

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 452

99TH GENERAL ASSEMBLY

1145S.03T

2017

AN ACT

To repeal sections 538.205 and 538.210, RSMo, and to enact in lieu thereof two new sections relating to the liability of an employee of a health care provider.

Be it enacted by the General Assembly of the state of Missouri, as follows:

- Section A. Sections 538.205 and 538.210, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 538.205 and 538.210, to read as follows:
538.205. As used in sections 538.205 to 538.230, the following terms shall mean:
- 2 (1) "Catastrophic personal injury", a physical injury resulting in:
 - 3 (a) Quadriplegia defined as the permanent loss of functional use of all four limbs;
 - 4 (b) Paraplegia defined as the permanent loss of functional use of two limbs;
 - 5 (c) Loss of two or more limbs;
 - 6 (d) An injury to the brain that results in permanent cognitive impairment resulting in the
7 permanent inability to make independent decisions or engage in one or more of the following
8 activities of daily living: eating, dressing, bathing, toileting, transferring, and walking;
 - 9 (e) An injury that causes irreversible failure of one or more major organ systems; or
 - 10 (f) Vision loss such that the patient's central visual acuity is no more than
11 twenty/two-hundred in the better eye with the best correction or whose field of vision in the
12 better eye is restricted to a degree that its widest diameter subtends an angle no greater than
13 twenty degrees;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (2) "Economic damages", damages arising from pecuniary harm including, without
15 limitation, medical damages, and those damages arising from lost wages and lost earning
16 capacity;

17 (3) **"Employee", any individual who is directly compensated by a health care
18 provider for health care services rendered by such individual and other nonphysician
19 individuals who are supplied to a health care provider by an entity that provides staffing;**

20 (4) "Equitable share", the share of a person or entity in an obligation that is the same
21 percentage of the total obligation as the person's or entity's allocated share of the total fault, as
22 found by the trier of fact;

23 ~~[(4)]~~ (5) "Future damages", damages that the trier of fact finds will accrue after the
24 damages findings are made;

25 ~~[(5)]~~ (6) "Health care provider", any physician, hospital, health maintenance
26 organization, ambulatory surgical center, long-term care facility including those licensed under
27 chapter 198, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist,
28 chiropractor, professional physical therapist, psychologist, physician-in-training, and any other
29 person or entity that provides health care services under the authority of a license or certificate;

30 ~~[(6)]~~ (7) "Health care services", any services that a health care provider renders to a
31 patient in the ordinary course of the health care provider's profession or, if the health care
32 provider is an institution, in the ordinary course of furthering the purposes for which the
33 institution is organized. Professional services shall include, but are not limited to, transfer to a
34 patient of goods or services incidental or pursuant to the practice of the health care provider's
35 profession or in furtherance of the purposes for which an institutional health care provider is
36 organized;

37 ~~[(7)]~~ (8) "Medical damages", damages arising from reasonable expenses for necessary
38 drugs, therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and
39 rehabilitative services;

40 ~~[(8)]~~ (9) "Noneconomic damages", damages arising from nonpecuniary harm including,
41 without limitation, pain, suffering, mental anguish, inconvenience, physical impairment,
42 disfigurement, loss of capacity to enjoy life, and loss of consortium but shall not include punitive
43 damages;

44 ~~[(9)]~~ (10) "Past damages", damages that have accrued when the damages findings are
45 made;

46 ~~[(10)] "Physician employee", any person or entity who works for hospitals for a salary or
47 under contract and who is covered by a policy of insurance or self-insurance by a hospital for acts
48 performed at the direction or under control of the hospital;]~~

49 (11) "Punitive damages", damages intended to punish or deter willful, wanton or
50 malicious misconduct, including exemplary damages and damages for aggravating
51 circumstances;

52 (12) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any
53 kind.

538.210. 1. A statutory cause of action for damages against a health care provider for
2 personal injury or death arising out of the rendering of or failure to render health care services
3 is hereby created, replacing any such common law cause of action. The elements of such cause
4 of action are that the health care provider failed to use that degree of skill and learning ordinarily
5 used under the same or similar circumstances by members of the defendant's profession and that
6 such failure directly caused or contributed to cause the plaintiff's injury or death.

7 2. (1) In any action against a health care provider for damages for personal injury arising
8 out of the rendering of or the failure to render health care services, no plaintiff shall recover more
9 than four hundred thousand dollars for noneconomic damages irrespective of the number of
10 defendants.

11 (2) Notwithstanding the provisions of subdivision (1) of this subsection, in any action
12 against a health care provider for damages for a catastrophic personal injury arising out of the
13 rendering or failure to render health care services, no plaintiff shall recover more than seven
14 hundred thousand dollars for noneconomic damages irrespective of the number of defendants.

15 (3) In any action against a health care provider for damages for death arising out of the
16 rendering of or the failure to render health care services, no plaintiff shall recover more than
17 seven hundred thousand dollars for noneconomic damages irrespective of the number of
18 defendants.

19 3. (1) ~~[Such limitation]~~ **This section** shall also apply to any individual or entity, or their
20 employees or agents, that provide, refer, coordinate, consult upon, or arrange for the delivery of
21 health care services to the plaintiff; and

22 (2) Who is a defendant in a lawsuit brought against a health care provider under this
23 chapter, or who is a defendant in any lawsuit that arises out of the rendering of or the failure to
24 render health care services.

25 ~~[(3) No individual or entity whose liability is limited by the provisions of this chapter~~
26 ~~shall be liable to any plaintiff based on the actions or omissions of any other entity or person who~~
27 ~~is not an employee of such individual or entity whose liability is limited by the provisions of this~~
28 ~~chapter.~~

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30 ~~Such limitation shall apply to all claims for contribution.]~~

31 **4. No health care provider whose liability is limited by the provisions of this chapter**
32 **shall be liable to any plaintiff based on the actions or omissions of any other entity or**
33 **individual who is not an employee of such health care provider, unless the individual is an**
34 **employee of a subsidiary in which the health care provider has a controlling interest and**
35 **the subsidiary does not carry a professional liability insurance policy or self-insurance**
36 **covering said individual of at least one million dollars per occurrence and a professional**
37 **liability insurance policy or self-insurance covering said subsidiary of least one million**
38 **dollars per occurrence.**

39 **5. The limitations on liability as provided for in this section shall apply to all claims**
40 **for contribution.**

41 **6.** In any action against a health care provider for damages for personal injury or death
42 arising out of the rendering of or the failure to render health care services, where the trier of fact
43 is a jury, such jury shall not be instructed by the court with respect to the limitation on an award
44 of noneconomic damages, nor shall counsel for any party or any person providing testimony
45 during such proceeding in any way inform the jury or potential jurors of such limitation.

46 ~~[5-]~~ **7.** For purposes of sections 538.205 to 538.230, any spouse claiming damages for
47 loss of consortium of their spouse shall be considered to be the same plaintiff as their spouse.

48 ~~[6-]~~ **8.** Any provision of law or court rule to the contrary notwithstanding, an award of
49 punitive damages against a health care provider governed by the provisions of sections 538.205
50 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider
51 demonstrated willful, wanton or malicious misconduct with respect to his actions which are
52 found to have injured or caused or contributed to cause the damages claimed in the petition.

53 ~~[7-]~~ **9.** For purposes of sections 538.205 to 538.230, all individuals and entities asserting
54 a claim for a wrongful death under section 537.080 shall be considered to be one plaintiff.

55 ~~[8-]~~ **10.** The limitations on awards for noneconomic damages provided for in this section
56 shall be increased by one and seven-tenths percent on an annual basis effective January first of
57 each year. The current value of the limitation shall be calculated by the director of the
58 department of insurance, financial institutions and professional registration, who shall furnish
59 that value to the secretary of state, who shall publish such value in the Missouri Register on the
60 first business day following January first, but the value shall otherwise be exempt from the
61 provisions of section 536.021.

62 ~~[9-]~~ **11.** In any claim for damages under this chapter, and upon post-trial motion
63 following a jury verdict with noneconomic damages exceeding four hundred thousand dollars,
64 the trial court shall determine whether the limitation in subsection 2 of this section shall apply
65 based on the severity of the most severe injuries.

66 ~~[10.]~~ **12.** If a court of competent jurisdiction enters a final judgment on the merits that
67 is not subject to appeal and that declares any provision or part of either section 1.010 or this
68 section to be unconstitutional or unenforceable, then section 1.010 and this section, as amended
69 by this act and in their entirety, are invalid and shall have no legal effect as of the date of such
70 judgment, and this act, including its repealing clause, shall likewise be invalid and of no legal
71 effect. In such event, the versions of sections 1.010 and this section that were in effect prior to
72 the enactment of this act shall remain in force.

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