

SS#2 SCS SBs 51 & 42 -- CIVIL ACTIONS

SPONSOR: Luetkemeyer (Wiemann)

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Litigation Reform by a vote of 6 to 2. Motion to "Do Pass" failed by the Standing Committee on Rules- Legislative Oversight by a vote of 3 to 7. Voted "To Reconsider" by the Standing Committee on Rules- Legislative Oversight by a vote of 8 to 3. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 6 to 5.

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 is similar to HB 1064 (2021).

PROPONENTS: Supporters say that the bill will protect businesses so that they are not scared to open back up in fear that they may be sued for someone catching COVID-19 even if they have taken all reasonable safety measures. The bill will relieve some tension and encourage businesses to open and boost Missouri's economy. Many states have already implemented bills similar to this one.

Testifying for the bill were Senator Luetkemeyer; Missouri Society of Certified Public Accountants; Missouri Insurance Coalition; Heartland Credit Union Association; LeadingAge Missouri; National Federation of Independent Business (NFIB); Healthcare Services Group; Missouri Retailers Association; Mo Grocers Association; Mo Tire Industry Association; Mark Behrens; Associated Industries of Missouri; Greater St Louis Inc.; Bayer U.S. LLC; Enterprise Leasing of St. Louis, LLC; Missouri Municipal League; Missouri Trucking Association; Missouri State Medical Association; Missouri Chamber of Commerce and Industry; Missouri Health Care Association; The Doctors Company; Sonny's Solid Waste; Missouri Civil Justice Reform; American Property Casualty Insurance Association; Kansas City Chiefs; Missouri Association of Osteopathic Physicians and Surgeons (MAOPS); and the Missouri Bankers Association.

OPPONENTS: Those who oppose the bill say that the bill goes too far by getting rid of negligence standard as people will no longer be able to sue on wrongful death actions against nursing homes. The bill gives nursing homes and hospitals immunity as they will claim all cases, regardless of the issues, relate to COVID-19. The

bill is almost exactly the same as the one in New York and with issues in the nursing homes there playing a factor, they are planning to repeal their version of the bill. The bill is dangerous for the most vulnerable of Missouri's population. The bill will indirectly make businesses follow mandates that they may not want to. The bill is being advertised as protecting the people but it actually protects nursing homes, hospitals, and insurance companies.

Testifying against the bill were Lizbeth A. Schmidt, Organic and Healthy, Inc.; Rebecca Boerner; Ron Calzone, Missouri First, Inc.; Shelly L Knichel; Tamara J Harrill; Marcella Povis; Arnie Dienoff; Caroline Waltman; Kim Williams; Amanda Vickers; Charlene Moore; David Terry, Terry Law Firm, LLC; Gail Griswold; Jennifer Barker; Jennifer Bird; John Beckett; Julie C. Jansma; Laura Martin; Lisa Pannett; Melanie Taylor, Wedding Street Missouri; Rachel Stahle, Dollar, Burns, Becker and Hershewe, L.C.; American Federation of Teachers - Missouri; Service Employees International Union Healthcare Workers; and AARP.

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.