

SECOND REGULAR SESSION

HOUSE BILL NO. 2201

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SANDER.

4773H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 537.1005, 537.1010, and 537.1015, RSMo, and to enact in lieu thereof three new sections relating to COVID-19 liability.

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

Section A. Sections 537.1005, 537.1010, and 537.1015, RSMo, are repealed and
2 three new sections enacted in lieu thereof, to be known as sections 537.1005, 537.1010, and
3 537.1015, to read as follows:

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

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

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

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

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

16 "WARNING

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

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

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

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

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

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

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

37 7. **The provisions of this section shall not apply to any individual or entity or**
38 **religious organization that has a COVID-19 mandate. A mandate may include, but is**
39 **not limited to, requiring a person to:**

40 (1) **Be vaccinated;**

41 (2) **Wear a facial covering or mask; or**

42 (3) **Socially distance himself or herself from others.**

537.1010. 1. Notwithstanding any other provision of law to the contrary, and except
2 as provided in subsection 2 of this section, no health care provider shall be liable in a COVID-
3 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 was
6 caused by the alleged recklessness or willful misconduct.

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

9 **3. The provisions of this section shall not apply to a health care provider with a**
10 **COVID-19 mandate. A mandate may include, but is not limited to, requiring a person**
11 **to:**

12 **(1) Be vaccinated;**

13 **(2) Wear a facial covering or mask; or**

14 **(3) Socially distance himself or herself from others.**

537.1015. 1. Notwithstanding any other provision of law to the contrary, and except
2 as otherwise provided in this section, no individual or entity who designs, manufactures,
3 imports, distributes, labels, packages, leases, sells, or donates a covered product shall be
4 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 the
10 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 was
16 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 investigation,
22 manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale,
23 purchase, lease, donation, dispensing, prescribing, administration, licensing, or use of such
24 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 means
29 of distribution by or in partnership with federal, state, or local public health officials or the
30 private sector.

31 **7. The provisions of this section shall not apply to an individual or entity that has**
32 **a COVID-19 mandate. A mandate may include, but is not limited to, requiring a person**
33 **to:**

- 34 **(1) Be vaccinated;**
- 35 **(2) Wear a facial covering or mask; or**
- 36 **(3) Socially distance himself or herself from others.**

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