

SECOND EXTRAORDINARY SESSION OF THE  
SECOND REGULAR SESSION

# HOUSE BILL NO. 3

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

0692H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal section 44.045, RSMo, and to enact in lieu thereof three new sections relating to civil actions arising during a 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Section A. Section 44.045, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 44.045, 537.768, and 537.790, to read as follows: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 the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 **indifference to or conscious disregard for the safety of others shall not constitute**  
16 **intentional conduct or malicious conduct.**

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

21 **For purposes of this section, the following terms mean:**

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

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

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

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

37 (c) **Death.**

38 3. **The provisions of this section shall apply to all civil actions filed on or after the**  
39 **effective date of this section, and shall apply to all claims described in this section based on**  
40 **acts or omissions occurring 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 thereof, used in**  
3 **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 section 537.760 to the contrary, any person who designs,**  
7 **manufactures, labels, sells, distributes, or donates a covered product in direct response to**  
8 **an emergency shall not be liable in a civil action arising out of the manufacture, design,**  
9 **importation, distribution, packaging, labeling, lease, or sale of a covered product if the**  
10 **person:**

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

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

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

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

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

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

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

28           (3) Intentionally harmed the plaintiff.

29           5. Nothing in this section:

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

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

32           (3) Affects rights, remedies, or protections under the Workers' Compensation Act,  
33 including the exclusive application of such law; or

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

35           6. The provisions of this section shall apply to all civil actions filed on or after the  
36 effective date of this section, and shall apply to all claims described in this section based on  
37 acts or omissions occurring 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 or its toxic  
3 products and transmitted, directly or indirectly, to a susceptible host from an infected  
4 person, animal or arthropod, or through the agency of an intermediate host or a vector,  
5 or through the inanimate environment;

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

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

- 10           (4) "First responder", the same meaning as defined in section 67.145;
- 11           (5) "Health care provider", the same meaning as defined in section 44.045;
- 12           (6) "Person", the same meaning as defined in section 144.010;
- 13           (7) "Premises", real property in the possession and under the control of a premises
- 14 owner where the premises serves a commercial, residential, educational, religious,
- 15 governmental, cultural, charitable, or health care purpose;
- 16           (8) "Premises owner", a person who, in whole or in part, owns, leases, rents,
- 17 maintains, or controls any premises;
- 18           (9) "Public health authority", an authority which is generally accepted to have the
- 19 expertise to issue statements that are based on scientific or peer-reviewed evidence on
- 20 public health matters.
- 21           2. Notwithstanding section 537.787 to the contrary, a premises owner shall not be
- 22 liable for an exposure claim which was related to an emergency and sustained on the
- 23 premises unless the plaintiff can prove by clear and convincing evidence that the premises
- 24 owner intentionally harmed the plaintiff without just cause or acted with a deliberate and
- 25 flagrant disregard for the safety of others.
- 26           3. A premises owner who uses their premises, in whole or in part, in a manner
- 27 different than its normal use to assist in direct response to an emergency, shall not be liable
- 28 for an exposure claim on the premises.
- 29           4. Any premises owner that operates in substantial compliance with, or is
- 30 reasonably consistent with, federal or state law or regulation; executive order; health order
- 31 of the director of the Missouri department of health and senior services; or rules,
- 32 regulations, ordinances, or public health guidance issued by a public health authority, that
- 33 was applicable at the time to the conduct or to the risk that allegedly caused harm, shall
- 34 not be liable for a claim related to conduct intended to reduce an exposure claim.
- 35           5. The provisions of this section shall apply to all civil actions filed on or after the
- 36 effective date of this section, and shall apply to all claims described in this section based on
- 37 acts or omissions occurring during the emergency.

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

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