

HB 759 -- CIVIL ACTIONS

SPONSOR: Lewis (6)

This bill establishes protections against liability in COVID-19 related actions.

This bill specifies that 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 gross negligence or willful misconduct that caused an actual exposure to COVID-19; and
- (2) The actual exposure caused personal injury to the plaintiff.

A COVID-19 exposure action shall not be commenced in any Missouri court later than one year after the date of the actual, alleged, feared, or potential exposure to COVID-19.

Additionally, 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, by clear and convincing evidence, gross negligence or willful misconduct by the health care provider and that the personal injury was directly caused by such gross negligence or willful misconduct. Resource or staffing shortages shall not be considered gross negligence 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 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.

No individual or entity that 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) Makes 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) Makes the covered product in the ordinary course of business and use of the covered product is different than its recommended purpose and used in response to the COVID-19 emergency.

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

The provisions of this bill apply only to covered products

administered or used for the treatment or protection against COVID-19 or the categories of health conditions or threats to health resulting from COVID-19. Additionally, this bill 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 products liability action shall not be commenced later than one year after the date of the alleged harm, damage, breach, or tort unless tolled for proof of fraud or intentional concealment.

An individual or entity against whom a final judgment is entered shall be liable solely for their relative and proportionate share of the judgment. In determining the percentage of responsibility, the trier of fact shall determine that percentage from the total fault of all individuals or entities, including the plaintiff, who caused or contributed to the total loss incurred. The trier of fact shall consider the following factors in determining the percentage of responsibility:

- (1) The nature of conduct of each individual found to have contributed to the loss; and
- (2) The nature and extent of the relationship between the conduct and damages incurred by the plaintiff.

The liability of a defendant shall be joint and several if the trier of fact determines that the defendant acted with specific intent to injure the plaintiff or knowingly committed fraud.

Nothing shall affect the right of a defendant to contribution with respect to a defendant found to have acted with specific intent to injure the plaintiff or knowingly committed fraud.

The award of compensatory damages shall be limited to economic loss incurred as a result of the personal injury, except that noneconomic and punitive damages may be awarded if the trier of fact determines that the injury was caused by willful misconduct. However, punitive damages may not exceed the amount of compensatory damages. Additionally, the amount of monetary damages shall be reduced by the amount of compensation received by the plaintiff from another source in connection with the personal injury.

In any COVID-19 related action that is maintained as a class action, any individual or entity shall only be a member of the class if the individual or entity affirmatively elects and notice containing a concise and clear description of the nature of the action, the jurisdiction, and the fee arrangement with class counsel shall be given to each member of the class.

If any person transmits in any form and by any means a demand for remuneration in exchange for settling, waiving, or otherwise not pursuing a claim that is or could be brought as part of a COVID-19 related action, the party receiving such a demand shall have a cause of action for the recovery of damages occasioned by such demand and for declaratory judgment if the claim for which the letter was transmitted was meritless. Damages for such an action

shall include compensatory damages, punitive damages, and attorney's fees.

The Attorney General may also commence a civil action for any person or group engaged in a pattern or practice of transmitting such demands. The court may assess a civil penalty in an amount not exceeding \$50,000 per transmitted demand. Any proceeds from the civil penalties obtained shall be distributed among those persons aggrieved by the person's pattern or practice.

The provisions of this bill apply to any cause of action filed on or after the effective date of this bill. Additionally, this bill shall not expand any liability or limit any defense otherwise available. This bill also 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. Additionally, nothing in this bill shall be construed to 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.

If any provision of this bill is found to be unconstitutional, the remaining provisions as well as the application of such provisions shall not be affected.

This bill contains an emergency clause.

This bill is similar to SB 51 (2021).