



LEGAL UPDATES

Missouri Bill Aims to Protect Individuals and Businesses Helping in Response to COVID-19

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On Monday, November 16, 2020, the Missouri Senate introduced Senate Bill 1 ("SB 1")^[1], which modifies provisions relating to civil actions arising during a declared state of emergency. Due to COVID-19, Missouri first declared a state of emergency on March 13, 2020.^[2] As of now, the state of emergency is extended through December 30, 2020.^[3]

If you or your business has shifted gears to respond to COVID-19 by making a product that was not in your normal line of business, using a product in a different way, or adapting to the guidelines to limit exposure, SB 1, if enacted in its entirety, may protect you from administrative sanctions or civil liability.

SB 1 may change as it moves through the Missouri Legislature. As it stands now, SB 1 applies to all claims arising from acts or omissions occurring during the declared state of emergency and all civil actions filed on or after the effective date of this act. SB 1 currently addresses three main areas:

- Liability of Health Care Providers;
- Liability of Products Developed in Response to an Emergency; and
- Liability of Premises Owners.

Liability of Health Care Providers

Who is covered? Health care providers who are deployed by the state to provide care necessitated by COVID-19.

How does SB 1 protect you? You will not be liable for any civil damages or administrative sanctions for any failure to exercise the skill and learning of an ordinarily careful health care provider in similar circumstances in the delivery or non-delivery of such care. In addition, a health care provider will not be liable for injuries resulting from negligent conduct.

How can you be held liable? To hold a health care provider liable, a plaintiff bringing a personal injury action must prove by clear and convincing evidence

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they sustained a serious injury as a result of the health care provider's malicious conduct or conduct that intentionally caused damage to the plaintiff.

Liability of Products Developed in Response to COVID-19

Who is covered? Any person who designs, manufactures, labels, sells, distributes, or donates a product used in response to the COVID-19 emergency.

How does SB 1 protect you? You are not liable in a civil action arising out of your manufacture, design, importation, distribution, packaging, labeling, lease, or sale of the product if you do not make the product in your ordinary course of business. If you do make the product in your ordinary course of business, you are protected if, due to COVID-19, you manufactured the product in a process that is outside your ordinary course of business or used the product in a way that is different than its recommend purpose in response to COVID-19.

How can you be held liable? To sustain a claim of use or misuse of a covered product, the plaintiff must prove by clear and convincing evidence that the person either 1) had actual knowledge the product was defective, there was a substantial likelihood the defect would cause the injury, and the person acted with a deliberate and flagrant disregard for the safety of others; or 2) intentionally harmed the plaintiff.

Liability of Premises Used in Emergencies

Who is covered? Premise owners subject to exposure claims related to COVID-19.

How does SB 1 protect you? A premise owner is not liable for exposure claims when their premises are used outside their ordinary purpose to assist in the direct response to COVID-19.

Further, a premises owner is not liable for claims related to conduct intended to reduce exposure to COVID-19 if the owner operates in substantial compliance with, or is reasonably consistent with, any applicable laws, rules, regulations, or orders at the time the conduct or risk allegedly caused harm.

How can you be held liable? A premise owner whose premises are used for its ordinary purpose in an emergency will be liable only if the plaintiff can prove by clear and convincing evidence the owner intentionally harmed the plaintiff without just cause or acted with deliberate and flagrant disregard for the safety of others.

In general, if you changed your ordinary business activities to respond to the COVID-19 emergency and you follow the applicable state and local COVID-19 guidelines, a plaintiff alleging injury arising from health care services, products, or exposure must overcome a high standard in order to hold you liable. As with any bill, however, SB 1 is subject to change as it moves through the Missouri legislature.

For more information, please contact [Litigation and Dispute Resolution Practice Group Leader Matthew Jacober](#), [Douglas Nelson](#), [Shoshanah Shanes](#) or your regular Lathrop GPM contact.

Each individual business and situation is unique and must be analyzed separately. If any organization has concerns regarding reopening, hosting events, its legal obligations or exposure, or other legal matters, it should consult with an attorney.

[1] <https://www.senate.mo.gov/20info/pdf-bill/E2/intro/SB1.pdf>

[2] Pursuant to Executive Order 20-02, Governor Mike Parson declared a state of emergency in the State of Missouri on March 13, 2020.

[3] See Executive Order 20-16.