1. The provisions of sections 537.1000 to
2 537.1040 shall apply to any cause of action filed on or
3 after the effective date of this act.

4 2. Except as otherwise explicitly provided for in the
5 provisions of sections 537.1000 to 537.1040, nothing in
6 sections 537.1000 to 537.1040 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 537.1040, replacing any such common law cause of action
16 and, except as described in subdivisions (1) to (5) of this
17 subsection, sections 537.1000 to 537.1040 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 537.1040 shall be
30 construed to affect the applicability of any provision of
31 state law that imposes stricter limits on damages or
32 liabilities for personal injury or otherwise affords greater
33 protection to defendants in any COVID-19 related action,
34 than are provided in sections 537.1000 to 537.1040. Any
35 such provision of state law shall be applied in addition to
36 the requirements of sections 537.1000 to 537.1040 and not in
37 lieu thereof.

38 (2) Nothing in section 537.1005 shall be construed to
39 affect the applicability of chapter 287.

40 (3) Nothing in sections 537.1000 to 537.1040 shall be
41 construed to impair, limit, or affect the authority of the
42 state or local government to bring any criminal, civil, or
43 administrative enforcement action against any individual or
44 entity.

45 (4) Nothing in sections 537.1000 to 537.1040 shall be
46 construed to affect the applicability of any provision of
47 any state law that creates a cause of action for intentional

48 discrimination on the basis of race, color, national origin,
49 religion, sex including pregnancy, disability, genetic
50 information, or age.

51 (5) Nothing in sections 537.1000 to 537.1040 shall be
52 construed to require or mandate a vaccination or affect the
53 applicability of any provision of law that creates a cause
54 of action for a vaccine-related personal injury.

55 4. A COVID-19 exposure action shall not be commenced
56 in any court of this state later than one year after the
57 date of the actual, alleged, feared, or potential for
58 exposure to COVID-19.

59 5. A COVID-19 medical liability action shall not be
60 commenced in any court of this state later than one year
61 after the date of the alleged harm, damage, breach, or tort
62 unless tolled for proof of fraud, intentional concealment,
63 or the presence of a foreign body which has no therapeutic
64 or diagnostic purpose or effect in the person of the injured
65 person.

66 6. A COVID-19 products liability action shall not be
67 commenced in any court of this state later than one year
68 after the date of the alleged harm, damage, breach, or tort
69 unless tolled for proof of fraud or intentional concealment.

537.1040. If any provision of sections 537.1005 to
2 537.1035 or the application of such provision to any person
3 or circumstance is held to be unconstitutional, the
4 remaining provisions of sections 537.1005 to 537.1035, as
5 well as the application of such provisions to any person
6 other than the parties to the action holding the provision
7 to be unconstitutional, or to any circumstance other than
8 those presented in such action, shall not be affected
9 thereby.

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.