

FIRST REGULAR SESSION

SENATE BILL NO. 42

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

0408S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 44.045 and 537.065, RSMo, and to enact in lieu thereof four new sections relating to civil actions based on acts occurring during emergencies, with an emergency clause.

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

Section A. Sections 44.045 and 537.065, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as
3 sections 44.045, 537.065, 537.768, and 537.790, to read as
4 follows:

44.045. 1. Subject to approval by the state emergency
2 management agency during an emergency declared by the
3 governor, any health care provider licensed, registered, or
4 certified in this state or any state who agrees to be so
5 deployed as provided in this section may be deployed to
6 provide care as necessitated by the emergency, including
7 care necessitated by mutual aid agreements between political
8 subdivisions and other public and private entities under
9 section 44.090. During an emergency declared by the
10 governor, health care providers deployed by the governor or
11 any state agency shall not be liable for any civil damages
12 or administrative sanctions for any failure, in the delivery
13 of health care necessitated by the emergency during
14 deployment, to exercise the skill and learning of an
15 ordinarily careful health care provider in similar

16 circumstances, but shall be liable for damages due to
17 willful and wanton acts or omissions in rendering such care.

18 2. In a declared state of emergency, the department of
19 health and senior services and the division of professional
20 registration within the department of commerce and insurance
21 may release otherwise confidential contact and licensure,
22 registration, or certification information relating to
23 health care professionals to state, local, and private
24 agencies to facilitate deployment.

25 3. (1) Any health care provider whether or not under
26 an official deployment who provides care as necessitated by
27 the COVID-19 pandemic, including care necessitated by mutual
28 aid agreements between political subdivisions and other
29 public and private entities under section 44.090, shall not
30 be liable for any civil damages or administrative sanctions
31 for any failure, in the delivery or nondelivery of health
32 care rendered in connection with the COVID-19 pandemic, to
33 exercise the skill and learning of an ordinary careful
34 health care provider in similar circumstances, but shall be
35 liable for damages, including exemplary damages and damages
36 for aggravating circumstances, when a person has sustained
37 serious injury as a result of malicious misconduct or
38 conduct that intentionally caused damage to the plaintiff
39 for acts or omissions in rendering such care. Evidence of
40 negligence including, but not limited to, indifference to or
41 conscious disregard for the safety of others shall not
42 constitute malicious misconduct or intentional conduct.
43 Such limitations on liability for civil damages shall only
44 apply to acts or omissions that occur during the period of
45 time in which the governor has declared a state of emergency
46 due to COVID-19. The limitations on liability in this
47 subsection shall not extend to medical treatments or

48 procedures, facility operations, or other services performed
49 that were not related to the COVID-19 pandemic.

50 (2) For purposes of this subsection, the following
51 terms mean:

52 (a) "COVID-19", the severe acute respiratory syndrome
53 coronavirus 2;

54 (b) "Health care provider":

55 a. Any physician, hospital, health maintenance
56 organization, ambulatory surgical center, long-term care
57 facility including those licensed under chapter 198,
58 dentist, registered or licensed practical nurse,
59 optometrist, podiatrist, pharmacist, chiropractor,
60 professional physical therapist, psychologist, physician-in-
61 training, and the employers or agents of any such person;

62 b. Any person or entity authorized to provide consumer
63 directed services, personal care assistance services, or
64 home based care and the employers or agents of any such
65 person or entity providing such services;

66 c. Any person or entity that provides health care
67 services under the authority of a license or certificate,
68 and the employers or agents of any such person or entity;

69 d. Any person, health care system, or other entity
70 that takes measures to coordinate, arrange for, provide,
71 refer, consults upon, verify, respond to, or address issues
72 related to the delivery of health care services; or

73 e. Any individual permitted to provide health care
74 services in the state due to a declared public health
75 emergency;

76 (c) "Serious Injury":

77 a. A positive diagnosis of an injury or illness
78 resulting in medical treatment and inpatient hospitalization;

79 b. Permanent impairment of a bodily function; or

80 c. Death.

81 (3) The provisions of this subsection shall apply to
82 all civil actions filed on or after the effective date of
83 this act, and shall apply to all claims described in this
84 subsection based on acts or omissions occurring during a
85 declared state of emergency due to COVID-19.

537.065. 1. Any person having an unliquidated claim
2 for damages against a tort-feasor, on account of personal
3 injuries, bodily injuries, or death, provided that, such
4 tort-feasor's insurer or indemnitor has the opportunity to
5 defend the tort-feasor without reservation but refuses to do
6 so, may enter into a contract with such tort-feasor or any
7 insurer on his or her behalf or both, whereby, in
8 consideration of the payment of a specified amount, the
9 person asserting the claim agrees that in the event of a
10 judgment against the tort-feasor, neither such person nor
11 any other person, firm, or corporation claiming by or
12 through him or her will levy execution, by garnishment or as
13 otherwise provided by law, except against the specific
14 assets listed in the contract and except against any insurer
15 which insures the legal liability of the tort-feasor for
16 such damage and which insurer is not excepted from
17 execution, garnishment or other legal procedure by such
18 contract. Execution or garnishment proceedings in aid
19 thereof shall lie only as to assets of the tort-feasor
20 specifically mentioned in the contract or the insurer or
21 insurers not excluded in such contract. Such contract, when
22 properly acknowledged by the parties thereto, may be
23 recorded in the office of the recorder of deeds in any
24 county where a judgment may be rendered, or in the county of
25 the residence of the tort-feasor, or in both such counties,
26 and if the same is so recorded then such tort-feasor's

27 property, except as to the assets specifically listed in the
28 contract, shall not be subject to any judgment lien as the
29 result of any judgment rendered against the tort-feasor,
30 arising out of the transaction for which the contract is
31 entered into.

32 2. Before a judgment may be entered against any tort-
33 feasor after such tort-feasor has entered into a contract
34 under this section, the insurer or insurers shall be
35 provided with written notice of the execution of the
36 contract and shall have thirty days after receipt of such
37 notice to intervene as a matter of right in any pending
38 lawsuit involving the claim for damages.

39 3. The provisions of this section shall apply to any
40 covenant not to execute or any contract to limit recovery to
41 specified assets, regardless of whether it is referred to as
42 a contract under this section.

43 4. Nothing in this section shall be construed to
44 prohibit an insured from bringing a separate action
45 asserting that the insurer acted in bad faith.

46 5. **No claims described in sections 44.045, 537.768,**
47 **and 537.790 based on acts or omissions occurring during a**
48 **state of emergency, as defined in section 44.010, due to the**
49 **severe acute respiratory syndrome coronavirus 2 shall be the**
50 **subject of any contract to limit recovery or covenant not to**
51 **execute as described in this section. Any such contract or**
52 **covenant not to execute shall be null and void as against**
53 **public policy. Any arbitration award, judgment, or other**
54 **judicial order applicable to any claim or lawsuit that is**
55 **the subject of any contract or covenant not to execute**
56 **prohibited by this subsection shall be null and void as**
57 **against public policy.**

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

(1) "COVID-19", severe acute respiratory syndrome coronavirus 2;

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

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

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

2. Notwithstanding the provisions of sections 537.760 to 537.765 to the contrary, any person who designs, manufactures, imports, distributes, packages, labels, leases, sells, or donates a covered product in direct response to the COVID-19 emergency shall not be liable in a civil action arising out of the design, manufacture, importation, distribution, packaging, labeling, lease, sale, or donation of a covered product if the person:

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

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

(3) Does make the covered product in the ordinary course of the person's business and use of the covered product is in a modified manner in response to the COVID-19 emergency.

3. Any person who selects or dispenses a covered product in response to the COVID-19 emergency shall not be liable in any civil action for injuries, death, or damages

33 claimed to have arisen from the selection, dispensation, or
34 use of the covered product.

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

38 (1) Had actual knowledge that the product was
39 defective and that there was a substantial likelihood that
40 the defect would cause the injury that is the basis of the
41 action; and

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

44 (3) Intentionally harmed the plaintiff.

45 5. Nothing in this section:

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

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

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

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

54 6. The provisions of this section shall apply to all
55 civil actions filed on or after the effective date of this
56 act, and shall apply to all claims described in this section
57 based on acts or omissions occurring during a declared state
58 of emergency due to COVID-19.

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

3 (1) "COVID-19", severe acute respiratory syndrome
4 coronavirus 2;

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

7 (3) "Exposure claim", any claim or cause of action for
8 damages, losses, indemnification, contribution, or other
9 relief arising out of or based on exposure or potential
10 exposure to COVID-19;

11 (4) "First responder", the same meaning as defined in
12 section 67.145;

13 (5) "Health care provider", the same meaning as
14 defined in subsection 3 of section 44.045;

15 (6) "Person", the same meaning as defined in section
16 144.010;

17 (7) "Premises", real property in the possession, and
18 under the control of, a premises owner where the premises
19 serves a commercial, residential, educational, religious,
20 governmental, cultural, charitable, or health care purpose;

21 (8) "Premises owner", a person who, in whole or in
22 part, owns, leases, rents, maintains, or controls any
23 premises;

24 (9) "Public health authority", an authority which is
25 generally accepted to have the expertise to issue statements
26 that are based on scientific or peer-reviewed evidence on
27 public health matters.

28 2. Notwithstanding the provisions of section 537.787
29 to the contrary, a premises owner shall not be liable for an
30 exposure claim sustained on the premises which was related
31 to an emergency due to COVID-19 unless the plaintiff can
32 prove by clear and convincing evidence that the premises
33 owner intentionally harmed the plaintiff without just cause
34 or acted with a deliberate and flagrant disregard for the
35 safety of others. There shall be a rebuttable presumption
36 of an assumption of risk by a claimant in an exposure claim
37 when a premise owner posts or maintains signs which contain
38 the warning notice specified in this subsection. Such signs

39 shall be placed in a clearly visible location at the
40 entrance of the premises. The warning notice specified in
41 this subsection shall appear on the sign in black letters on
42 a white background with each letter to be a minimum of one
43 inch height. The sign described in this subsection shall
44 contain the following warning notice:

45 "WARNING

46 Under Missouri law, any individual entering the
47 premises waives all civil liability against the
48 premise owner for any damages based on the
49 inherent risks associated with an exposure or
50 potential exposure to COVID-19, except for an
51 intentional infliction of harm or a deliberate
52 or fragrant disregard for the safety of others."

53 3. A premises owner who uses their premises, in whole
54 or in part, to provide health care services; to provide
55 shelter to health care patients, health care providers, or
56 first responders; or for quarantine purposes in direct
57 response to an emergency due to COVID-19, shall not be
58 liable for an exposure claim on the premises.

59 4. Any premises owner that operates in substantial
60 compliance with, or is reasonably consistent with, federal
61 or state law or regulation, executive order, health order of
62 the director of the Missouri department of health and senior
63 services, or rule, regulation, ordinance, or public health
64 guidance issued by a public health authority, which was
65 applicable at the time the conduct or the risk allegedly
66 caused harm, shall not be liable for a claim related to
67 conduct intended to reduce an exposure claim.

68 5. The provisions of this section shall apply to all
69 civil actions filed on or after the effective date of this
70 act, and shall apply to all claims described in this section

71 **based on acts or omissions occurring during a declared state**
72 **of emergency due to COVID-19.**

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

✓