

HB 1064 -- COVID-19 CIVIL ACTIONS

SPONSOR: Wiemann

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Litigation Reform by a vote of 6 to 2.

This bill establishes provisions of law relating to liability in COVID-19 related actions.

COVID-19 EXPOSURE ACTION (Section 573.1005, RSMo)

No individual or entity engaged in businesses, services, activities, or accommodations shall be liable in any COVID-19 exposure action, as defined in the bill, unless the plaintiff can prove by clear and convincing evidence that:

- (1) The individual or entity engaged in recklessness or willful misconduct that caused an actual exposure to COVID-19; and
- (2) The actual exposure caused personal injury to the plaintiff.

Additionally, no religious organization, as defined in the bill, shall be liable in any COVID-19 exposure action, unless the plaintiff can prove intentional misconduct.

There is a rebuttable presumption of an assumption of risk by a plaintiff in an exposure claim when the individual or entity posts and maintains signs in a clearly visible location at the entrance of the premises or provides written notice containing the warning notice specified in the bill. No religious organization shall be required to post or maintain a sign or provide written notice containing the warning notice.

Any adoption or change to a policy, practice, or procedure by an individual to address or mitigate the spread of COVID-19 after the exposure shall not be considered evidence of liability or culpability. Additionally, nothing in this provision shall require an individual or entity to establish a written or published policy addressing the spread of COVID-19, including any policy requiring or mandating vaccination or requiring proof of vaccination.

No individual or entity shall be held liable for the acts or omissions of a third party unless the individual or entity has an obligation under general common law principles or the third party was an agent of the individual or entity.

A COVID-19 exposure action shall not be commenced in any Missouri court later than two years after the date of the actual, alleged,

feared, or potential exposure to COVID-19.

#### COVID-19 MEDICAL LIABILITY ACTION (Section 573.1010)

A health care provider, as defined in the bill, shall not be liable in a COVID-19 medical liability action, as defined in the bill, unless the plaintiff can prove recklessness or willful misconduct by the health care provider and that the personal injury was caused by such recklessness or willful misconduct. An elective procedure that is delayed for good cause shall not be considered recklessness or willful misconduct.

A COVID-19 medical liability action may not be commenced in any Missouri court later than one year after the date of the discovery of the alleged harm, damage, breach, or tort unless tolled for proof of fraud, intentional concealment, or the presence of a foreign body which has no therapeutic or diagnostic purpose or effect.

#### COVID-19 PRODUCTS LIABILITY ACTION (Section 537.1015)

No individual or entity who designs, manufactures, imports, distributes, labels, packages, leases, sells, or donates a covered product, as defined in the bill, shall be liable in a COVID-19 products liability action, as defined in the bill, if the individual or entity:

- (1) Does not make the covered product in the ordinary course of business;
- (2) Does make the covered product in the ordinary course of business and the emergency required the product to be made in a modified manufacturing process that is outside the ordinary course of business; or
- (3) Does make the covered product in the ordinary course of business and use of the covered product is different from its recommended purpose and used in response to the COVID-19 emergency.

For a plaintiff to prevail in a COVID-19 products liability action, the plaintiff shall prove, by clear and convincing evidence, recklessness or willful misconduct by the individual or entity and that such recklessness or misconduct caused the personal injury.

This bill shall not apply to any fraud in connection with the advertisement of a covered product. This provision applies to any claim for damages that has a causal relationship with the administration to or use by an individual of a covered product. Additionally, this provision shall apply only to covered products

administered or used for the treatment of or protection against COVID-19 and applies to any such covered product regardless of whether the product is obtained by donation, commercial sale, or any other means of distribution by federal, state, or local officials or by the private sector.

A COVID-19 liability action shall not be commenced later than two years after the date of the alleged harm, damage, breach, or tort unless tolled for proof of fraud or intentional concealment.

#### PUNITIVE DAMAGES IN COVID-19 RELATED ACTIONS (Section 537.1020)

Punitive damages may be awarded in any COVID-19 related action, but shall not exceed an amount in excess of nine times the amount of compensatory damages.

#### APPLICATION OF THIS bill (Sections 537.1035)

The provisions of this bill expire four years after the effective date of this bill.

This bill creates a new cause of action and replaces any such common law cause of action. Furthermore, this bill preempts and supersedes any state law related to the recovery for personal injuries covered under a COVID-19 related action unless the provisions of state law impose stricter limits on damages or liabilities for personal injury. The provisions of this bill shall not expand any liability or limit any defense otherwise available.

This bill shall not be construed to:

(1) Affect the applicability of the Workers' Compensation Law and chapters of law relating to discriminatory practices, employee-employer relations, and landlord-tenant relations for residential property;

(2) Impair, limit, or affect the authority of the state or local government to bring any criminal, civil, or administrative enforcement actions against any individual or entity nor shall it affect causes of action for intentional discrimination;

(3) Require or mandate a vaccination or affect the applicability of any provision of law creating a cause of action for a vaccine-related personal injury;

(4) Prohibit an individual or entity engaged in businesses, services, activities, or accommodations from instituting a cause of action regarding an order issued by the state or local government that requires an individual or entity to temporarily or permanently

cease the operation of such business;

(5) Affect the applicability of any provision of law providing a cause of action for breach of a contract insuring against business interruption or for failure or refusal to pay a contract insuring against business interruption;

(6) Affect the applicability of any provision of law providing a cause of action alleging price gouging, non-educational related canceled events, or payment of membership fees; and

(7) Affect the applicability of any provision of law providing a cause of action for breach of a contract against an educational institution for the refund of tuition or costs.

This bill contains an emergency clause.

This bill is the same as SS#2 SCS SBs 51 & 42 (2021).

PROPOSERS: Supporters say that over 20 states have passed bills similar to this bill to protect citizens from suits regarding certain COVID-19 matters. The bill also provides substantial protections for churches. The bill will be very beneficial to Missouri. It does not provide protection to bad actors, only to those who act in good faith.

Testifying for the bill were Representative Wiemann; National Federation of Independent Business (NFIB); Missouri Society of Certified Public Accountants; Missouri Insurance Coalition; Heartland Credit Union Association; Dana Frese, Healthcare Services Group; Associated Industries of Missouri; Bayer US LLC; Enterprise Leasing STL LLC; Missouri Trucking Association; Missouri State Medical Association; Missouri Bankers Association; Mo Retailers Assn; Mo Grocers Assn; Mo Tire Industry Assn; Julia Jansma; Matt Morrow, Springfield Area Chamber of Commerce; Associated Industries of Missouri; Missouri Poultry Federation; Missouri Association of Osteopathic Physicians and Surgeons (MAOPS).; Missouri Hospital Association; Missouri Chamber of Commerce; Missouri Health Care Association; Missouri United School Insurance Council, American Property Casualty Insurance Association, and the Missouri Civil Justice Reform Coalition.

OPPOSERS: Those who oppose the bill say that the bill alters how we approach the civil justice system and the 7th amendment. The bill does not provide protections for the people, it only provides them to nursing homes, hospitals, and insurance companies. There already are many hurdles that people must go through to even file a petition in these matters.

Testifying against the bill were Deborah D. Mantonya; Missouri AFL-CIO; Lizbeth A. Schmidt, Organic and Healthy, Inc.; Michele; Michelle Hohmeier; Nelia Aubuchon; Nikki Evers; Sydney Reno; Arnie Dienoff; Caroline Waltman; Dianna Meinecke; Kim Williams; Pamela Campbell; Amanda Vickers; Angelica Ittzes; Carla Grewe; Charlene Moore; Gail Griswold; Jennifer Barker; John Beckett; Julia C. Jansma; Kenneth Barnes, Missouri Association of Trial Attorneys; Laura Martin; Lisa Pannett; Marcella Povis; and Melanie Taylor.

Written testimony has been submitted for this bill. The full written testimony can be found under Testimony on the bill page on the House website.