

LEGAL UPDATES

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Product Liability

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# Missouri Senate Advances COVID-19 Liability Protection Bill

## Update:

After three weeks of lobbying and negotiation, on February 23, 2021, the Missouri Senate took a final vote on Senate Bill 51, the COVID-19 Liability Protection Bill. The Bill was adopted by the Senate by a vote of 20 to 13. It now goes to the House of Representatives.

The Bill was delayed for almost three weeks before a final Senate vote was taken. The issue was the emergency clause. Under Missouri law, legislation becomes effective on August 28 of each year. The exception is where both houses pass, by two-thirds majorities, a so-called “emergency clause,” which finds that the health and welfare of the state demand immediate implementation of the Bill. If both chambers adopt the emergency clause, the Bill becomes effective upon signature of the Governor. Business groups have been lobbying members of the Senate to secure the votes for the emergency clause, arguing that COVID-19 protection needs to be effective immediately, not in August. The reason this issue is important is that Missouri law prohibits retrospective legislation, so the COVID-19 liability protections only affect claims filed after the effective date of the legislation. Ultimately, the emergency clause failed by a vote of 19 (for it) and 15 (against it), several votes short of the two-thirds majority needed.

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After 15 hours of debate, at about 5:00 a.m. on February 3, 2021, the Missouri Senate perfected Senate Bill 51, providing substantial protection for businesses, healthcare providers and those who produce, sell and distribute COVID-19 therapies and products.

## Businesses and public accommodations

For businesses and public accommodations, the bill prevents liability for exposure to COVID-19 unless the plaintiff can prove by clear and convincing evidence that (1) the defendant engaged in recklessness or willful misconduct that caused an actual exposure to COVID-19; and (2) the actual exposure to COVID-19 caused personal injury to the plaintiff. Senate Bill 51 also establishes a rebuttable presumption that a plaintiff adopted the risk of COVID-19 exposure by entering a public accommodation if it conspicuously posts this notice:

## “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.”

### **Healthcare providers**

For healthcare providers, similar liability protections are in Senate Bill 51. No healthcare provider shall be liable in a COVID-19 medical liability action unless the plaintiff proves that personal injury was caused by recklessness or willful misconduct. “COVID-19 medical liability action” is broadly defined, including any personal injury action against a healthcare provider alleging that the injury was caused by any act or omission in the course of providing COVID-19-related healthcare services.

### **Products liability**

As to products liability, Senate Bill 51 applies to “COVID-19 products liability actions,” defined as a personal injury action brought against an entity that designs, manufactures, imports, distributes, labels, packages, sells, leases or donates any “pandemic or epidemic product, drug, biological, device or component to combat COVID-19” (excluding vaccines and gene therapy). In a “COVID-19 products liability action,” the plaintiff must prove by clear and convincing evidence that the defendant was reckless or engaged in willful misconduct, and that the personal injury was caused by the alleged recklessness or willful misconduct. The liability protection only applies if the product was used to treat the plaintiff for COVID-19 or protect the plaintiff from it.

In addition to establishing liability protection, Senate Bill 51 has more technical provisions that establish limitation periods for COVID-19-related actions, expressly override most common-law causes of action, and others.

The bill requires one more vote in the Senate, but its adoption after a 15-hour filibuster and compromise is expected. It will then go to the House of Representatives. Having cleared the biggest obstacle to passage – the Senate’s filibuster rules – the bill is expected to receive prompt attention in the House.

The biggest remaining issue may well be the effective date. Normally, truly agreed and finally passed bills become effective on August 28 of each year. Senate Bill 51 contains an emergency clause. If that is adopted by the two-thirds majorities in each chamber of the General Assembly, the bill will be effective upon approval by the Governor. Business groups supporting the bill badly want the emergency clause.

### **Contact us**

For more information on how evolving COVID regulations may impact your business, contact Lowell Pearson, Natalie Holden, Allee Barton or your Husch Blackwell attorney.

### **CARES Act, COVID-19 & Return-to-Work Guidance**

Husch Blackwell provides guidance regarding COVID-19 updates, the CARES Act, and rapidly changing state-by-state orders, including those that impact stay-at-home and return-to-work protocols. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.