

SECOND REGULAR SESSION

# HOUSE BILL NO. 2273

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WHITE.

6072H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 538.210, RSMo, and to enact in lieu thereof one new section relating to punitive damages in actions against health care providers.

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

Section A. Section 538.210, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 538.210, to read as follows:

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

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

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

(3) In any action against a health care provider for damages for death arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than

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.

17 seven hundred thousand dollars for noneconomic damages irrespective of the number of defendants.

18 3. (1) This section shall also apply to any individual or entity, or their employees or  
19 agents, that provide, refer, coordinate, consult upon, or arrange for the delivery of health care  
20 services to the plaintiff; and

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

24 4. No health care provider whose liability is limited by the provisions of this chapter  
25 shall be liable to any plaintiff based on the actions or omissions of any other entity or individual  
26 who is not an employee of such health care provider, unless the individual is an employee of a  
27 subsidiary in which the health care provider has a controlling interest and the subsidiary does not  
28 carry a professional liability insurance policy or self-insurance covering said individual of at least  
29 one million dollars per occurrence and a professional liability insurance policy or self-insurance  
30 covering said subsidiary of least one million dollars per occurrence.

31 5. The limitations on liability as provided for in this section shall apply to all claims for  
32 contribution.

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

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

40 8. 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 clear and convincing evidence** by a plaintiff  
43 that the health care provider demonstrated willful, wanton or malicious misconduct with respect  
44 to his actions which are found to have injured or caused or contributed to cause the damages  
45 claimed in the petition.

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

48 10. The limitations on awards for noneconomic damages provided for in this section  
49 shall be increased by one and seven-tenths percent on an annual basis effective January first of  
50 each year. The current value of the limitation shall be calculated by the director of the  
51 department of insurance, financial institutions and professional registration, who shall furnish  
52 that value to the secretary of state, who shall publish such value in the Missouri Register on the

53 first business day following January first, but the value shall otherwise be exempt from the  
54 provisions of section 536.021.

55         11. In any claim for damages under this chapter, and upon post-trial motion following  
56 a jury verdict with noneconomic damages exceeding four hundred thousand dollars, the trial  
57 court shall determine whether the limitation in subsection 2 of this section shall apply based on  
58 the severity of the most severe injuries.

59         12. If a court of competent jurisdiction enters a final judgment on the merits that is not  
60 subject to appeal and that declares any provision or part of either section 1.010 or this section  
61 to be unconstitutional or unenforceable, then section 1.010 and this section, as amended by this  
62 act and in their entirety, are invalid and shall have no legal effect as of the date of such judgment,  
63 and this act, including its repealing clause, shall likewise be invalid and of no legal effect. In  
64 such event, the versions of sections 1.010 and this section that were in effect prior to the  
65 enactment of this act shall remain in force.

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