

FIRST REGULAR SESSION

HOUSE BILL NO. 755

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE AVERY.

Read 1st time March 9, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0856L.011

AN ACT

To repeal sections 355.176, 408.040, 508.010, 508.040, 508.070, 508.120, 510.263, 516.105, 537.035, 537.067, 538.205, 538.210, 538.220, and 538.225, RSMo, and to enact in lieu thereof sixteen new sections relating to claims for damages and the payment thereof.

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

Section A. Sections 355.176, 408.040, 508.010, 508.040, 508.070, 508.120, 510.263, 516.105, 537.035, 537.067, 538.205, 538.210, 538.220, and 538.225, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 355.176, 408.040, 508.010, 510.263, 516.105, 537.035, 537.067, 538.205, 538.210, 538.214, 538.220, 538.225, 538.227, 1, 2, and 3, to read as follows:

355.176. 1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent annual report filed pursuant to section 355.856. Service is perfected under this subsection on the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

3. This section does not prescribe the only means, or necessarily the required

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.

13 **means, of serving a corporation.**

408.040. 1. Interest shall be allowed on all money due upon any judgment or order of
2 any court from the day of rendering the same until satisfaction be made by payment, accord or
3 sale of property; all such judgments and orders for money upon contracts bearing more than nine
4 percent interest shall bear the same interest borne by such contracts, and, **except as provided by**
5 **subsection 3 of this section**, all other judgments and orders for money shall bear nine percent
6 per annum until satisfaction made as aforesaid.

7 2. In tort actions, if a claimant has made a demand for payment of a claim or an offer of
8 settlement of a claim, to the party, parties or their representatives, **and to such party's liability**
9 **insurer if known to the claimant**, and the amount of the judgment or order exceeds the demand
10 for payment or offer of settlement, **then** prejudgment interest, [at the rate specified in subsection
11 1 of this section,] shall be **awarded**, calculated from a date [sixty] **ninety** days after the demand
12 or offer was [made] **received, as shown by the certified mail return receipt**, or from the date
13 the demand or offer was rejected without counter offer, whichever is earlier. [Any such demand
14 or offer shall be made in writing and sent by certified mail and shall be left open for sixty days
15 unless rejected earlier.] **In order to qualify as a demand or offer pursuant to this section,**
16 **such demand must:**

17 (1) **Be in writing and sent by certified mail return receipt requested; and**

18 (2) **Be accompanied by an affidavit of the claimant describing the nature of the**
19 **claim and theory of liability, the nature of any injuries claimed and a computation of any**
20 **category of damages sought by the claimant with supporting documentation; and**

21 (3) **For personal injury and bodily injury claims, be accompanied by a list of the**
22 **names and addresses of medical providers who have provided treatment to the claimant**
23 **for such injuries, copies of all medical bills, a list of employers if the claimant is seeking**
24 **damages for loss of wages or earnings, and written authorizations sufficient to allow the**
25 **party, its representatives, and liability insurer if known to the claimant to obtain records**
26 **from all employers and medical care providers; and**

27 (4) **Reference this section and be left open for ninety days.**

28 **If the claimant fails to file a cause of action in circuit court within thirty days after the**
29 **expiration of ninety days as provided in subdivision (4) of this subsection, then the court**
30 **shall not award prejudgment interest to the claimant. If the claimant is a minor or**
31 **incompetent or deceased, the affidavit may be signed by any person who reasonably**
32 **appears to be qualified to act as next friend or conservator or personal representative. If**
33 **the claim is one for wrongful death, the affidavit may be signed by any person qualified**
34 **pursuant to section 537.080, RSMo, to make claim for the death.** Nothing contained herein
35 shall limit the right of a claimant, in actions other than tort actions, to recover prejudgment

36 interest as otherwise provided by law or contract.

37 **3. Notwithstanding the provisions of subsection 1 of this section, in tort actions, a**
38 **judgment for prejudgment interest awarded pursuant to subsection 2 of this section should**
39 **bear interest at a per annum interest rate equal to the Federal Funds Rate, as established**
40 **by the Federal Reserve Board, plus three percent. A judgment awarded for post judgment**
41 **interest should bear interest at a per annum interest rate equal to the Federal Funds Rate,**
42 **as established by the Federal Reserve Board, plus five percent. The judgment shall state**
43 **the applicable interest rate.**

508.010. [Suits instituted by summons shall, except as otherwise provided by law, be
2 brought] 1. **As used in this section, "principal place of residence" shall mean the county**
3 **which is the main place where an individual resides in the state of Missouri. There shall**
4 **be a rebuttable presumption that the county of voter registration is the principal place of**
5 **residence. There shall be only one principal place of residence.**

6 **2. In all actions in which there is no count alleging a tort, venue shall be determined**
7 **as follows:**

8 (1) When the defendant is a resident of the state, either in the county within which the
9 defendant resides, or in the county within which the plaintiff resides, and the defendant may be
10 found;

11 (2) When there are several defendants, and they reside in different counties, the suit may
12 be brought in any such county;

13 (3) When there are several defendants, some residents and others nonresidents of the
14 state, suit may be brought in any county in this state in which any defendant resides;

15 (4) When all the defendants are nonresidents of the state, suit may be brought in any
16 county in this state[;

17 (5) Any action, local or transitory, in which any county shall be plaintiff, may be
18 commenced and prosecuted to final judgment in the county in which the defendant or defendants
19 reside, or in the county suing and where the defendants, or one of them, may be found;

20 (6) In all tort actions the suit may be brought in the county where the cause of action
21 accrued regardless of the residence of the parties, and process therein shall be issued by the court
22 of such county and may be served in any county within the state; provided, however, that in any
23 action for defamation or for invasion of privacy the cause of action shall be deemed to have
24 accrued in the county in which the defamation or invasion was first published].

25 **3. Tort actions shall include claims based upon improper health care.**

26 **4. Notwithstanding any other provision of law in all actions in which there is any**
27 **count alleging a tort and in which the cause of action accrued in the state of Missouri,**
28 **venue shall be in any county within the judicial circuit where the cause of action accrued.**

29 As used in this section, "judicial circuit where the cause of action accrued" shall mean the
30 judicial circuit where the plaintiff, or, in the case of a wrongful death action, the decedent,
31 was first injured by the wrongful acts or negligent conduct alleged in the action.

32 **5. Notwithstanding any other provision of law, in all actions in which there is any**
33 **count alleging a tort and in which the cause of action accrued outside the state of Missouri,**
34 **venue shall be determined as follows:**

35 **(1) If the defendant is a corporation, then venue shall be in any county within the**
36 **judicial circuit where a corporation's registered agent is located or, if there are one or two**
37 **plaintiffs properly joined and either of the plaintiff's principal place of residence was in**
38 **the state of Missouri on the date the cause of action accrued, in any county within the**
39 **judicial circuit of a plaintiff's principal place of residence on the date the cause of action**
40 **accrued;**

41 **(2) If the defendant is an individual, then venue may be in any county within the**
42 **judicial circuit of the individual's principal place of residence in the state of Missouri or,**
43 **if there are one or two plaintiffs properly joined and either of the plaintiff's principal place**
44 **of residence was in the state of Missouri on the date the cause of action accrued, in any**
45 **county within the judicial circuit of a plaintiff's principal place of residence on the date the**
46 **cause of action accrued.**

47 **6. Any action, local or transitory, in which any county shall be plaintiff, may be**
48 **commenced and prosecuted to final judgment in the county in which the defendant or**
49 **defendants reside, or in the county suing and where the defendants, or one of them, may**
50 **be found.**

51 **7. In all actions process therein shall be issued by the court of such county and may**
52 **be served in any county within the state.**

53 **8. In any action for defamation or for invasion of privacy, the cause of action shall**
54 **be deemed to have accrued in the county in which the defamation or invasion was first**
55 **published.**

56 **9. In all actions, venue shall be determined as of the date the cause of action**
57 **accrued.**

58 **10. All motions to dismiss or to transfer based upon a claim of improper venue shall**
59 **be deemed granted if not denied within ninety days of filing of the motion unless such time**
60 **period is waived in writing by all parties.**

510.263. 1. All actions tried before a jury involving punitive damages, **including tort**
2 **actions based upon improper health care,** shall be conducted in a bifurcated trial before the
3 same jury if requested by any party.

4 2. In the first stage of a bifurcated trial, in which the issue of punitive damages is

5 submissible, the jury shall determine liability for compensatory damages, the amount of
6 compensatory damages, including nominal damages, and the liability of a defendant for punitive
7 damages. Evidence of defendant's financial condition shall not be admissible in the first stage
8 of such trial unless admissible for a proper purpose other than the amount of punitive damages.

9 3. If during the first stage of a bifurcated trial the jury determines that a defendant is
10 liable for punitive damages, that jury shall determine, in a second stage of trial, the amount of
11 punitive damages to be awarded against such defendant. Evidence of such defendant's net worth
12 shall be admissible during the second stage of such trial.

13 4. Within the time for filing a motion for new trial, a defendant may file a post-trial
14 motion requesting the amount awarded by the jury as punitive damages be credited by the court
15 with amounts previously paid by the defendant for punitive damages arising out of the same
16 conduct on which the imposition of punitive damages is based. At any hearing, the burden on
17 all issues relating to such a credit shall be on the defendant and either party may introduce
18 relevant evidence on such motion. Such a motion shall be determined by the trial court within
19 the time and according to procedures applicable to motions for new trial. If the trial court
20 sustains such a motion the trial court shall credit the jury award of punitive damages by the
21 amount found by the trial court to have been previously paid by the defendant arising out of the
22 same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to
23 a credit under the provisions of this section, or the trial court finds from the evidence that the
24 defendant's conduct out of which the prior punitive damages award arose was not the same
25 conduct on which the imposition of punitive damages is based in the pending action, or the trial
26 court finds the defendant unreasonably continued the conduct after acquiring actual knowledge
27 of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial
28 court finds that the laws regarding punitive damages in the state in which the prior award of
29 punitive damages was entered substantially and materially deviate from the law of the state of
30 Missouri and that the nature of such deviation provides good cause for disallowance of the credit
31 based on the public policy of Missouri, then the trial court may disallow all or any part of the
32 credit provided by this section.

33 5. The credit allowable under this section shall not apply to causes of action for libel,
34 slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution or
35 fraud.

36 6. The doctrines of remittitur and additur, based on the trial judge's assessment of the
37 totality of the surrounding circumstances, shall apply to punitive damage awards.

38 **7. As used in this section, "punitive damage award" means an award for punitive**
39 **or exemplary damages or an award for aggravating circumstances.**

40 **8. Discovery as to a defendant's assets shall be allowed only after a finding by the**

41 **trial court that it is more likely than not that the plaintiff will be able to present a**
42 **submissible case to the trier of fact on the plaintiff's claim of punitive damages.**

516.105. All actions against physicians, hospitals, dentists, registered or licensed
2 practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical
3 therapists, and any other entity providing health care services and all employees of any of the
4 foregoing acting in the course and scope of their employment, for damages for malpractice,
5 negligence, error or mistake related to health care shall be brought within two years from the date
6 of occurrence of the act of neglect complained of, except that:

7 (1) In cases in which the act of neglect complained of is introducing and negligently
8 permitting any foreign object to remain within the body of a living person, the action shall be
9 brought within two years from the date of the discovery of such alleged negligence, or from the
10 date on which the patient in the exercise of ordinary care should have discovered such alleged
11 negligence, whichever date first occurs; and

12 (2) In cases in which the act of neglect complained of is the negligent failure to inform
13 the patient of the results of medical tests, the action for failure to inform shall be brought within
14 two years from the date of the discovery of such alleged negligent failure to inform, or from the
15 date on which the patient in the exercise of ordinary care should have discovered such alleged
16 negligent failure to inform, whichever date first occurs; except that, no such action shall be
17 brought for any negligent failure to inform about the results of medical tests performed more than
18 two years before August 28, 1999; and

19 (3) In cases in which the person bringing the action is a minor less than eighteen years
20 of age, such minor shall have until his or her twentieth birthday to bring such action.

21

22 In no event shall any action for damages for malpractice, error, or mistake be commenced after
23 the expiration of ten years from the date of the act of neglect complained of or for ten years from
24 a minor's [twentieth] **eighteenth** birthday, whichever is later.

537.035. 1. As used in this section, unless the context clearly indicates otherwise, the
2 following words and terms shall have the meanings indicated:

3 (1) "Health care professional", a physician or surgeon licensed under the provisions of
4 chapter 334, RSMo, or a dentist licensed under the provisions of chapter 332, RSMo, or a
5 podiatrist licensed under the provisions of chapter 330, RSMo, or an optometrist licensed under
6 the provisions of chapter 336, RSMo, or a pharmacist licensed under the provisions of chapter
7 338, RSMo, or a chiropractor licensed under the provisions of chapter 331, RSMo, or a
8 psychologist licensed under the provisions of chapter 337, RSMo, or a nurse licensed under the
9 provisions of chapter 335, RSMo, or a social worker licensed under the provisions of chapter
10 337, RSMo, or a professional counselor licensed under the provisions of chapter 337, RSMo, or

11 a mental health professional as defined in section 632.005, RSMo, while acting within their
12 scope of practice;

13 (2) "Peer review committee", a committee of health care professionals with the
14 responsibility to evaluate, maintain, or monitor the quality and utilization of health care services
15 or to exercise any combination of such responsibilities.

16 2. A peer review committee may be constituted as follows:

17 (1) Comprised of, and appointed by, a state, county or local society of health care
18 professionals;

19 (2) Comprised of, and appointed by, the partners, shareholders, or employed health care
20 professionals of a partnership or professional corporation of health care professionals;

21 (3) Appointed by the board of trustees, chief executive officer, or the organized medical
22 staff of a licensed hospital, or other health facility operating under constitutional or statutory
23 authority, **including long-term care facilities licensed under chapter 198, RSMo**, or an
24 administrative entity of the department of mental health recognized pursuant to the provisions
25 of subdivision (3) of subsection 1 of section 630.407, RSMo;

26 (4) Any other organization formed pursuant to state or federal law authorized to exercise
27 the responsibilities of a peer review committee and acting within the scope of such authorization;

28 (5) Appointed by the board of directors, chief executive officer or the medical director
29 of the licensed health maintenance organization.

30 3. Each member of a peer review committee and each person, hospital governing board,
31 health maintenance organization board of directors, and chief executive officer of a licensed
32 hospital or other hospital operating under constitutional or statutory authority, chief executive
33 officer or medical director of a licensed health maintenance organization who testifies before,
34 or provides information to, acts upon the recommendation of, or otherwise participates in the
35 operation of, such a committee shall be immune from civil liability for such acts so long as the
36 acts are performed in good faith, without malice and are reasonably related to the scope of
37 inquiry of the peer review committee.

38 4. Except as otherwise provided in this section, the proceedings, findings, deliberations,
39 reports, and minutes of peer review committees concerning the health care provided any patient
40 are privileged and shall not be subject to discovery, subpoena, or other means of legal
41 compulsion for their release to any person or entity or be admissible into evidence in any judicial
42 or administrative action for failure to provide appropriate care. Except as otherwise provided
43 in this section, no person who was in attendance at any peer review committee proceeding shall
44 be permitted or required to disclose any information acquired in connection with or in the course
45 of such proceeding, or to disclose any opinion, recommendation, or evaluation of the committee
46 or board, or any member thereof; provided, however, that information otherwise discoverable

47 or admissible from original sources is not to be construed as immune from discovery or use in
48 any proceeding merely because it was presented during proceedings before a peer review
49 committee nor is a member, employee, or agent of such committee, or other person appearing
50 before it, to be prevented from testifying as to matters within his personal knowledge and in
51 accordance with the other provisions of this section, but such witness cannot be questioned about
52 testimony or other proceedings before any health care review committee or board or about
53 opinions formed as a result of such committee hearings.

54 5. The provisions of subsection 4 of this section limiting discovery and admissibility of
55 testimony as well as the proceedings, findings, records, and minutes of peer review committees
56 do not apply in any judicial or administrative action brought by a peer review committee or the
57 legal entity which formed or within which such committee operates to deny, restrict, or revoke
58 the hospital staff privileges or license to practice of a physician or other health care providers;
59 or when a member, employee, or agent of the peer review committee or the legal entity which
60 formed such committee or within which such committee operates is sued for actions taken by
61 such committee which operate to deny, restrict or revoke the hospital staff privileges or license
62 to practice of a physician or other health care provider.

63 6. Nothing in this section shall limit authority otherwise provided by law of a health care
64 licensing board of the state of Missouri to obtain information by subpoena or other authorized
65 process from peer review committees or to require disclosure of otherwise confidential
66 information relating to matters and investigations within the jurisdiction of such health care
67 licensing boards.

537.067. [1.] In all tort actions for damages[, in which fault is not assessed to the
2 plaintiff], [the defendants] **a defendant** shall be jointly and severally liable for the amount of
3 [the judgment] **the compensatory damages and noneconomic damages portion of the**
4 **judgment** rendered against [such] defendants **only with those defendants whose apportioned**
5 **percentage of fault is less than such defendant. A defendant may not be jointly or severally**
6 **liable for more than the percentage of punitive damages for which fault is attributed to**
7 **such defendant by the trier of fact.**

8 [2. In all tort actions for damages in which fault is assessed to plaintiff the defendants
9 shall be jointly and severally liable for the amount of the judgment rendered against such
10 defendants except as follows:

11 (1) In all such actions in which the trier of fact assesses a percentage of fault to the
12 plaintiff, any party, including the plaintiff, may within thirty days of the date the verdict is
13 rendered move for reallocation of any uncollectible amounts;

14 (2) If such a motion is filed the court shall determine whether all or part of a party's
15 equitable share of the obligation is uncollectible from that party, and shall reallocate any

16 uncollectible amount among the other parties, including a claimant at fault, according to their
17 respective percentages of fault;

18 (3) The party whose uncollectible amount is reallocated is nonetheless subject to
19 contribution and to any continuing liability to the claimant on the judgment[;].

20 [(4) No amount shall be reallocated to any party whose assessed percentage of fault is
21 less than the plaintiff's so as to increase that party's liability by more than a factor of two;

22 (5) If such a motion is filed, the parties may conduct discovery on the issue of
23 collectibility prior to a hearing on such motion;

24 (6) Any order of reallocation pursuant to this section shall be entered within one hundred
25 twenty days after the date of filing such a motion for reallocation. If no such order is entered
26 within that time, such motion shall be deemed to be overruled;

27 (7) Proceedings on a motion for reallocation shall not operate to extend the time
28 otherwise provided for post-trial motion or appeal on other issues.

29

30 Any appeal on an order or denial of reallocation shall be taken within the time provided under
31 applicable rules of civil procedure and shall be consolidated with any other appeal on other
32 issues in the case.

33 3. This section shall not be construed to expand or restrict the doctrine of joint and
34 several liability except for reallocation as provided in subsection 2.]

538.205. As used in sections 538.205 to 538.230, the following terms shall mean:

2 (1) "Economic damages", damages arising from pecuniary harm including, without
3 limitation, medical damages, and those damages arising from lost wages and lost earning
4 capacity;

5 (2) "Equitable share", the share of a person or entity in an obligation that is the same
6 percentage of the total obligation as the person's or entity's allocated share of the total fault, as
7 found by the trier of fact;

8 (3) "Future damages", damages that the trier of fact finds will accrue after the damages
9 findings are made;

10 (4) "Health care provider", any physician, hospital, health maintenance organization,
11 ambulatory surgical center, long-term care facility **including those licensed under chapter 198,**
12 **RSMo**, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist,
13 chiropractor, professional physical therapist, psychologist, physician-in-training, and any other
14 person or entity that provides health care services under the authority of a license or certificate;

15 (5) "Health care services", any services that a health care provider renders to a patient
16 in the ordinary course of the health care provider's profession or, if the health care provider is an
17 institution, in the ordinary course of furthering the purposes for which the institution is

18 organized. Professional services shall include, but are not limited to, transfer to a patient of
19 goods or services incidental or pursuant to the practice of the health care provider's profession
20 or in furtherance of the purposes for which an institutional health care provider is organized;

21 (6) "Medical damages", damages arising from reasonable expenses for necessary drugs,
22 therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and
23 rehabilitative services;

24 (7) "Noneconomic damages", damages arising from nonpecuniary harm including,
25 without limitation, pain, suffering, mental anguish, inconvenience, physical impairment,
26 disfigurement, loss of capacity to enjoy life, and loss of consortium but shall not include punitive
27 damages;

28 (8) "Past damages", damages that have accrued when the damages findings are made;

29 (9) "Physician employee", any person or entity who works for hospitals for a salary or
30 under contract and who is covered by a policy of insurance or self-insurance by a hospital for acts
31 performed at the direction or under control of the hospital;

32 (10) "Punitive damages", damages intended to punish or deter willful, wanton or
33 malicious misconduct, **including exemplary damages and damages for aggravating**
34 **circumstances**;

35 (11) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any
36 kind.

538.210. 1. In any action against a health care provider for damages for personal injury
2 or death arising out of the rendering of or the failure to render health care services, no plaintiff
3 shall recover more than [three] **four** hundred [fifty] thousand dollars [per occurrence] for
4 noneconomic damages [from any one defendant as defendant is defined in subsection 2 of this
5 section] **irrespective of the number of defendants**.

6 2. ["Defendant" for purposes of sections 538.205 to 538.230 shall be defined as:

7 (1) A hospital as defined in chapter 197, RSMo, and its employees and physician
8 employees who are insured under the hospital's professional liability insurance policy or the
9 hospital's self-insurance maintained for professional liability purposes;

10 (2) A physician, including his nonphysician employees who are insured under the
11 physician's professional liability insurance or under the physician's self-insurance maintained for
12 professional liability purposes;

13 (3) Any other health care provider having the legal capacity to sue and be sued and who
14 is not included in subdivisions (1) and (2) of this subsection, including employees of any health
15 care providers who are insured under the health care provider's professional liability insurance
16 policy or self-insurance maintained for professional liability purposes.] **Such limitation shall**
17 **also apply to any other individual or entity that is a defendant in a lawsuit brought against**

18 **a health care provider pursuant to this chapter, or that is a defendant in any lawsuit that**
19 **arises out of the rendering of or the failure to render health care services.**

20 **3. No hospital or other health care provider shall be liable to any plaintiff based on**
21 **the actions or omissions of any other entity or person who is not an employee of that**
22 **hospital or other health care provider.**

23 [3.] **4.** In an action against a health care provider for damages for personal injury or
24 death arising out of the rendering of or the failure to render health care services, where the trier
25 of fact is a jury, such jury shall not be instructed by the court with respect to the limitation on an
26 award of noneconomic damages, nor shall counsel for any party or any person providing
27 testimony during such proceeding in any way inform the jury or potential jurors of such
28 limitation.

29 [4. The limitation on awards for noneconomic damages provided for in this section shall
30 be increased or decreased on an annual basis effective January first of each year in accordance
31 with the Implicit Price Deflator for Personal Consumption Expenditures as published by the
32 Bureau of Economic Analysis of the United States Department of Commerce. The current value
33 of the limitation shall be calculated by the director of the department of insurance, who shall
34 furnish that value to the secretary of state, who shall publish such value in the Missouri Register
35 as soon after each January first as practicable, but it shall otherwise be exempt from the
36 provisions of section 536.021, RSMo.]

37 **5. For purposes of sections 538.205 to 538.230, any spouse claiming damages for**
38 **loss of consortium of their spouse shall be considered to be the same plaintiff as their**
39 **spouse.**

40 [5.] **6.** Any provision of law or court rule to the contrary notwithstanding, an award of
41 punitive damages against a health care provider governed by the provisions of sections 538.205
42 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider
43 demonstrated willful, wanton or malicious misconduct with respect to his actions which are
44 found to have injured or caused or contributed to cause the damages claimed in the petition.

45 **7. For purposes of sections 538.205 to 538.230, all individuals and entities asserting**
46 **a claim for a wrongful death pursuant to section 537.080, RSMo, shall be considered to be**
47 **one plaintiff.**

538.214. 1. Any physician licensed pursuant to chapter 334, RSMo, or dentist
2 **licensed pursuant to chapter 332, RSMo, or hospital, or employee of a hospital as defined**
3 **in section 197.020, RSMo, or other health care provider as defined in section 538.205, who**
4 **renders any care or assistance in a hospital shall not be held liable for more than two**
5 **hundred thousand dollars for noneconomic damages, exclusive of interest computed from**
6 **the date of judgment, to or for the benefit of any claimant arising out of any act or omission**

7 in rendering that care or assistance when:

8 (1) The care or assistance is rendered in a hospital emergency department, or is
9 care rendered within twenty-four hours of receiving care in the emergency department;

10 (2) The care or assistance rendered is necessitated by a traumatic injury demanding
11 immediate medical attention for which the patient enters the hospital for care in its
12 emergency department or trauma center; and

13 (3) The care or assistance is rendered in good faith and in a manner not amounting
14 to reckless, willful, or wanton conduct.

15 2. The limitation on liability provided pursuant to this section does not apply to any
16 act or omission in rendering care or assistance which:

17 (1) Occurs after the patient is stabilized and is capable of receiving medical
18 treatment as a nonemergency patient; or

19 (2) Is unrelated to the original traumatic injury.

20 3. There shall be a rebuttable presumption that the medical condition was the result
21 of the original traumatic injury.

22 4. In considering whether an act or omission constitutes reckless, willful, or wanton
23 conduct, the court shall consider the following:

24 (1) The extent or serious nature of the prevailing circumstances;

25 (2) The lack of time or ability to obtain appropriate consultation;

26 (3) The lack of a prior medical relationship with the patient;

27 (4) The inability to obtain an appropriate medical history of the patient; and

28 (5) The time constraints imposed by coexisting emergencies.

29 5. For purposes of this section "Traumatic injury" shall mean any acute injury or
30 illness which, according to standardized criteria for triage in the field, involves a significant
31 risk of death or the precipitation of complications or disabilities.

538.220. 1. In any action against a health care provider for damages for personal injury
2 or death arising out of the rendering of or the failure to render health care services, past damages
3 shall be payable in a lump sum.

4 2. At the request of any party to such action made prior to the entry of judgment, the
5 court shall include in the judgment a requirement that future damages be paid in whole or in part
6 in periodic or installment payments if the total award of damages in the action exceeds one
7 hundred thousand dollars. Any judgment ordering such periodic or installment payments shall
8 specify a **future medical periodic payment schedule, which shall include:** the recipient, the
9 amount of each payment, the interval between payments, and the number of payments. **The**
10 **duration of the future medical payment schedule shall be for a period of time no less than**
11 **the evidence of life expectancy presented at trial. The amount of each of the future medical**

12 **periodic payments shall be determined by dividing the total amount of future medical**
13 **damages by the number of future medical periodic payments. The court shall apply**
14 **interest on such future periodic payments at a per annum interest rate no greater than the**
15 **coupon issue yield equivalent, as determined by the Federal Reserve Board, of the average**
16 **accepted auction price for the last auction of fifty-two week United States Treasury bills**
17 **settled immediately prior to the date of the judgment. The judgment shall state the**
18 **applicable interest rate.** The parties shall be afforded the opportunity to agree on the manner
19 of payment of future damages, including the rate of interest, if any, to be applied, subject to court
20 approval. However, in the event the parties cannot agree, the unresolved issues shall be
21 submitted to the court for resolution, either with or without a post-trial evidentiary hearing which
22 may be called at the request of any party or the court. If a defendant makes the request for
23 payment pursuant to this section, such request shall be binding only as to such defendant and
24 shall not apply to or bind any other defendant.

25 3. As a condition to authorizing periodic payments of future damages, the court may
26 require a judgment debtor who is not adequately insured to post security or purchase an annuity
27 adequate to assure full payment of such damages awarded by the judgment. Upon termination
28 of periodic payments of future damages, the court shall order the return of this security or so
29 much as remains to the judgment debtor.

30 4. If a plaintiff and his attorney have agreed that attorney's fees shall be paid from the
31 award, as part of a contingent fee arrangement, it shall be presumed that the fee will be paid at
32 the time the judgment becomes final. If the attorney elects to receive part or all of such fees in
33 periodic or installment payments from future damages, the method of payment and all incidents
34 thereto shall be a matter between such attorney and the plaintiff and not subject to the terms of
35 the payment of future damages, whether agreed to by the parties or determined by the court.

36 5. Upon the death of a judgment creditor, the right to receive payments of future
37 damages, other than future medical damages, being paid by installments or periodic payments
38 will pass in accordance with the Missouri probate code unless otherwise transferred or alienated
39 prior to death. Payment of future medical damages will continue to the estate of the judgment
40 creditor only for as long as necessary to enable the estate to satisfy medical expenses of the
41 judgment creditor that were due and owing at the time of death, which resulted directly from the
42 injury for which damages were awarded, and do not exceed the dollar amount of the total
43 payments for such future medical damages outstanding at the time of death.

44 **6. Nothing in this section shall prevent the parties from contracting and agreeing**
45 **to settle and resolve the claim for future damages. If such an agreement is reached by the**
46 **parties, the future periodic payment schedule will become moot.**

538.225. 1. In any action against a health care provider for damages for personal injury

2 or death on account of the rendering of or failure to render health care services, the plaintiff or
3 [his] **the plaintiff's** attorney shall file an affidavit with the court stating that he **or she** has
4 obtained the written opinion of a legally qualified health care provider which states that the
5 defendant health care provider failed to use such care as a reasonably prudent and careful health
6 care provider would have under similar circumstances and that such failure to use such
7 reasonable care directly caused or directly contributed to cause the damages claimed in the
8 petition. **The written opinion shall be subject to in camera review at the request of any**
9 **defendant for a determination of whether the health care provider offering such an opinion**
10 **meets the qualifications set forth in subsection 6 of this section.**

11 2. The affidavit shall state the qualifications of such health care providers to offer such
12 opinion.

13 3. A separate affidavit shall be filed for each defendant named in the petition.

14 4. Such affidavit shall be filed no later than ninety days after the filing of the petition
15 unless the court, for good cause shown, orders that such time be extended **for a period of time**
16 **not to exceed an additional ninety days.**

17 5. If the plaintiff or his attorney fails to file such affidavit the court [may] **shall**, upon
18 motion of any party, dismiss the action against such moving party without prejudice.

19 **6. As used in this section, the term "legally qualified health care provider" means**
20 **a health care provider licensed in this state or any other state in substantially the same**
21 **profession and authorized to practice in substantially the same specialty as the defendant.**

538.227. 1. The portion of statements, writings, or benevolent gestures expressing
2 **sympathy or a general sense of benevolence relating to the pain, suffering, or death of a**
3 **person and made to that person or to the family of that person shall be inadmissible as**
4 **evidence of an admission of liability in a civil action. A statement of fault, however, which**
5 **is part of, or in addition to, any of the provisions of this subsection shall not be**
6 **inadmissible pursuant to this section.**

7 **2. For the purposes of this section:**

8 **(1) "Benevolent gestures", actions which convey a sense of compassion or**
9 **commiseration emanating from humane impulses;**

10 **(2) "Family", the spouse, parent, grandparent, stepmother, stepfather, child,**
11 **grandchild, brother, sister, half brother, half sister, adopted children of a parent, or**
12 **spouse's parents of an injured party.**

Section 1. If any provision of this act is found by a court of competent jurisdiction
2 **to be invalid or unconstitutional it is the stated intent of the legislature that the legislature**
3 **would have approved the remaining portions of the act, and the remaining portions of the**
4 **act shall remain in full force and effect.**

Section 2. The provisions of this act shall apply to all causes of action filed after August 28, 2004.

Section 3. At any time prior to the commencement of a trial, if a plaintiff or defendant is either added or removed from a complaint filed in any court in the state of Missouri which would have, if originally added or removed to the initial petition, altered the determination of venue under section 508.010, RSMo, then the judge shall transfer the case to a proper forum pursuant to section 476.410, RSMo.

[355.176. 1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent annual report filed pursuant to section 355.856. Service is perfected under this subsection on the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.]

[508.040. Suits against corporations shall be commenced either in the county where the cause of action accrued, or in case the corporation defendant is a railroad company owning, controlling or operating a railroad running into or through two or more counties in this state, then in either of such counties, or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.]

[508.070. 1. Suit may be brought against any motor carrier which is subject to regulation pursuant to chapter 390, RSMo, in any county where the cause of action may arise, in any town or county where the motor carrier operates, or judicial circuit where the cause of action accrued, or where the defendant maintains an office or agent, and service may be had upon the motor carrier whether an individual person, firm, company, association, or corporation, by serving process upon the director, division of motor carrier and railroad safety.

2. When a summons and petition are served upon the director, division of motor carrier and railroad safety, naming any motor carrier, either a resident or nonresident of this state, as a defendant in any action, the director shall immediately mail the summons and petition by registered United States mail to the motor carrier at the business address of the motor carrier as it appears upon the records of the commission. The director shall request from the postmaster a

14 return receipt from the motor carrier to whom the registered letter enclosing copy
15 of summons and petition is mailed. The director shall inform the clerk of the
16 court out of which the summons was issued that the summons and petition were
17 mailed to the motor carrier, as herein described, and the director shall forward to
18 the clerk the return receipt showing delivery of the registered letter.

19 3. Each motor carrier not a resident of this state and not maintaining an
20 office or agent in this state shall, in writing, designate the director as its
21 authorized agent upon whom legal service may be had in all actions arising in
22 this state from any operation of the motor vehicle pursuant to authority of any
23 certificate or permit, and service shall be had upon the nonresident motor carrier
24 as herein provided.

25 4. There shall be kept in the office of the director, division of motor
26 carrier and railroad safety a permanent record showing all process served, the
27 name of the plaintiff and defendant, the court from which the summons issued,
28 the name and title of the officer serving the same, the day and the hour of service,
29 the day and date on which petition and summons were forwarded to the defendant
30 or defendants by registered letter, the date on which return receipt is received by
31 the director, and the date on which the return receipt was forwarded to the clerk
32 of the court out of which the summons was issued.]

33

2 [508.120. No defendant shall be allowed a change of venue and no
3 application by a defendant to disqualify a judge shall be granted unless the
4 application therefor is made before the filing of his answer to the merits, except
5 when the cause for the change of venue or disqualification arises, or information
6 or knowledge of the existence thereof first comes to him, after the filing of his
7 answer in which case the application shall state the time when the cause arose or
8 when applicant acquired information and knowledge thereof, and the application
must be made within five days thereafter.]