

FIRST REGULAR SESSION

HOUSE BILL NO. 759

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEWIS (6).

1666H.011

DANA RADEMAN MILLER, Chief Clerk

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 nine new sections, to be known as sections 537.1000, 537.1005, 537.1010, 537.1015, 537.1020, 537.1025, 537.1030, 537.1035, and 537.1040, to read as follows:

537.1000. As used in sections 537.1000 to 537.1040, the following terms mean:

(1) "Applicable government standards, regulations, and guidance":

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

(b) With respect to an individual or entity that, at the time of the actual, alleged, feared, or potential for exposure to COVID-19, is not subject to any mandatory standards or regulations described in paragraph (a) of this subdivision, any standards, regulations, or guidance specifically concerning the prevention or mitigation of the transmission of COVID-19 issued by the federal, state, or local government with jurisdiction over the individual or entity;

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

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

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

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

20 (a) Brought by a person who suffered personal injury or is at risk of suffering
21 personal injury, or a representative of a person who suffered personal injury or is at risk
22 of suffering personal injury;

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

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

27 a. Occurred in the course of the businesses, services, activities, or accommodations
28 of the individual or entity; and

29 b. Occurred:

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

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

34

35 The term "COVID-19 exposure action" shall not include a criminal, civil, or
36 administrative enforcement action brought by the state or a local government or a claim
37 alleging intentional discrimination on the basis of race, color, national origin, religion, sex,
38 pregnancy, disability, genetic information, or age;

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

40 (a) Brought by a person who suffered personal injury, or a representative of a
41 person who suffered personal injury;

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

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

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

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

51

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

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

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

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

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

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

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

70

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

75 (8) "COVID-19 related action", a COVID-19 exposure action, a COVID-19 medical
76 liability action, or a COVID-19 products liability action;

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

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

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

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

86 (10) "Employer", any person serving as an employer or acting directly in the
87 interest of an employer in relation to an employee. The term "employer" shall include a

88 public entity but shall not include any labor organization, other than when acting as an
89 employer, or any person acting in the capacity of officer or agent of such labor
90 organization;

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

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

95 (a) A legal duty;

96 (b) The consequences to another party; and

97 (c) Applicable government standards, regulations, and guidance;

98 (13) "Harm":

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

101 (b) Economic and noneconomic losses;

102 (14) "Health care provider":

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

105 a. Required by state law to be licensed, registered, or certified to provide health
106 care and is so licensed, registered, or certified, or is exempt from any such requirement;

107 b. Otherwise authorized by state law to provide care including services and
108 supports furnished in a home- or community-based residential setting under MO
109 HealthNet or a waiver of that program; or

110 c. Considered under applicable state law to be a health care provider, health care
111 professional, health care institution, or health care facility;

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

115 (c) Volunteers that meet the following criteria:

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

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

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

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

121 (iii) The course of providing health care services that are within the scope of the
122 license, registration, or certification of the volunteer as defined by the state and does not

123 exceed the scope of the license, registration, or certification of a substantially similar health
124 professional in the state; and

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

127 (15) "Individual or entity":

128 (a) Any natural person, corporation, company, trade, business, firm, partnership,
129 joint stock company, educational institution, labor organization, or similar organization
130 or group of organizations;

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

133 (c) State or local government;

134 (16) "Local government", any county, city, town, village, or other political
135 subdivision of this state, including any school district or charter school as well as the
136 bi-state authority created under chapter 70;

137 (17) "Mandatory", with respect to applicable government standards, regulations,
138 and guidance, the standards or regulations are enforceable by the issuing government
139 through criminal, civil, or administrative action;

140 (18) "Personal injury", actual or potential physical injury to an individual or death
141 caused by a physical injury and includes mental suffering, emotional distress, or similar
142 injuries suffered by an individual in connection with a physical injury;

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

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

145 (a) Intentionally to achieve a wrongful purpose;

146 (b) Knowingly without legal or factual justification; and

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

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

6 (1) The individual or entity engaged in gross negligence 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 individual or entity shall be held liable in a COVID-19 exposure action for
10 the acts or omissions of a third party, unless:

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

13 **(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 by clear and convincing**
4 **evidence:**

5 **(1) Gross negligence or willful misconduct by the health care provider; and**

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

8 **2. For purposes of this section, acts, omissions, or decisions resulting from a**
9 **resource or staffing shortage shall not be considered gross negligence or willful**
10 **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) Makes 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) Makes the covered product in the ordinary course of business and use of the**
10 **covered product is different than its recommended purpose and the covered product is**
11 **used in response to the emergency due to COVID-19.**

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

15 **(1) Gross negligence or willful misconduct by the individual or entity; and**

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

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

24 **4. The provisions of subsection 1 of this section apply only if the covered product**
25 **was administered or used for the treatment of or protection against COVID-19 or the**
26 **category of health conditions or threats to health resulting from COVID-19.**

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

537.1020. 1. Notwithstanding the provisions of section 537.067 to the contrary, an
2 **individual or entity against whom a final judgment is entered in any COVID-19 related**
3 **action shall be liable solely for the portion of the judgment that corresponds to the relative**
4 **and proportionate responsibility of that individual or entity. In determining the**
5 **percentage of responsibility of any defendant, the trier of fact shall determine that**
6 **percentage as a percentage of the total fault of all individuals or entities, including the**
7 **plaintiff, who caused or contributed to the total loss incurred by the plaintiff.**

8 **2. (1) In any COVID-19 related action, the court shall instruct the jury to answer**
9 **special interrogatories, or, if there is no jury, the court shall make findings with respect to**
10 **each defendant, including defendants who have entered into settlements with the plaintiff**
11 **or plaintiffs, concerning the percentages of responsibility, if any, of each defendant,**
12 **measured as a percentage of the total fault of all individuals or entities who caused or**
13 **contributed to the loss incurred by the plaintiff.**

14 **(2) In determining the percentages of responsibility under this subsection, the trier**
15 **of fact shall consider:**

16 **(a) The nature of the conduct of each individual or entity found to have caused or**
17 **contributed to the loss incurred by the plaintiff; and**

18 **(b) The nature and extent of the causal relationship between the conduct of each**
19 **such individual or entity and the damages incurred by the plaintiff.**

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

23 **(1) Acted with specific intent to injure the plaintiff; or**

24 **(2) Knowingly committed fraud.**

25 **4. Nothing in this section affects the right, under any other law, of a defendant to**
26 **contribution with respect to another defendant determined under subsection 3 of this**
27 **section to have acted with specific intent to injure the plaintiff or to have knowingly**
28 **committed fraud.**

29 **5. In any COVID-19 related action:**

30 (1) The award of compensatory damages shall be limited to economic losses
31 incurred as the result of the personal injury, harm, damage, breach, or tort, except that the
32 court may award damages for noneconomic losses if the trier of fact determines that the
33 personal injury, harm, damage, breach, or tort was caused by the willful misconduct of the
34 individual or entity;

35 (2) Punitive damages:

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

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

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

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

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

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

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

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

9 (c) The fee arrangement with class counsel, including the hourly fee being charged
10 or, if the fee is on a contingency basis, the percentage of the final award that will be paid,
11 including an estimate of the total amount that would be paid if the requested damages were
12 to be granted, and if the cost of the litigation is being financed, a description of the
13 financing arrangement.

537.1030. 1. If any person transmits or causes another to transmit in any form and
2 by any means a demand for remuneration in exchange for settling, releasing, waiving, or
3 otherwise not pursuing a claim that is, or could be, brought as part of a COVID-19 related
4 action, the party receiving such a demand shall have a cause of action for the recovery of
5 damages occasioned by such demand and for declaratory judgment if the claim for which
6 the demand was transmitted was meritless.

7 2. Damages available under subsection 1 of this section shall include:

8 (1) Compensatory damages, including costs incurred in responding to the demand;

9 and

10 **(2) Punitive damages, if the court determines that the defendant had knowledge or**
11 **was reckless with regard to the fact that the claim was meritless.**

12 **3. In an action commenced under subsection 1 of this section, if the plaintiff is a**
13 **prevailing party, the court shall, in addition to any judgment awarded to a plaintiff, allow**
14 **reasonable attorney's fees and costs of the action to be paid by the defendant.**

15 **4. (1) If the attorney general has reasonable cause to believe that any person or**
16 **group of persons is engaged in a pattern or practice of transmitting demands for**
17 **remuneration in exchange for settling, releasing, waiving, or otherwise not pursuing a**
18 **claim that is, or could be, brought as part of a COVID-19 related action and that is**
19 **meritless, the attorney general may commence a civil action in any appropriate court of**
20 **this state.**

21 **(2) In a civil action under subdivision (1) of this subsection, the court may, to**
22 **vindicate the public interest, assess a civil penalty against the respondent in an amount not**
23 **exceeding fifty thousand dollars per transmitted demand for remuneration in exchange for**
24 **settling, releasing, waiving, or otherwise not pursuing a claim that is meritless.**

25 **(3) If the attorney general obtains civil penalties in accordance with subdivision (2)**
26 **of this subsection, the attorney general shall distribute the proceeds equitably among those**
27 **persons aggrieved by the respondent's pattern or practice of transmitting demands for**
28 **remuneration in exchange for settling, releasing, waiving, or otherwise not pursuing a**
29 **claim that is meritless.**

537.1035. 1. The provisions of sections 537.1000 to 537.1040 shall apply to any
2 **cause of action filed on or after the effective date of this act.**

3 **2. Except as otherwise explicitly provided for in the provisions of sections 537.1000**
4 **to 537.1040, nothing in sections 537.1000 to 537.1040 expand any liability otherwise**
5 **imposed or limits any defense otherwise available.**

6 **3. (1) Except as described in this subdivision and subdivisions (2) to (5) of this**
7 **subsection, sections 537.1000 to 537.1040 preempt and supersede any state law, including**
8 **statutes, regulations, rules, or standards that are enacted, promulgated, or established**
9 **under common law, related to the recovery for personal injuries caused by actual, alleged,**
10 **feared, or potential for exposure to COVID-19, personal injuries caused by, arising out of,**
11 **or related to an act or omission by a health care provider in the course of arranging for or**
12 **providing COVID-19 related health care services, or personal injuries caused by the**
13 **design, manufacturing, importing, distribution, labeling, packaging, lease, sale, or donation**
14 **of a covered product.**

15 **(2) Nothing in sections 537.1000 to 537.1040 shall be construed to affect the**
16 **applicability of any provision of state law that imposes stricter limits on damages or**

17 liabilities for personal injury, or otherwise affords greater protection to defendants in any
18 COVID-19 related action, than are provided in sections 537.1000 to 537.1040. Any such
19 provision of state law shall be applied in addition to the requirements of sections 537.1000
20 to 537.1040 and not in lieu thereof.

21 (3) Nothing in section 537.1005 shall be construed to affect the applicability of
22 chapter 287.

23 (4) Nothing in sections 537.1000 to 537.1040 shall be construed to impair, limit, or
24 affect the authority of the state or local government to bring any criminal, civil, or
25 administrative enforcement action against any individual or entity.

26 (5) Nothing in sections 537.1000 to 537.1040 shall be construed to affect the
27 applicability of any provision of any state law that creates a cause of action for intentional
28 discrimination on the basis of race, color, national origin, religion, sex, pregnancy,
29 disability, genetic information, or age.

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

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

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

537.1040. If any provision of sections 537.1005 to 537.1035 or the application of
2 such provision to any person or circumstance is held to be unconstitutional, the remaining
3 provisions of sections 537.1005 to 537.1035, as well as the application of such provisions to
4 any person other than the parties to the action holding the provision to be unconstitutional,
5 or to any circumstance other than those presented in such action, shall not be affected
6 thereby.

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.

✓