AN ACT

To amend chapter 537, RSMo, by adding thereto nine 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 nine new sections, to be known as sections 537.1000, 537.1005, 537.1010, 537.1015, 537.1020, 537.1025, 537.1030, 537.1035, and 537.1040, to read as follows:

537.1000. As used in sections 537.1000 to 537.1040, 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;

(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:

(a) Brought by a person who suffered personal injury or is at risk of suffering personal injury, or a representative of a person who suffered personal injury or is at risk or suffering personal injury;
(b) Brought against an individual or entity engaged in businesses, services, activities, or accommodations; and
(c) Alleging that an actual, alleged, feared, or 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;

(8) "COVID-19 related health care services", any act or omission by a health care provider, regardless of the location, that relates to:
   (a) The diagnosis, prevention, or treatment of COVID-19;
   (b) The assessment or care of an individual with a confirmed or suspected case of COVID-19; or
   (c) The care of any individual who is admitted to, presents to, receives services from, or resides at, a health care provider for any purpose if such health care provider's decisions or activities with respect to such individual are impacted as a result of COVID-19;

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

(10) "Harm":
   (a) Physical and nonphysical contact that results in personal injury to an individual; and
   (b) Economic and noneconomic losses;

(11) "Health care provider", any physician, hospital, health maintenance organization, ambulatory surgical center, long-term care facility including those licensed under chapter 198, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist, psychologist, physician-in-training, any person authorized to practice consumer
directed services, personal care assistance services, or home-based care, any person or entity that provides health 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
(c) In disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

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

(1) The individual or entity engaged in recklessness or willful misconduct that caused an actual exposure to COVID-19; and
(2) The actual exposure to COVID-19 caused the personal injury of the plaintiff.

2. There shall be a conclusive presumption of an assumption of risk by a plaintiff in a COVID-19 exposure action when an individual or entity posts or maintains signs which contain the warning notice specified in this subsection. Such signs shall be placed in a clearly visible location at the entrance of the business, service, activity, or accommodation. The sign described in this subsection shall contain the following warning notice in a substantially similar form:

"WARNING
Under Missouri law, any individual entering the premises waives all civil liability against the individual or entity for any damages based on
3. 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.

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

5. 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 by clear and convincing evidence:

   (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 directly caused by the alleged recklessness or willful misconduct.
2. For purposes of this section, acts, omissions, or decisions resulting from a resource or staffing shortage or from new or modified health and safety procedures, including deferral of medical procedures and treatment, 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 file and sustain a claim in a COVID-19 products liability action over the use or misuse of a covered product, the plaintiff shall prove by clear and convincing evidence:

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

(2) That the alleged harm, damage, breach, or tort resulting in the personal injury was directly caused by the alleged recklessness or willful misconduct.
3. The provisions of subsection 1 of this section shall not apply to the act, use, or employment by any individual or entity of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the design, manufacture, importation, distribution, labeling, packaging, lease, sale, or donation of any covered product.

4. The provisions of subsection 1 of this section shall apply to any claim for damages that has a causal relationship with the administration to or use by an individual of a covered product, including a causal relationship with the design, development, clinical testing or investigation, manufacture, labeling, distribution, 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.

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

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

   (2) Knowingly committed fraud.

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

5. In any COVID-19 related action:

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

(2) Punitive damages:
(a) May be awarded in accordance with sections 510.261 to 510.265 and subsection 8 of section 538.210; and
(b) Shall not exceed the amount of compensatory damages awarded; and

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

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

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

(2) The court, in addition to any other notice required by applicable state law, shall direct notice of the action to each member of the class, which shall include:
(a) A concise and clear description of the nature of the action;
(b) The jurisdiction where the case is pending; and
(c) The fee arrangement with class counsel, including the hourly fee being charged or if the fee is on a contingency basis, the percentage of the final award which will be paid, including an estimate of the total amount that would be paid if the requested damages were to be granted, and if the cost of the litigation is being financed, a description of the financing arrangement.
537.1030. 1. If any person transmits or causes another to transmit in any form and by any means a demand for remuneration in exchange for settling, releasing, waiving, or otherwise not pursuing a claim that is, or could be, brought as part of a COVID-19 related action, the party receiving such a demand shall have a cause of action for the recovery of damages occasioned by such demand and for declaratory judgment if the claim for which the letter was transmitted was meritless.

2. Damages available under subsection 1 of this section shall include:
   (1) Compensatory damages, including costs incurred in responding to the demand; and
   (2) Punitive damages, if the court determines that the defendant had knowledge or was reckless with regard to the fact that the claim was meritless.

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

4. (1) Whenever the attorney general has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of transmitting demands for remuneration in exchange for settling, releasing, waiving, or otherwise not pursuing a claim that is, or could be, brought as part of a COVID-19 related action and that is meritless, the attorney general may commence a civil action in any appropriate court of this state.
   (2) In a civil action under subdivision (1) of this subsection, the court may, to vindicate the public interest, assess a civil penalty against the respondent in an amount
not exceeding fifty thousand dollars per transmitted demand
for remuneration in exchange for settling, releasing,
waiving, or otherwise not pursuing a claim that is meritless.

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

2. Except as otherwise explicitly provided for in the
provisions of sections 537.1000 to 537.1040, nothing in
sections 537.1000 to 537.1040 expands any liability
otherwise imposed or limits any defense otherwise available.

3. Except as described in subdivisions (1) to (5) of
this subsection, sections 537.1000 to 537.1040 preempts and
supersedes any state law, including statutes, regulations,
rules, or standards that are enacted, promulgated, or
established under common law, related to the recovery for
personal injuries caused by actual, alleged, feared, or
potential for exposure to COVID-19, personal injuries caused
by, arising out of, or related to an act or omission by a
health care provider in the course of arranging for or
providing COVID-19 related health care services, or personal
injuries caused by the design, manufacturing, importing,
distribution, labeling, packaging, lease, sale, or donation
of a covered product.

(1) Nothing in sections 537.1000 to 537.1040 shall be
construed to affect the applicability of any provision of
state law that imposes stricter limits on damages or
liabilities for personal injury or otherwise affords greater
protection to defendants in any COVID-19 related action,
than are provided in sections 537.1000 to 537.1040. Any
such provision of state law shall be applied in addition to
the requirements of sections 537.1000 to 537.1040 and not in
lieu thereof.
(2) Nothing in section 537.1005 shall be construed to affect the applicability of chapter 287.

(3) Nothing in sections 537.100 to 537.1040 shall be construed to impair, limit, or affect the authority of the state or local government to bring any criminal, civil, or administrative enforcement action against any individual or entity.

(4) Nothing in sections 537.1000 to 537.1040 shall be construed to affect the applicability of any provision of any state law that creates a cause of action for intentional discrimination on the basis of race, color, national origin, religion, sex including pregnancy, disability, genetic information, or age.

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

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

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

6. A COVID-19 products liability action shall not be commenced in any court of this state later than one year after the date of the alleged harm, damage, breach, or tort unless tolled for proof of fraud or intentional concealment.
537.1040. If any provision of sections 537.1005 to 537.1035 or the application of such provision to any person or circumstance is held to be unconstitutional, the remaining provisions of sections 537.1005 to 537.1035, as well as the application of such provisions to any person other than the parties to the action holding the provision to be unconstitutional, or to any circumstance other than those presented in such action, shall not be affected thereby.

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