

FIRST REGULAR SESSION

HOUSE BILL NO. 1064

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WIEMANN.

2279H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

537.1000. As used in sections 537.1000 to 537.1035, 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, excluding any vaccine or gene therapy;**

(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 a representative of a person who suffered 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;**

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.

- 17 **(5) "COVID-19 medical liability action", a civil action:**
18 **(a) Brought by a person who suffered personal injury, or a representative of a**
19 **person who suffered personal injury;**
20 **(b) Brought against a health care provider; and**
21 **(c) Alleging any harm, damage, breach, or tort resulting in the personal injury**
22 **alleged to have been caused by, arising out of, or related to a health care provider's act or**
23 **omission in the course of arranging for or providing COVID-19 related health care services**
24 **if such health care provider's decisions or activities with respect to such person are**
25 **impacted as a result of COVID-19;**
- 26 **(6) "COVID-19 products liability action", a civil action:**
27 **(a) Brought by a person who suffered personal injury or a representative of a**
28 **person who suffered personal injury;**
29 **(b) Brought against an individual or entity engaged in the design, manufacturing,**
30 **importing, distribution, labeling, packaging, lease, sale, or donation of a covered product;**
31 **and**
32 **(c) Alleging any harm, damage, breach, or tort resulting in the personal injury**
33 **alleged to have been caused by, arising out of, or related to the design, manufacture,**
34 **importation, distribution, labeling, packaging, lease, sale, or donation of a covered**
35 **product;**
- 36 **(7) "COVID-19 related action", a COVID-19 exposure action, a COVID-19 medical**
37 **liability action, or a COVID-19 products liability action;**
- 38 **(8) "COVID-19 related health care services", any act or omission by a health care**
39 **provider, regardless of the location, that relates to:**
40 **(a) The diagnosis, prevention, or treatment of COVID-19;**
41 **(b) The assessment or care of an individual with a confirmed or suspected case of**
42 **COVID-19; or**
43 **(c) The care of any individual who is admitted to, presents to, receives services**
44 **from, or resides at, a health care provider for any purpose if such health care provider's**
45 **decisions or activities with respect to such individual are impacted as a result of COVID-**
46 **19;**
- 47 **(9) "Employer", any person serving as an employer or acting directly in the interest**
48 **of an employer in relation to an employee. The term "employer" shall include a public**
49 **entity, but shall not include any labor organization, other than when acting as an employer,**
50 **or any person acting in the capacity of officer or agent of such labor organization;**
- 51 **(10) "Harm":**

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

54 (b) Economic and noneconomic losses;

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

66 (12) "Individual or entity":

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

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

72 (c) State or local government;

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

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

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

81 (a) A legal duty; and

82 (b) The consequences to another party;

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

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

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

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

2 537.1005. 1. Notwithstanding any other provision of law to the contrary, and
3 except as otherwise provided in this section, no individual or entity engaged in businesses,
4 services, activities, or accommodations shall be liable in any COVID-19 exposure action
5 unless the plaintiff can prove by clear and convincing evidence that:

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

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

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

11 3. There shall be a rebuttable presumption of an assumption of risk by a plaintiff
12 in a COVID-19 exposure action when an individual or entity posts or maintains signs or
13 provides written notice which contains the warning notice specified in this subsection. If
14 a sign is posted or maintained, the sign shall be placed in a clearly visible location at the
15 entrance of the business, service, activity, or accommodation. The sign or written notice
16 described in this subsection shall contain the following warning notice in a substantially
17 similar form:

18 **"WARNING**

19 **Under Missouri law, any individual entering the**
20 **premises or engaging the services of the business**
21 **waives all civil liability against the individual**
22 **or entity for any damages based on inherent risks**
23 **associated with an exposure or potential exposure**
24 **to COVID-19, except for recklessness or willful**
25 **misconduct."**

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

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

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

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

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

39 **(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
2 **except as provided in subsection 2 of this section, no health care provider shall be liable in**
3 **a COVID-19 medical liability action unless the plaintiff can prove:**

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

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

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

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

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

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

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

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

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

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

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

19 **4. The provisions of this section shall apply to any claim for damages that has a**
20 **causal relationship with the administration to or use by an individual of a covered product,**
21 **including a causal relationship with the design, development, clinical testing or**
22 **investigation, manufacture, labeling, distribution, formulation, packaging, marketing,**

23 promotion, sale, purchase, lease, donation, dispensing, prescribing, administration,
24 licensing, or use of such covered product.

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

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

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

2 **(1) May be awarded in accordance with sections 510.261 to 510.265 and subsection**
3 **8 of section 538.210; and**

4 **(2) Shall not exceed an amount in excess of nine times the amount of compensatory**
5 **damages awarded.**

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

3 **2. Except as otherwise explicitly provided for in the provisions of sections 537.1000**
4 **to 537.1035, nothing in sections 537.1000 to 537.1035 expands any liability otherwise**
5 **imposed or limits any defense otherwise available.**

6 **3. A statutory cause of action for damages arising out of an actual, feared, or**
7 **potential for exposure to COVID-19, an act or omission by a health care provider in the**
8 **course of arranging for or providing COVID-19 related health care services, or the design,**
9 **manufacturing, importing, distribution, labeling, packaging, lease, sale, or donation of a**
10 **covered product is hereby created in sections 537.1000 to 537.1035, replacing any such**
11 **common law cause of action and, except as described in subdivisions (1) to (10) of this**
12 **subsection, sections 537.1000 to 537.1035 preempts and supersedes any state law, including**
13 **statutes, regulations, rules, or standards that are enacted, promulgated, or established**
14 **under common law, related to the recovery for personal injuries caused by actual, alleged,**
15 **feared, or potential for exposure to COVID-19, personal injuries caused by, arising out of,**
16 **or related to an act or omission by a health care provider in the course of arranging for or**
17 **providing COVID-19 related health care services, or personal injuries caused by the**
18 **design, manufacturing, importing, distribution, labeling, packaging, lease, sale, or donation**
19 **of a covered product.**

20 **(1) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the**
21 **applicability of any provision of law that imposes stricter limits on damages or liabilities**
22 **for personal injury or otherwise affords greater protection to defendants in any COVID-19**
23 **related action, than are provided in sections 537.1000 to 537.1035. Any such provision of**

24 law shall be applied in addition to the requirements of sections 537.1000 to 537.1035 and
25 not in lieu thereof.

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

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

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

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

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

43 (7) Nothing in sections 537.1000 to 537.1035 shall be construed to affect the
44 applicability of any provision of law providing for a cause of action for breach of a contract
45 insuring against business interruption or for any action brought pursuant to section
46 375.296, alleging that an insurer has failed or refused to pay a contract insuring against
47 business interruption. In any such cause of action, an insurer shall be entitled to raise all
48 affirmative defenses to which it is entitled.

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

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

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

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

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

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

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

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