

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE NO. 2 FOR

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILLS NOS. 51 & 42

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

0961S.08P

ADRIANE D. CROUSE, Secretary

## 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:

14 (a) Brought by a person who suffered personal injury  
15 or a representative of a person who suffered personal injury;

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

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

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

25 (a) Brought by a person who suffered personal injury,  
26 or a representative of a person who suffered personal injury;

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

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

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

37 (a) Brought by a person who suffered personal injury  
38 or a representative of a person who suffered personal injury;

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

43 (c) Alleging any harm, damage, breach, or tort  
44 resulting in the personal injury alleged to have been caused  
45 by, arising out of, or related to the design, manufacture,

46 importation, distribution, labeling, packaging, lease, sale,  
47 or donation of a covered product;

48 (7) "COVID-19 related action", a COVID-19 exposure  
49 action, a COVID-19 medical liability action, or a COVID-19  
50 products liability action;

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

54 (a) The diagnosis, prevention, or treatment of COVID-  
55 19;

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

58 (c) The care of any individual who is admitted to,  
59 presents to, receives services from, or resides at, a health  
60 care provider for any purpose if such health care provider's  
61 decisions or activities with respect to such individual are  
62 impacted as a result of COVID-19;

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

69 (10) "Harm":

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

72 (b) Economic and noneconomic losses;

73 (11) "Health care provider", any physician, hospital,  
74 health maintenance organization, ambulatory surgical center,  
75 long-term care facility including those licensed under  
76 chapter 198, dentist, registered or licensed practical  
77 nurse, optometrist, podiatrist, pharmacist, chiropractor,

78 professional physical therapist, psychologist, physician-in-  
79 training, any person authorized to practice consumer  
80 directed services, personal care assistance services, or  
81 home-based care, any person providing behavioral or mental  
82 health services, any person or entity that provides health  
83 care services pursuant to a license or certificate, and the  
84 respective employers or agents of any such person or entity  
85 providing health care services, and any person, health care  
86 system, or other entity that takes measures to coordinate,  
87 arrange for, provide, verify, respond to, or address issues  
88 related to the delivery of health care services;

89 (12) "Individual or entity":

90 (a) Any natural person, employee, public employee,  
91 employer, corporation, company, trade, business, firm,  
92 partnership, joint stock company, educational institution,  
93 labor organization, or similar organization or group of  
94 organizations;

95 (b) Any nonprofit organization, foundation, society,  
96 or association organized for religious, charitable,  
97 educational, or other purposes; or

98 (c) State or local government;

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

103 (14) "Personal injury", actual or potential physical  
104 injury to an individual or death caused by a physical injury  
105 and includes mental suffering, emotional distress, or  
106 similar injuries suffered by an individual in connection  
107 with a physical injury;

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

110 (a) A legal duty; and

111 (b) The consequences to another party;

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

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

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

119 (b) In disregard of a known or obvious risk that is so  
120 great as to make it highly probable that the harm will  
121 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) The individual or entity engaged in recklessness  
8 or willful misconduct that caused an actual exposure to  
9 COVID-19; and

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

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

15 3. There shall be a rebuttable presumption of an  
16 assumption of risk by a plaintiff in a COVID-19 exposure  
17 action when an individual or entity posts or maintains signs  
18 or provides written notice which contains the warning notice  
19 specified in this subsection. If a sign is posted or  
20 maintained, the sign shall be placed in a clearly visible

21 location at the entrance of the business, service, activity,  
22 or accommodation. The sign or written notice described in  
23 this subsection shall contain the following warning notice  
24 in a substantially similar form:

25 "WARNING

26 Under Missouri law, any individual entering the  
27 premises or engaging the services of the business  
28 waives all civil liability against the individual  
29 or entity for any damages based on inherent risks  
30 associated with an exposure or potential exposure  
31 to COVID-19, except for recklessness or willful  
32 misconduct."

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

36 4. Adoption of or changes to policies, practices, or  
37 procedures of an individual or entity in order to address or  
38 mitigate the spread of COVID-19 after the time of the  
39 actual, alleged, feared, or potential for exposure to COVID-  
40 19, shall not be considered evidence of liability or  
41 culpability.

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

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

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

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

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

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

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

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

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

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

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

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

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

23           (1) Recklessness 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 caused by the alleged  
27 recklessness or willful misconduct.

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

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

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

43           6. The provisions of this section shall apply to a  
44 covered product regardless of whether such covered product  
45 is obtained by donation, commercial sale, or any other means



46 of distribution by or in partnership with federal, state, or  
47 local public health officials or the private sector.

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

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

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

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

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

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

25 providing COVID-19 related health care services, or personal  
26 injuries caused by the design, manufacturing, importing,  
27 distribution, labeling, packaging, lease, sale, or donation  
28 of a covered product.

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

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

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

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

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

56           (6) Nothing in sections 537.1000 to 537.1035 shall  
57 prohibit an individual or entity from instituting a cause of  
58 action regarding an order issued by the state or a local  
59 government that requires an individual or entity engaged in  
60 businesses, services, activities, or accommodations to  
61 temporarily or permanently cease operation of such  
62 businesses, services, activities, or accommodations.

63           (7) Nothing in sections 537.1000 to 537.1035 shall be  
64 construed to affect the applicability of any provision of  
65 law providing for a cause of action for breach of a contract  
66 insuring against business interruption or for any action  
67 brought pursuant to section 375.296, alleging that an  
68 insurer has failed or refused to pay a contract insuring  
69 against business interruption. In any such cause of action,  
70 an insurer shall be entitled to raise all affirmative  
71 defenses to which it is entitled.

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

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

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

85           4. A COVID-19 exposure action shall not be commenced  
86 in any court of this state later than two years after the

87 date of the actual, alleged, feared, or potential for  
88 exposure to COVID-19.

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

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

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.

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