

FIRST REGULAR SESSION

HOUSE BILL NO. 1014

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUGHES.

1997L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 538.210, RSMo, and to enact in lieu thereof two new sections relating to medical malpractice court cases.

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

Section A. Section 538.210, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 477.700 and 538.210, to read as follows:

477.700. 1. Beginning January 1, 2012, the chief justice of the supreme court or his or her designee shall establish a five-year pilot project to implement a medical malpractice court in this state and to study its effectiveness and feasibility on a statewide basis.

2. The project shall include the following:

(1) The chief justice or his or her designee shall select one circuit in this state to implement the five-year pilot;

(2) The chief justice or his or her designee shall designate a judge in that circuit who has a medical background to be the judge of that medical malpractice court;

(3) All medical malpractice cases in the designated circuit and any other civil cases which will require the introduction of extensive medical evidence shall be assigned to the judge of the medical malpractice court.

3. The Missouri supreme court shall develop and implement any rules necessary to carry out this pilot project.

4. The pilot project shall be funded from existing appropriations or with any moneys specifically appropriated for this pilot project.

5. At the end of the five-year pilot, the chief justice or his or her designee shall submit a report to the governor and the general assembly by February 1, 2018, on the

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.

18 effectiveness of the medical malpractice court and the feasibility of expanding it statewide.

19 The report shall, at a minimum, include the following:

20 (1) A conclusion as to the effectiveness of having a judge with a medical
21 background handle medical malpractice cases as opposed to judges without such a
22 background;

23 (2) A conclusion as to the effectiveness of having all medical malpractice cases and
24 other civil cases with extensive medical evidence heard in one court by a judge with a
25 medical background;

26 (3) An assessment of the impact of the medical malpractice court in the following
27 areas:

28 (a) Length of time from filing to disposition in the medical malpractice court versus
29 the average length of time for such cases in other circuits without a medical malpractice
30 court;

31 (b) A comparison of the number and size of settlements in the malpractice court
32 with the number and size of settlements in previous years for malpractice cases;

33 (c) A comparison of the average size of damage awards in the pilot court versus the
34 average size of damage awards in other circuits without a medical malpractice court;

35 (d) The level of acceptance of the concept of a medical malpractice court by lawyers
36 and judges within the pilot circuit;

37 (e) The impact of the removal of the three hundred fifty thousand dollar cap on
38 noneconomic damages in actions against health care providers for damages for personal
39 injury or death arising out of the rendering of or the failure to render health care services,
40 on damage awards in cases in the pilot medical malpractice court versus the impact on
41 damage awards in such cases in circuits without a medical malpractice court;

42 (4) A recommendation as to whether the medical malpractice court should be
43 continued and if so how it should be implemented including whether a medical malpractice
44 court should be implemented in every circuit, or on a regional basis or just one medical
45 malpractice court for the entire state; and

46 (5) Any recommended changes for the structure or operation of the medical
47 malpractice court.

48 6. As used in this section "designee" may be one individual or a panel of members
49 made up of doctors, lawyers and judges selected by the chief justice of the Missouri
50 supreme court.

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 hundred fifty thousand dollars for noneconomic damages
4 irrespective of the number of defendants.

5 2. (1) Such limitation shall also apply to any individual or entity, or their employees or
6 agents that provide, refer, coordinate, consult upon, or arrange for the delivery of health care
7 services to the plaintiff; and

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

11 (3) No individual or entity whose liability is limited by the provisions of this chapter
12 shall be liable to any plaintiff based on the actions or omissions of any other entity or person who
13 is not an employee of such individual or entity whose liability is limited by the provisions of this
14 chapter. Such limitation shall apply to all claims for contribution.

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

20 4.] For purposes of sections 538.205 to 538.230, any spouse claiming damages for loss
21 of consortium of their spouse shall be considered to be the same plaintiff as their spouse.

22 [5.] 2. Any provision of law or court rule to the contrary notwithstanding, an award of
23 punitive damages against a health care provider governed by the provisions of sections 538.205
24 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider
25 demonstrated willful, wanton or malicious misconduct with respect to his actions which are
26 found to have injured or caused or contributed to cause the damages claimed in the petition.

27 [6.] 3. For purposes of sections 538.205 to 538.230, all individuals and entities asserting
28 a claim for a wrongful death under section 537.080 shall be considered to be one plaintiff.