

# Missouri Governor Signs Bill on COVID-19 Civil Actions

July 13, 2021

On July 7, 2021, Missouri Governor Mike Parson signed into law a COVID-19 liability bill (Senate Bill 51). The law, which becomes effective on August 28, 2021, is intended to provide protections to Missouri businesses, the health care industry, religious organizations and others for liability under three types of COVID-19 related causes of action: COVID-19 exposure actions, COVID-19 medical liability actions, and COVID-19 products liability actions.

The law preempts and supersedes any state, local, or common law causes of actions for damages arising from these COVID-19 related actions and permits plaintiffs to recover punitive damages not exceeding nine times the amount of compensatory damages awarded. While providing injured persons with an avenue for recovery, the law generally protects and limits liability to businesses and health care providers by requiring plaintiffs to prove a heightened standard of conduct - **recklessness or willful misconduct** - to maintain the action and limiting liability even further for religious organizations. Here is what you need to know about each COVID-19 related cause of action:

## COVID-19 Exposure Actions (§ 537.1005)

The statute covers "COVID-19 exposure actions" which encompass civil actions brought by a person (or personal representative) who suffered personal injury, or a risk of personal injury, caused by "an actual, alleged, feared, or potential for exposure to COVID-19." No business or person shall be liable in a COVID-19 exposure action unless the plaintiff proves that it engaged in **recklessness or willful misconduct** that caused an actual exposure to COVID-19 and that exposure caused personal injury to the Plaintiff.

Notably, the statute provides that if a written warning is posted in a visible location at the entrance of a building, there is a rebuttable presumption that the plaintiff **assumed the risk** of exposure. That written warning must be substantially similar to the following warning provided by statute:

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

While the law doesn't require COVID-19 policies, changes to any policies and procedures to address the spread of COVID-19 after the time of an alleged exposure shall not be considered evidence of liability or culpability.

Unlike the other actions addressed below, protections in this portion of the bill relate to almost any business or individual providing any service, activity, accommodation, or product in Missouri. Religious organizations, however, can only be held liable for exposure actions for intentional misconduct and are not required to post or maintain a sign or written notice

### **COVID-19 Medical Liability Actions (§ 537.1010)**

A "COVID-19 medical liability action" is a civil action brought by a person who suffered personal injury, against a health care provider, and alleging "harm ... caused by, arising out of, or related to a health care provider's act or omission in the course of arranging for or providing COVID-19 related health care services if such ... decisions or activities ... are impacted as a result of COVID-19." Health care providers shall not be liable in such actions unless the plaintiff can prove that **recklessness or willful misconduct** by the health care provider caused the alleged harm and it resulted in personal injury.

### **COVID-19 Products Liability Actions (§ 537.1015)**

A "COVID-19 products liability action" has similarities to ordinary products liability, except it's limited to "covered products," which are products or components of products used to combat COVID-19 (excluding the vaccine and gene therapy). This is a cause of action brought by a person who suffered personal injury, against an entity engaged in the design, manufacturing, importing, distribution, labeling, packaging, lease, sale, or donation of a covered product and alleging "harm ... caused by, arising out of, or related to the design, manufacturer, importation, distribution, labeling, packaging, lease, sale, or donations of a covered product." It only applies if the covered product was administered or used for the treatment or protection against COVID-19 but applies regardless of whether the product was obtained by sale, donation or otherwise, and regardless of if in partnership with the public or private sector.

However, the entities involved in these activities are not liable in three circumstances: (1) if the entity does not make the covered product in the ordinary course of business; (2) if the entity does make the covered product in the ordinary course of business, but due to the COVID-19 emergency, it required the covered product to be made in a modified manufacturing process that is outside the ordinary course of business; or (3) if the entity does make the covered product in the ordinary course of business, but it is used differently than its recommended purpose and used in response to COVID-19. This provides some protection to businesses whose products or manufacturing operations changed or were diverted in response to the pandemic.



Notably, the law does not mandate vaccinations or affect the applicability of any law that creates a cause of action for vaccine-related personal injury, and it also does not affect the applicability of most other causes of actions such as fraud, discrimination, breach of contract, actions for price gouging, cancelled events, membership fees, or tuition payments.

While many hope that COVID-19 is in our rearview mirror, COVID-19 is still ravaging areas of the world, and most acutely, Missouri. For religious organizations, Missouri's newest COVID-19 law should provide some relief in terms of potential liability for COVID-19 exposure. But businesses and individuals providing products, services, and accommodations, whether for profit or not, should continue to exercise care in protecting themselves from unwanted COVID-19 related liability. This includes posting the provided written warning at location entrances where applicable and updating any policies or procedures to mitigate the spread of the virus.

For more information, please contact Matthew Jacober, Rick Bien, Taryn Nash, or your regular Lathrop GPM contact.

Senate Bill No. 51; RSMo. §§ 537.1000 to 537.1035.