

SENATE BILL NO. 1243

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HEGEMAN.

5864S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 516.120, 516.140, 537.060, 537.067, and 537.1035, RSMo, and to enact in lieu thereof seven new sections relating to civil actions.

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

Section A. Sections 516.120, 516.140, 537.060, 537.067, and 537.1035, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 516.099, 516.120, 516.140, 537.060, 537.067, 537.767, and 537.1035, to read as follows:

516.099. 1. Any action to recover damages for economic loss, personal injury, property damage, or wrongful death arising out of a defective or unsafe condition of any product that is sold, leased, or otherwise placed in the stream of commerce, or arising out of the negligent design, manufacture, sale, or distribution of any such product shall be commenced within fifteen years of the date on which such product is first sold or leased to any person or otherwise placed into the stream of commerce.

2. This section shall apply to all actions falling within it, whether arising under the common law or by operation of statute; except that, if an action within this section is barred by another provision of law, such other provision of law shall govern.

3. This section shall not apply:

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 (1) To any action brought with respect to a product
17 that is real property or an improvement to real property;

18 (2) If the person against whom an action is brought
19 has knowingly concealed any defective or unsafe condition in
20 the product that is the subject of the action, or has
21 knowingly concealed any negligence in the product's
22 construction, manufacture, sale, distribution, or placing
23 into the stream of commerce, and if any matter so concealed
24 directly resulted in the economic loss, personal injury,
25 property damage, or wrongful death for which the action is
26 brought;

27 (3) If a manufacturer, lessor, seller, or person who
28 first placed a product in the stream of commerce against
29 whom an action within this section is brought brings an
30 action for indemnity or contribution against a person who is
31 or may be liable to such person for all or any portion of
32 any judgment rendered against such person, in which event
33 such action for indemnity or contribution shall not be
34 barred by this section;

35 (4) If a manufacturer, lessor, seller, or person who
36 first placed a product in the stream of commerce has stated
37 in a written warranty or an advertisement to the public that
38 the product has an expected useful life for a period certain
39 that is greater than fifteen years, in which event any
40 action that is otherwise within this section and is not
41 barred by any other provision of law shall be brought no
42 later than two years following the expiration of that period
43 certain;

44 (5) To any action regarding negligent service or
45 negligent maintenance of a product;

46 (6) To any action regarding a defective or unsafe
47 condition of a product if the product is subject to a

48 government mandated product recall related to consumer
49 safety, provided that the action shall be limited to the
50 extent that the subject of the action and the underlying
51 reason for the recall are the same;

52 (7) To any action regarding a defective or unsafe
53 condition of a product causing a respiratory or malignant
54 disease with a latency of more than fifteen years. No
55 action shall be commenced under this subdivision based upon
56 strict product liability, or negligence against a seller of
57 a product, in which the product is alleged to contain or
58 possess a defective condition unreasonably dangerous to the
59 buyer, user, or consumer, unless such seller is also the
60 manufacturer of the product claimed to be defective; or

61 (8) Notwithstanding subdivision (4) of this
62 subsection, to any action against a manufacturer of a
63 mechanical device where the harm occurred during the useful
64 safe life of the product. In determining whether a
65 product's useful safe life has expired, the trier of fact
66 may consider:

67 (a) The amount of wear and tear to which the product
68 had been subject;

69 (b) The effect of deterioration from natural causes,
70 and from climate and other conditions under which the
71 product was used or stored;

72 (c) The normal practices of the user, similar users,
73 and the product seller with respect to the circumstances,
74 frequency, and purposes of the product's use, and with
75 respect to repairs, renewals, and replacements;

76 (d) Any representations, instructions, or warnings
77 made by the product manufacturer concerning proper
78 maintenance, storage, and use of the product or the expected
79 useful safe life of the product; and

80 (e) Any modification or alteration of the product by a
81 user or third party.

82 4. This section shall apply to all civil actions
83 commenced on or after August 28, 2022, or any new causes of
84 action asserted in civil actions pending on or after that
85 date; except that, any cause of action falling within this
86 section that accrued on or before August 28, 2022, may, in
87 any event, be brought no later than August 28, 2023, unless
88 barred by another provision of law.

516.120. Within five years:

2 (1) All actions upon contracts, obligations or
3 liabilities, express or implied, except those mentioned in
4 section 516.110 **and section 516.140**, and except upon
5 judgments or decrees of a court of record, and except where
6 a different time is herein limited;

7 (2) An action upon a liability created by a statute
8 other than a penalty or forfeiture;

9 (3) An action for trespass on real estate;

10 (4) An action for taking, detaining or injuring any
11 goods or chattels, including actions for the recovery of
12 specific personal property[, or for any other injury to the
13 person or rights of another, not arising on contract and not
14 herein otherwise enumerated];

15 (5) An action for relief on the ground of fraud, the
16 cause of action in such case to be deemed not to have
17 accrued until the discovery by the aggrieved party, at any
18 time within ten years, of the facts constituting the fraud.

516.140. Within two years:

2 (1) An action for libel, slander, injurious falsehood,
3 assault, battery, false imprisonment, criminal conversation,
4 malicious prosecution or actions brought under section
5 290.140[.];

6 **(2)** An action by an employee for the payment of unpaid
7 minimum wages, unpaid overtime compensation or liquidated
8 damages by reason of the nonpayment of minimum wages or
9 overtime compensation, and for the recovery of any amount
10 under and by virtue of the provisions of the Fair Labor
11 Standards Act of 1938 and amendments thereto, such act being
12 an act of Congress, shall be brought within two years after
13 the cause accrued;

14 **(3)** An action for any injury to the person or rights
15 of another, not arising on contract and not otherwise
16 provided for by law, including actions for personal injury
17 or bodily injury;

18 **(4)** An action against an insurer relating to uninsured
19 motorist coverage or underinsured motorist coverage,
20 including any action to enforce such coverage.

537.060. Defendants in a judgment founded on an action
2 for the redress of a private wrong shall be subject to
3 contribution, and all other consequences of such judgment,
4 in the same manner and to the same extent as defendants in a
5 judgment in an action founded on contract. When an
6 agreement by release, covenant not to sue or not to enforce
7 a judgment is given in good faith to one of two or more
8 persons liable in tort for the same injury or wrongful
9 death, such agreement shall not discharge any of the other
10 tort-feasors for the damage unless the terms of the
11 agreement so provide[; however such agreement shall reduce
12 the claim by the stipulated amount of the agreement, or in
13 the amount of consideration paid, whichever is greater. The
14 agreement shall discharge the tort-feasor to whom it is
15 given from all liability for contribution or noncontractual
16 indemnity to any other tort-feasor. The term
17 "noncontractual indemnity" as used in this section refers to

18 indemnity between joint tort-feasors culpably negligent,
19 having no legal relationship to each other and does not
20 include indemnity which comes about by reason of contract,
21 or by reason of vicarious liability].

537.067. 1. In all tort actions for damages, [if a
2 defendant is found to bear fifty-one percent or more of
3 fault, then such defendant shall be jointly and severally
4 liable for the amount of the judgment rendered against the
5 defendants. If a defendant is found to bear less than fifty-
6 one percent of fault, then the defendant shall only be
7 responsible for the percentage of the judgment for which the
8 defendant is determined to be responsible by the trier of
9 fact; except that, a party is responsible for the fault of
10 another defendant or for payment of the proportionate share
11 of another defendant if any of the following applies:

12 (1) The other defendant was acting as an employee of
13 the party;

14 (2) The party's liability for the fault of another
15 person arises out of a duty created by the federal
16 Employers' Liability Act, 45 U.S.C. Section 51.

17 2. The defendants shall only be severally liable for
18 the percentage of punitive damages for which fault is
19 attributed to such defendant by the trier of fact.

20 **3.] the liability of each defendant for damages shall**
21 **be several and shall not be joint. Each defendant shall be**
22 **liable only for the amount of damages allocated to that**
23 **defendant in direct proportion to that defendant's**
24 **percentage of fault. A separate several judgment shall be**
25 **rendered against that defendant for that amount.**

26 2. To determine the amount of judgment to be entered
27 against each defendant, the court shall first reduce the
28 total amount of damages recoverable by the plaintiff by the

29 total of any stipulated amount in any release, covenant not
30 to sue or not to enforce a judgment under any agreement with
31 any other person or entity alleged to have been at fault
32 pursuant to this section, or any consideration paid by such
33 person or entity, whichever is greater. The court shall
34 then multiply the remaining amount of damages recoverable by
35 the plaintiff by the percentage of each defendant's fault.
36 That final amount shall be the maximum recoverable against
37 that defendant.

38 3. In assessing percentages of fault, the trier of
39 fact shall consider the fault of all persons or entities who
40 contributed to the alleged injury or damages, regardless of
41 whether the person or entity was, or could have been, named
42 as a party to the suit and regardless of whether the person
43 or entity has settled or been released from liability.

44 4. Negligence or fault of a nonparty may be considered
45 if the plaintiff entered into a settlement agreement with or
46 has otherwise released from liability the nonparty or if a
47 party gives notice before trial, in accordance with
48 requirements established by court rule, that a nonparty was
49 wholly or partially at fault. Fault of another person or
50 entity may be alleged by any party to the tort action in any
51 claim, counterclaim, cross-claim, or as an affirmative
52 defense. Assessments of percentages of fault of nonparties
53 shall be used only in the determination of the percentage of
54 fault of named parties. Where fault is assessed against
55 nonparties under this section, findings of fact, including
56 any determination by the trier of fact as to the amount of
57 fault, shall not subject any nonparty to liability in any
58 action, be introduced as evidence of liability in any
59 action, or otherwise be binding against or affect the rights
60 or liabilities of a nonparty.

61 5. In all tort actions, no party may disclose to the
62 trier of fact the impact of this section.

 537.767. 1. In any civil action for personal injury,
2 death, or property damage caused by a product, regardless of
3 the type of claims alleged or the theory of liability
4 asserted, the plaintiff shall prove, among other elements,
5 that the defendant designed, manufactured, sold, or leased
6 the particular product the use of which is alleged to have
7 caused the injury on which the claim is based, and not a
8 similar or equivalent product. Designers, manufacturers,
9 sellers, or lessors of products not identified as having
10 been used, ingested, or encountered by an allegedly injured
11 party shall not be held liable for any alleged injury. A
12 person, firm, corporation, association, partnership, or
13 other legal or business entity whose design is copied or
14 otherwise used by a manufacturer without the designer's
15 express authorization shall not be subject to liability for
16 personal injury, death, or property damage caused by the
17 manufacturer's product even if use of the design was
18 foreseeable.

19 2. This section shall not alter or affect any other
20 provision of law, including those provisions that apply to
21 successor entities, distributors, component manufacturers,
22 or manufacturers who use component parts in assembling
23 products for sale as complete units or those provisions that
24 apply to the operation of a contract, including a licensing
25 agreement.

 537.1035. 1. The provisions of sections 537.1000 to
2 537.1035 shall expire four years after August 28, 2021, but
3 shall continue to apply to causes of action accruing before
4 that date. Any causes of action that are prohibited or time-

5 **barred under sections 537.1000 to 537.1035 will remain so**
6 **after the expiration of sections 537.1000 to 537.1035.**

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

11 3. (1) A statutory cause of action for damages
12 arising out of an actual, feared, or potential for exposure
13 to COVID-19, an act or omission by a health care provider in
14 the course of arranging for or providing COVID-19 related
15 health care services, or the design, manufacturing,
16 importing, distribution, labeling, packaging, lease, sale,
17 or donation of a covered product is hereby created in
18 sections 537.1000 to 537.1035, replacing any such common law
19 cause of action and, except as described in subdivisions (2)
20 to (11) of this subsection, sections 537.1000 to 537.1035
21 preempts and supersedes any state law, including statutes,
22 regulations, rules, or standards that are enacted,
23 promulgated, or established under common law, related to the
24 recovery for personal injuries caused by actual, alleged,
25 feared, or potential for exposure to COVID-19, personal
26 injuries caused by, arising out of, or related to an act or
27 omission by a health care provider in the course of
28 arranging for or providing COVID-19 related health care
29 services, or personal injuries caused by the design,
30 manufacturing, importing, distribution, labeling, packaging,
31 lease, sale, or donation of a covered product.

32 (2) Nothing in sections 537.1000 to 537.1035 shall be
33 construed to affect the applicability of any provision of
34 law that imposes stricter limits on damages or liabilities
35 for personal injury or otherwise affords greater protection
36 to defendants in any COVID-19 related action than are

37 provided in sections 537.1000 to 537.1035. Any such
38 provision of law shall be applied in addition to the
39 requirements of sections 537.1000 to 537.1035 and not in
40 lieu thereof.

41 (3) Nothing in sections 537.1000 to 537.1035 shall be
42 construed to affect the applicability of chapters 213, 285,
43 and 287.

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

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

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

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

66 (8) Nothing in sections 537.1000 to 537.1035 shall be
67 construed to affect the applicability of any provision of
68 law providing for a cause of action for breach of a contract

69 insuring against business interruption or for any action
70 brought pursuant to section 375.296, alleging that an
71 insurer has failed or refused to pay a contract insuring
72 against business interruption. In any such cause of action,
73 an insurer shall be entitled to raise all affirmative
74 defenses to which it is entitled.

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

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

85 (11) Nothing in sections 537.1000 to 537.1035 shall be
86 construed to affect the applicability of chapters 441, 534,
87 and 535 relating to residential property.

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

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

99 6. A COVID-19 products liability action shall not be
100 commenced in any court of this state later than two years

101 after the date of the alleged harm, damage, breach, or tort
102 unless tolled for proof of fraud or intentional concealment.

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