

SENATE BILL NO. 51

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

0961S.01I

ADRIANE D. CROUSE, Secretary

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
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) "Applicable government standards, regulations, and
4 guidance":**

**5 (a) Any mandatory standards or regulations
6 specifically concerning the prevention or mitigation of the
7 transmission of COVID-19 issued by the federal, state, or
8 local government with jurisdiction over an individual or
9 entity, whether provided by executive, judicial, or
10 legislative order; and**

**11 (b) With respect to an individual or entity that, at
12 the time of the actual, alleged, feared, or potential for
13 exposure to COVID-19 is not subject to any mandatory
14 standards or regulations described in paragraph (a) of this
15 subdivision, any standards, regulations, or guidance
16 specifically concerning the prevention or mitigation of the
17 transmission of COVID-19 issued by the federal, state, or**

18 local government with jurisdiction over the individual or
19 entity;

20 (2) "Businesses, services, activities, or
21 accommodations", any act by an individual or entity,
22 irrespective of whether the act is carried on for profit;

23 (3) "Covered product", a pandemic or epidemic product,
24 drug, biological product, device, or an individual component
25 thereof to combat COVID-19;

26 (4) "COVID-19", any disease, health condition, or
27 threat of harm caused by the severe acute respiratory
28 syndrome coronavirus 2 or a virus mutating therefrom;

29 (5) "COVID-19 exposure action", a civil action:

30 (a) Brought by a person who suffered personal injury
31 or is at risk of suffering personal injury, or a
32 representative of a person who suffered personal injury or
33 is at risk or suffering personal injury;

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

36 (c) Alleging that an actual, alleged, feared, or
37 potential for exposure to COVID-19 caused the personal
38 injury or risk of personal injury that:

39 a. Occurred in the course of the businesses, services,
40 activities, or accommodations of the individual or entity;
41 and

42 b. Occurred:

43 (i) On or after December 1, 2019; and

44 (ii) Before the later of October 1, 2024 or the date
45 on which there is no state of emergency declared by
46 proclamation by the governor or by resolution of the general
47 assembly pursuant to chapter 44 that is in effect with
48 respect to COVID-19.

49 The term "COVID-19 exposure action" shall not include a
50 criminal, civil, or administrative enforcement action
51 brought by the state or a local government or a claim
52 alleging intentional discrimination on the basis of race,
53 color, national origin, religion, sex including pregnancy,
54 disability, genetic information, or age;

55 (6) "COVID-19 medical liability action", a civil
56 action:

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

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

60 (c) Alleging any harm, damage, breach, or tort
61 resulting in the personal injury alleged to have been caused
62 by, arising out of, or related to a health care provider's
63 act or omission in the course of arranging for or providing
64 COVID-19 related health care services that occurred:

65 a. On or after December 1, 2019; and

66 b. Before the later of October 1, 2024 or the date on
67 which there is no state of emergency declared by
68 proclamation of the governor or by resolution of the general
69 assembly pursuant to chapter 44 that is in effect with
70 respect to COVID-19.

71 The term "COVID-19 medical liability action" shall not
72 include a criminal, civil, or administrative enforcement
73 action brought by the state or a local government or a claim
74 alleging intentional discrimination on the basis of race,
75 color, national origin, religion, sex including pregnancy,
76 disability, genetic information, or age;

77 (7) "COVID-19 products liability action", a civil
78 action:

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

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

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

90 (i) On or after December 1, 2019; and

91 (ii) Before the later of October 1, 2024 or the date
92 on which there is no state of emergency declared by
93 proclamation of the governor or by resolution of the general
94 assembly pursuant to chapter 44 that is in effect with
95 respect to COVID-19.

96 The term "COVID-19 products liability action" shall not
97 include a criminal, civil, or administrative enforcement
98 action brought by the state or a local government or a claim
99 alleging intentional discrimination on the basis of race,
100 color, national origin, religion, sex including pregnancy,
101 disability, genetic information, or age;

102 (8) "COVID-19 related action", a COVID-19 exposure
103 action, a COVID-19 medical liability action, or a COVID-19
104 products liability action;

105 (9) "COVID-19 related health care services", services
106 provided by a health care provider, regardless of the
107 location where the services are provided, that relate to:

108 (a) The diagnosis, prevention, or treatment of COVID-
109 19;

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

112 (c) The care of any individual who is admitted to,
113 presents to, receives services from, or resides at, a health
114 care provider for any purpose during the period of a
115 declared state of emergency pursuant to chapter 44 due to
116 COVID-19, if such provider's decisions or activities with
117 respect to such individual are impacted as a result of COVID-
118 19;

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

125 (11) "Government", an agency, instrumentality, or
126 other entity of the federal, state, or local government,
127 including multijurisdictional agencies;

128 (12) "Gross negligence", a conscious, voluntary act or
129 omission in reckless disregard of:

130 (a) A legal duty;

131 (b) The consequences to another party; and

132 (c) Applicable government standards, regulations, and
133 guidance;

134 (13) "Harm":

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

137 (b) Economic and noneconomic losses;

138 (14) "Health care provider":

139 (a) Any person, including an agent, volunteer subject
140 to paragraph (c) of this subdivision, contractor, employee,
141 or other entity, who is:

142 a. Required by state law to be licensed, registered,
143 or certified to provide health care and is so licensed,

144 registered, or certified, or is exempt from any such
145 requirement;

146 b. Otherwise authorized by state law to provide care
147 including services and supports furnished in a home or
148 community based residential setting under MO HealthNet or a
149 waiver of that program; or

150 c. Considered under applicable state law to be a
151 health care provider, health care professional, health care
152 institution, or health care facility;

153 (b) A health care facility administrator, executive,
154 supervisor, board member or trustee, or another individual
155 responsible for directing, supervising, or monitoring the
156 provision of COVID-19 related health care services in a
157 comparable role; and

158 (c) Volunteers that meet the following criteria:

159 a. The volunteer is a health care professional
160 providing COVID-19 related health care services; and

161 b. The act or omission by the volunteer occurs in:

162 (i) The course of providing health care services;

163 (ii) The health care professional's capacity as a
164 volunteer;

165 (iii) The course of providing health care services
166 that are within the scope of the license, registration, or
167 certification of the volunteer as defined by the state and
168 does not exceed the scope of the license, registration, or
169 certification of a substantially similar health professional
170 in the state; and

171 (iv) A good-faith belief that the individual being
172 treated is in need of health care services;

173 (15) "Individual or entity":

174 (a) Any natural person, corporation, company, trade,
175 business, firm, partnership, joint stock company,

176 educational institution, labor organization, or similar
177 organization or group of organizations;

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

181 (c) State or local government;

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

186 (17) "Mandatory", with respect to applicable
187 government standards, regulations, and guidance, the
188 standards or regulations are themselves enforceable by the
189 issuing government through criminal, civil, or
190 administrative action;

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

196 (19) "State", the state of Missouri;

197 (20) "Willful misconduct", an act or omission that is
198 taken:

199 (a) Intentionally to achieve a wrongful purpose;

200 (b) Knowingly without legal or factual justification;

201 and

202 (c) In disregard of a known or obvious risk that is so
203 great as to make it highly probable that the harm will
204 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) In engaging in the businesses, services,
8 activities, or accommodations, the individual or entity was
9 not making reasonable efforts in light of all the
10 circumstances to comply with the applicable government
11 standards, regulations, and guidance in effect at the time
12 of the actual, alleged, feared, or potential for exposure to
13 COVID-19;

14 (2) The individual or entity engaged in gross
15 negligence or willful misconduct that caused an actual
16 exposure to COVID-19; and

17 (3) The actual exposure to COVID-19 caused the
18 personal injury of the plaintiff.

19 2. (1) If more than one government to whose
20 jurisdiction an individual or entity is subject issues
21 applicable government standards, regulations, and guidance,
22 and the applicable government standards, regulations, and
23 guidance issued by one or more of the governments conflicts
24 with the applicable government standards, regulations, and
25 guidance issued by one or more of the other governments, the
26 individual or entity shall be considered to have made
27 reasonable efforts in light of all the circumstances to
28 comply with the applicable government standards,
29 regulations, and guidance for the purposes of subdivision
30 (1) of subsection 1 of this section unless the plaintiff
31 establishes by clear and convincing evidence that the
32 individual or entity was not making reasonable efforts in
33 light of all the circumstances to comply with any of the
34 conflicting applicable government standards, regulations,

35 and guidance issued by any government to whose jurisdiction
36 the individual or entity is subject.

37 (2) If mandatory standards and regulations
38 constituting applicable government standards, regulations,
39 and guidance issued by any government with jurisdiction over
40 the individual or entity conflict with applicable government
41 standards, regulations, and guidance that are not mandatory
42 and are issued by any other government with jurisdiction
43 over the individual or entity or by the same government that
44 issued the mandatory standards and regulations, the
45 plaintiff may establish that the individual or entity did
46 not make reasonable efforts in light of all the
47 circumstances to comply with the applicable government
48 standards, regulations, and guidance for purposes of
49 subdivision (1) of subsection 1 of this section by
50 establishing by clear and convincing evidence that the
51 individual or entity was not making reasonable efforts in
52 light of all the circumstances to comply with the mandatory
53 standards and regulations to which the individual or entity
54 was subject.

55 3. (1) If an individual or entity engaged in
56 businesses, services, activities, or accommodations
57 maintained a written or published policy on the mitigation
58 of transmission of COVID-19 at the time of the actual,
59 alleged, feared, or potential for exposure to COVID-19 that
60 complied with, or was more protective than, the applicable
61 government standards, regulations, and guidance to which the
62 individual or entity was subject, the individual or entity
63 shall be presumed to have made reasonable efforts in light
64 of all the circumstances to comply with the applicable
65 government standards, regulations, and guidance for purposes
66 of subdivision (1) of subsection 1 of this section.

67 (2) The plaintiff may rebut the presumption under
68 subdivision (1) of this subsection by establishing that the
69 individual or entity was not complying with the written or
70 published policy at the time of the actual, alleged, feared,
71 or potential for exposure to COVID-19.

72 (3) The absence of a written or published policy shall
73 not give rise to a presumption that the individual or entity
74 did not make reasonable efforts in light of all the
75 circumstances to comply with the applicable government
76 standards, regulations, and guidance for purposes of
77 subdivision (1) of subsection 1 of this section.

78 4. For purposes of subdivision (1) of subsection 1 of
79 this section, a change to a policy or practice by an
80 individual or entity before or after the actual, alleged,
81 feared, or potential for exposure to COVID-19, shall not be
82 evidence of liability for the actual, alleged, feared, or
83 potential for exposure to COVID-19.

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

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

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

92 6. Changes to the policies, practices, or procedures
93 of an individual or entity in order to comply with the
94 applicable government standards, regulations, and guidance
95 after the time of the actual, alleged, feared, or potential
96 for exposure to COVID-19, shall not be considered evidence
97 of liability or culpability.

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) Gross negligence 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 gross negligence or willful misconduct.

2. For purposes of this section, acts, omissions, or decisions resulting from a resource or staffing shortage shall not be considered gross negligence 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.

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) Gross negligence 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 gross negligence or willful misconduct.

28 3. The provisions of subsection 1 of this section
29 applies to any claim for damages that has a causal
30 relationship with the administration to or use by an
31 individual of a covered product, including a causal
32 relationship with the design, development, clinical testing
33 or investigation, manufacture, labeling, distribution,
34 formulation, packaging, marketing, promotion, sale,
35 purchase, lease, donation, dispensing, prescribing,
36 administration, licensing, or use of such covered product.

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

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

537.1020. 1. Notwithstanding the provisions of
2 section 537.067 to the contrary, an individual or entity
3 against whom a final judgment is entered in any COVID-19
4 related action shall be liable solely for the portion of the

5 judgment that corresponds to the relative and proportionate
6 responsibility of that individual or entity. In determining
7 the percentage of responsibility of any defendant, the trier
8 of fact shall determine that percentage as a percentage of
9 the total fault of all individuals or entities, including
10 the plaintiff, who caused or contributed to the total loss
11 incurred by the plaintiff.

12 2. (1) In any COVID-19 related action, the court
13 shall instruct the jury to answer special interrogatories,
14 or, if there is no jury, the court shall make findings with
15 respect to each defendant, including defendants who have
16 entered into settlements with the plaintiff or plaintiffs,
17 concerning the percentages of responsibility, if any, of
18 each defendant, measured as a percentage of the total fault
19 of all individuals or entities who caused or contributed to
20 the loss incurred by the plaintiff.

21 (2) In determining the percentage of responsibility
22 under this subsection, the trier of fact shall consider:

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

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

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

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

35 (2) Knowingly committed fraud.

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

41 5. In any COVID-19 related action:

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

49 (2) Punitive damages:

50 (a) May be awarded only if the trier of fact
51 determines that the personal injury to the plaintiff was
52 caused by the willful misconduct of the individual or
53 entity; and

54 (b) Shall not exceed the amount of compensatory
55 damages awarded; and

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

537.1025. 1. In any COVID-19 related action that is
2 filed in a court of this state and is maintained as a class
3 action:

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

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

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

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

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

20 allow a reasonable attorney's fee to be paid by the
21 defendant, and costs of the action.

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.

36 (3) If the attorney general obtains civil penalties in
37 accordance with subdivision (2) of this subsection, the
38 attorney general shall distribute the proceeds equitably
39 among those persons aggrieved by the respondent's pattern or
40 practice of transmitting demands for remuneration in
41 exchange for settling, releasing, waiving, or otherwise not
42 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. Except as described in subdivisions (1) to (4) of
9 this subsection, sections 537.1000 to 537.1040 preempts and

10 supersedes any state law, including statutes, regulations,
11 rules, or standards that are enacted, promulgated, or
12 established under common law, related to the recovery for
13 personal injuries caused by actual, alleged, feared, or
14 potential for exposure to COVID-19, personal injuries caused
15 by, arising out of, or related to an act or omission by a
16 health care provider in the course of arranging for or
17 providing COVID-19 related health care services, or personal
18 injuries caused by the design, manufacturing, importing,
19 distribution, labeling, packaging, lease, sale, or donation
20 of a covered product.

21 (1) Nothing in sections 537.1000 to 537.1040 shall be
22 construed to affect the applicability of any provision of
23 state law that imposes stricter limits on damages or
24 liabilities for personal injury or otherwise affords greater
25 protection to defendants in any COVID-19 related action,
26 than are provided in sections 537.1000 to 537.1040. Any
27 such provision of state law shall be applied in addition to
28 the requirements of sections 537.1000 to 537.1040 and not in
29 lieu thereof.

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

32 (3) Nothing in sections 537.1000 to 537.1040 shall be
33 construed to impair, limit, or affect the authority of the
34 state or local government to bring any criminal, civil, or
35 administrative enforcement action against any individual or
36 entity.

37 (4) Nothing in sections 537.1000 to 537.1040 shall be
38 construed to affect the applicability of any provision of
39 any state law that creates a cause of action for intentional
40 discrimination on the basis of race, color, national origin,

41 religion, sex including pregnancy, disability, genetic
42 information, or age.

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

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

54 6. A COVID-19 products liability action shall not be
55 commenced in any court of this state later than one year
56 after the date of the alleged harm, damage, breach, or tort
57 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.

✓