

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Bill No. 37, Page 19, Section 334.291, Line 5, by inserting after all of said line the  
2 following:

3  
4 "537.1000. As used in sections 537.1000 to 537.1035, the following terms mean:

5 (1) "Businesses, services, activities, or accommodations", any act by an individual or entity,  
6 irrespective of whether the act is carried on for profit;

7 (2) "Covered product", a pandemic or epidemic product, drug, biological product, device, or an  
8 individual component thereof to combat COVID-19, excluding any vaccine or gene therapy;

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

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

12 (a) Brought by a person who suffered personal injury or a representative of a person who suffered  
13 personal injury;

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

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

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

20 (a) Brought by a person who suffered personal injury, or a representative of a person who suffered  
21 personal injury;

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

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

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

28 (a) Brought by a person who suffered personal injury or a representative of a person who suffered  
29 personal injury;

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

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

35 (7) "COVID-19 related action", a COVID-19 exposure action, a COVID-19 medical liability action,  
36 or a COVID-19 products liability action;

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

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

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1           (b) The assessment or care of an individual with a confirmed or suspected case of COVID-19; or  
 2           (c) The care of any individual who is admitted to, presents to, receives services from, or resides at, a  
 3 health care provider for any purpose if such health care provider's decisions or activities with respect to such  
 4 individual are impacted as a result of COVID-19;

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

9           (10) "Harm":

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

11           (b) Economic and noneconomic losses;

12           (11) "Health care provider", any physician, hospital, health maintenance organization, ambulatory  
 13 surgical center, long-term care facility including those licensed under chapter 198, dentist, registered or  
 14 licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist,  
 15 psychologist, physician-in-training, any person authorized to practice consumer directed services, personal  
 16 care assistance services, or home-based care, any person providing behavioral or mental health services, any  
 17 person or entity that provides health care services pursuant to a license or certificate, and the respective  
 18 employers or agents of any such person or entity providing health care services, and any person, health care  
 19 system, or other entity that takes measures to coordinate, arrange for, provide, verify, respond to, or address  
 20 issues related to the delivery of health care services;

21           (12) "Individual or entity":

22           (a) Any natural person, employee, public employee, employer, corporation, company, trade,  
 23 business, firm, partnership, joint stock company, educational institution, labor organization, or similar  
 24 organization or group of organizations;

25           (b) Any nonprofit organization, foundation, society, or association organized for religious, charitable,  
 26 educational, or other purposes; or

27           (c) State or local government;

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

30           (14) "Personal injury", actual or potential physical injury to an individual or death caused by a  
 31 physical injury and includes mental suffering, emotional distress, or similar injuries suffered by an individual  
 32 in connection with a physical injury;

33           (15) "Recklessness", a conscious, voluntary act or omission in reckless disregard of:

34           (a) A legal duty; and

35           (b) The consequences to another party;

36           (16) "Religious organization", any church, synagogue, mosque, or any entity that has or would  
 37 qualify for federal tax-exempt status as a nonprofit religious organization under Section 501(c) of the Internal  
 38 Revenue Code;

39           (17) "Willful misconduct", an act or omission that is taken:

40           (a) Intentionally to achieve a wrongful purpose; or

41           (b) In disregard of a known or obvious risk that is so great as to make it highly probable that the  
 42 harm will outweigh the benefit.

43           537.1005. 1. Notwithstanding any other provision of law to the contrary, and except as otherwise  
 44 provided in this section, no individual or entity engaged in businesses, services, activities, or  
 45 accommodations shall be liable in any COVID-19 exposure action unless the plaintiff can prove by clear and  
 46 convincing evidence that:

47           (1) The individual or entity engaged in recklessness or willful misconduct that caused an actual  
 48 exposure to COVID-19; and

49           (2) The actual exposure to COVID-19 caused the personal injury of the plaintiff.

50           2. No religious organization shall be liable in any COVID-19 exposure action unless the plaintiff can  
 51 prove intentional misconduct.

52           3. There shall be a rebuttable presumption of an assumption of risk by a plaintiff in a COVID-19  
 53 exposure action when an individual or entity posts or maintains signs or provides written notice which

1 contains the warning notice specified in this subsection. If a sign is posted or maintained, the sign shall be  
 2 placed in a clearly visible location at the entrance of the business, service, activity, or accommodation. The  
 3 sign or written notice described in this subsection shall contain the following warning notice in a substantially  
 4 similar form:

5  
 6 "WARNING

7 Under Missouri law, any individual entering the  
 8 premises or engaging the services of the business  
 9 waives all civil liability against the individual  
 10 or entity for any damages based on inherent risks  
 11 associated with an exposure or potential exposure  
 12 to COVID-19, except for recklessness or willful  
 13 misconduct."

14  
 15 No religious organization shall be required to post or maintain a sign or provide written notice containing the  
 16 warning notice specified in this subsection.

17 4. Adoption of or changes to policies, practices, or procedures of an individual or entity in order to  
 18 address or mitigate the spread of COVID-19 after the time of the actual, alleged, feared, or potential for  
 19 exposure to COVID-19, shall not be considered evidence of liability or culpability.

20 5. Nothing in this section shall require an individual or entity to establish a written or published  
 21 policy addressing the spread of COVID-19, including any policy requiring or mandating a vaccination or  
 22 requiring proof of vaccination.

23 6. No individual or entity shall be held liable in a COVID-19 exposure action for the acts or  
 24 omissions of a third party, unless:

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

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

28 537.1010. 1. Notwithstanding any other provision of law to the contrary, and except as provided in  
 29 subsection 2 of this section, no health care provider shall be liable in a COVID-19 medical liability action  
 30 unless the plaintiff can prove:

31 (1) Recklessness or willful misconduct by the health care provider; and

32 (2) That the alleged harm, damage, breach, or tort resulting in the personal injury was caused by the  
 33 alleged recklessness or willful misconduct.

34 2. For purposes of this section, an elective procedure that is delayed with good cause shall not be  
 35 considered recklessness or willful misconduct.

36 537.1015. 1. Notwithstanding any other provision of law to the contrary, and except as otherwise  
 37 provided in this section, no individual or entity who designs, manufactures, imports, distributes, labels,  
 38 packages, leases, sells, or donates a covered product shall be liable in a COVID-19 products liability action if  
 39 the individual or entity:

40 (1) Does not make the covered product in the ordinary course of business;

41 (2) Does make the covered product in the ordinary course of business, however the emergency due  
 42 to COVID-19 requires the covered product to be made in a modified manufacturing process that is outside the  
 43 ordinary course of business; or

44 (3) Does make the covered product in the ordinary course of business and use of the covered product  
 45 is different than its recommended purpose and used in response to the emergency due to COVID-19.

46 2. For a plaintiff to prevail in a COVID-19 products liability action over the use or misuse of a  
 47 covered product, the plaintiff shall prove by clear and convincing evidence:

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

49 (2) That the alleged harm, damage, breach, or tort resulting in the personal injury was caused by the  
 50 alleged recklessness or willful misconduct.

51 3. The provisions of this section shall not apply to any fraud in connection with the advertisement of  
 52 any covered product.

1           4. The provisions of this section shall apply to any claim for damages that has a causal relationship  
2 with the administration to or use by an individual of a covered product, including a causal relationship with  
3 the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation,  
4 packaging, marketing, promotion, sale, purchase, lease, donation, dispensing, prescribing, administration,  
5 licensing, or use of such covered product.

6           5. The provisions of this section shall apply only if the covered product was administered or used for  
7 the treatment of or protection against COVID-19.

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

11           537.1020. In any COVID-19 related action, punitive damages:

12           (1) May be awarded in accordance with sections 510.261 to 510.265 and subsection 8 of section  
13 538.210; and

14           (2) Shall not exceed an amount in excess of nine times the amount of compensatory damages  
15 awarded.

16           537.1035. 1. The provisions of sections 537.1000 to 537.1035 shall expire four years after the  
17 effective date of this act.

18           2. Except as otherwise explicitly provided for in the provisions of sections 537.1000 to 537.1035,  
19 nothing in sections 537.1000 to 537.1035 expands any liability otherwise imposed or limits any defense  
20 otherwise available.

21           3. A statutory cause of action for damages arising out of an actual, feared, or potential for exposure  
22 to COVID-19, an act or omission by a health care provider in the course of arranging for or providing  
23 COVID-19 related health care services, or the design, manufacturing, importing, distribution, labeling,  
24 packaging, lease, sale, or donation of a covered product is hereby created in sections 537.1000 to 537.1035,  
25 replacing any such common law cause of action and, except as described in subdivisions (1) to (10) of this  
26 subsection, sections 537.1000 to 537.1035 preempts and supersedes any state law, including statutes,  
27 regulations, rules, or standards that are enacted, promulgated, or established under common law, related to the  
28 recovery for personal injuries caused by actual, alleged, feared, or potential for exposure to COVID-19,  
29 personal injuries caused by, arising out of, or related to an act or omission by a health care provider in the  
30 course of arranging for or providing COVID-19 related health care services, or personal injuries caused by  
31 the design, manufacturing, importing, distribution, labeling, packaging, lease, sale, or donation of a covered  
32 product.

33           (1) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the applicability of any  
34 provision of law that imposes stricter limits on damages or liabilities for personal injury or otherwise affords  
35 greater protection to defendants in any COVID-19 related action, than are provided in sections 537.1000 to  
36 537.1035. Any such provision of law shall be applied in addition to the requirements of sections 537.1000 to  
37 537.1035 and not in lieu thereof.

38           (2) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the applicability of  
39 chapters 213, 285, and 287.

40           (3) Nothing in sections 537.1000 to 537.1035 shall be construed to impair, limit, or affect the  
41 authority of the state or local government to bring any criminal, civil, or administrative enforcement action  
42 against any individual or entity.

43           (4) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the applicability of any  
44 provision of law that creates a cause of action for intentional discrimination on the basis of race, color,  
45 national origin, religion, sex including pregnancy, disability, genetic information, or age.

46           (5) Nothing in sections 537.1000 to 537.1035 shall be construed to require or mandate a vaccination  
47 or affect the applicability of any provision of law that creates a cause of action for a vaccine-related personal  
48 injury.

49           (6) Nothing in sections 537.1000 to 537.1035 shall prohibit an individual or entity from instituting a  
50 cause of action regarding an order issued by the state or a local government that requires an individual or  
51 entity engaged in businesses, services, activities, or accommodations to temporarily or permanently cease  
52 operation of such businesses, services, activities, or accommodations.

53           (7) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the applicability of any

1 provision of law providing for a cause of action for breach of a contract insuring against business interruption  
2 or for any action brought pursuant to section 375.296, alleging that an insurer has failed or refused to pay a  
3 contract insuring against business interruption. In any such cause of action, an insurer shall be entitled to  
4 raise all affirmative defenses to which it is entitled.

5 (8) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the applicability of any  
6 provision of law providing for a cause of action alleging price gouging, noneducational related canceled  
7 events, or payment of membership fees.

8 (9) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the applicability of any  
9 provision of law providing for a cause of action for breach of a contract against an educational institution for  
10 the refund of tuition or costs.

11 (10) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the applicability of  
12 chapters 441, 534, and 535 relating to residential property.

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

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

19 6. A COVID-19 products liability action shall not be commenced in any court of this state later than  
20 two years after the date of the alleged harm, damage, breach, or tort unless tolled for proof of fraud or  
21 intentional concealment.

22 Section B. Because of the impact of the COVID-19 pandemic on the economic recovery of this state,  
23 the enactment of sections 537.1000 to 537.1035 of section A of this act is deemed necessary for the  
24 immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an  
25 emergency act within the meaning of the constitution, and the enactment of sections 537.1000 to 537.1035 of  
26 section A of this act shall be in full force and effect upon its passage and approval."; and

27  
28 Further amend said bill by amending the title, enacting clause, and intersectional references  
29 accordingly.