

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILLS NOS. 51 & 42  
AN ACT

To amend chapter 537, RSMo, by adding thereto nine new sections relating to civil actions, with a penalty provision and an emergency clause.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 537, RSMo, is amended by adding thereto  
2 nine new sections, to be known as sections 537.1000, 537.1005,  
3 537.1010, 537.1015, 537.1020, 537.1025, 537.1030, 537.1035, and  
4 537.1040, to read as follows:

2 537.1000. As used in sections 537.1000 to 537.1040,  
the following terms mean:

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

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

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

12 (4) "COVID-19 exposure action", a civil action:  
13 (a) Brought by a person who suffered personal injury  
14 or is at risk of suffering personal injury, or a  
15 representative of a person who suffered personal injury or  
16 is at risk of suffering personal injury;

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

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

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

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

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

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

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

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

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

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

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

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

55 (a) The diagnosis, prevention, or treatment of COVID-  
56 19;

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

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

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

70 (10) "Harm":

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

73 (b) Economic and noneconomic losses;

74 (11) "Health care provider", any physician, hospital,  
75 health maintenance organization, ambulatory surgical center,  
76 long-term care facility including those licensed under  
77 chapter 198, dentist, registered or licensed practical  
78 nurse, optometrist, podiatrist, pharmacist, chiropractor,  
79 professional physical therapist, psychologist, physician-in-  
80 training, any person authorized to practice consumer  
81 directed services, personal care assistance services, or  
82 home-based care, any person providing behavioral or mental  
83 health services, any person or entity that provides health  
84 care services pursuant to a license or certificate, and the

85 respective employers or agents of any such person or entity  
86 providing health care services, and any person, health care  
87 system, or other entity that takes measures to coordinate,  
88 arrange for, provide, verify, respond to, or address issues  
89 related to the delivery of health care services;

90 (12) "Individual or entity":

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

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

99 (c) State or local government;

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

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

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

111 (a) A legal duty; and

112 (b) The consequences to another party;

113 (16) "Willful misconduct", an act or omission that is  
114 taken:

115 (a) Intentionally to achieve a wrongful purpose;

116 (b) Knowingly without legal or factual justification;

117 and

118 (c) In disregard of a known or obvious risk that is so  
119 great as to make it highly probable that the harm will  
120 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. There shall be a conclusive presumption of an  
13 assumption of risk by a plaintiff in a COVID-19 exposure  
14 action when an individual or entity posts or maintains signs  
15 which contain the warning notice specified in this  
16 subsection. Such signs shall be placed in a clearly visible  
17 location at the entrance of the business, service, activity,  
18 or accommodation. The sign described in this subsection  
19 shall contain the following warning notice in a  
20 substantially similar form:

21 "WARNING

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

28 3. Adoption of or changes to policies, practices, or  
29 procedures of an individual or entity in order to address or  
30 mitigate the spread of COVID-19 after the time of the

31 actual, alleged, feared, or potential for exposure to COVID-  
32 19, shall not be considered evidence of liability or  
33 culpability.

34 4. Nothing in this section shall require an individual  
35 or entity to establish a written or published policy  
36 addressing the spread of COVID-19.

37 5. No individual or entity shall be held liable in a  
38 COVID-19 exposure action for the acts or omissions of a  
39 third party, unless:

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

43 (2) The third party was an agent of the individual or  
44 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 by clear and convincing evidence:

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 directly caused by the  
10 alleged recklessness or willful misconduct.

11 2. For purposes of this section, acts, omissions, or  
12 decisions resulting from a resource or staffing shortage or  
13 from new or modified health and safety procedures, including  
14 deferral of medical procedures and treatment, shall not be  
15 considered 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 file and sustain a claim in a  
20 COVID-19 products liability action over the use or misuse of  
21 a covered product, the plaintiff shall prove by clear and  
22 convincing 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 directly caused by the  
27 alleged recklessness or willful misconduct.

28 3. The provisions of subsection 1 of this section  
29 shall not apply to any fraud in connection with the  
30 advertisement of any covered product.

31 4. The provisions of subsection 1 of this section  
32 shall apply to any claim for damages that has a causal  
33 relationship with the administration to or use by an  
34 individual of a covered product, including a causal  
35 relationship with the design, development, clinical testing  
36 or investigation, manufacture, labeling, distribution,  
37 formulation, packaging, marketing, promotion, sale,

38 purchase, lease, donation, dispensing, prescribing,  
39 administration, licensing, or use of such covered product.

40 5. The provisions of subsection 1 of this section  
41 shall apply only if the covered product was administered or  
42 used for the treatment of or protection against COVID-19 or  
43 the category of health conditions or threats to health  
44 resulting from COVID-19.

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

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

12 2. In determining the percentage of responsibility  
13 pursuant to subsection 1 of this section, the trier of fact  
14 shall consider:

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

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

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

25 (1) Acted with specific intent to injure the  
26 plaintiff; or

27 (2) Knowingly committed fraud.

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

33 5. In any COVID-19 related action:

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

41 (2) Punitive damages:

42 (a) May be awarded in accordance with sections 510.261  
43 to 510.265 and subsection 8 of section 538.210; and

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

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

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

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

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

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

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

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

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

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

12           (1) Compensatory damages, including costs incurred in  
13 responding to the demand; and

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

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

22           4. (1) Whenever the attorney general has reasonable  
23 cause to believe that any person or group of persons is  
24 engaged in a pattern or practice of transmitting demands for  
25 remuneration in exchange for settling, releasing, waiving,  
26 or otherwise not pursuing a claim that is, or could be,  
27 brought as part of a COVID-19 related action and that is  
28 meritless, the attorney general may commence a civil action  
29 in any appropriate court of this state.

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

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

4           2. Except as otherwise explicitly provided for in the  
5 provisions of sections 537.1000 to 537.1040, nothing in  
6 sections 537.1000 to 537.1040 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 537.1040, replacing any such common law cause of action  
16 and, except as described in subdivisions (1) to (5) of this  
17 subsection, sections 537.1000 to 537.1040 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 537.1040 shall be  
30 construed to affect the applicability of any provision of  
31 state law that imposes stricter limits on damages or  
32 liabilities for personal injury or otherwise affords greater  
33 protection to defendants in any COVID-19 related action,  
34 than are provided in sections 537.1000 to 537.1040. Any  
35 such provision of state law shall be applied in addition to  
36 the requirements of sections 537.1000 to 537.1040 and not in  
37 lieu thereof.

38 (2) Nothing in section 537.1005 shall be construed to  
39 affect the applicability of chapter 287.

40 (3) Nothing in sections 537.1000 to 537.1040 shall be  
41 construed to impair, limit, or affect the authority of the  
42 state or local government to bring any criminal, civil, or  
43 administrative enforcement action against any individual or  
44 entity.

45 (4) Nothing in sections 537.1000 to 537.1040 shall be  
46 construed to affect the applicability of any provision of  
47 any state law that creates a cause of action for intentional

48 discrimination on the basis of race, color, national origin,  
49 religion, sex including pregnancy, disability, genetic  
50 information, or age.

51 (5) Nothing in sections 537.1000 to 537.1040 shall be  
52 construed to require or mandate a vaccination or affect the  
53 applicability of any provision of law that creates a cause  
54 of action for a vaccine-related personal injury.

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

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

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

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

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.