

Missouri Lawmakers Are Proposing Several Bills Which Would Provide Liability Defenses as it Relates to COVID-19

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Senate Bill 42 would exclude health care providers from liability for any medical treatment or procedure related to COVID-19. The key language of the bill states any health provider, “who provides care as necessitated by the COVID-19 pandemic shall not be liable for any civil damages.” This protection shall not extend to medical treatments or procedures, facility operations, or other services performed that were not related to COVID-19.

Based on the Governor’s Executive Order, this would cover all claims which arose from March 23, 2020 to March 31, 2021. This date could be extended if announced by the Governor. This law would apply to all civil actions filed on or after the effective date of Senate Bill 42. The effective date is an “emergency clause,” or a date that will be sooner than 90 days after the session in which it passed. Lawmakers will want to make this effective date as soon as possible. The bill also includes protections for premises owners and product liability actions.

Senate Bill 51 provides the standard for when entities could be sued for COVID exposure or in a COVID-19 medical liability action.

A Plaintiff must establish these three elements by clear and convincing evidence:

1. The entity was not making reasonable efforts in light of the circumstances to comply with applicable government standards, regulations, and guidance in effect at the time.
2. The individual or entity engaged in gross negligence or willful misconduct that caused an actual exposure to COVID-19; and

3. The actual exposure caused personal injury to the plaintiff.

A plaintiff cannot assert gross negligence or willful misconduct for failing to staff appropriately. A rebuttable presumption is established if a defendant provides evidence a policy based on government standards was enacted.

Senate Bill 51 also limits all claims involving COVID-19 to a one-year statute of limitations. Again, this applies to any causation of action filed on or after the emergency clause date. Lastly, Senate Bill 51 defines “COVID-19 exposure action” and “COVID-19 medical liability action.” The definition is broad and likely would cover any health care interaction that took place since December 2019 involving the treatment of or exposure to COVID-19.

Based on the plain reading of both bills, they would drastically reduce liability of health care providers related to COVID-19, meaning a plaintiff could only sue on issues related to COVID-19 if he or she showed willful conduct or gross negligence by a health care provider.

We will continue to monitor these bills as they move through the Senate and House in order to keep you informed. For more information, contact us.