

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR

SENATE BILL NO. 239

98TH GENERAL ASSEMBLY
2015

1309S.06T

AN ACT

To repeal sections 1.010, 538.205, and 538.210, RSMo, and to enact in lieu thereof three new sections relating to a statutory cause of action against healthcare providers.

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

Section A. Sections 1.010, 538.205, and 538.210, RSMo, are repealed and
2 three new sections enacted in lieu thereof, to be known as sections 1.010, 538.205,
3 and 538.210, to read as follows:

1.010. **1.** The common law of England and all statutes and acts of
2 parliament made prior to the fourth year of the reign of James the First, of a
3 general nature, which are not local to that kingdom and not repugnant to or
4 inconsistent with the Constitution of the United States, the constitution of this
5 state, or the statute laws in force for the time being, are the rule of action and
6 decision in this state, any custom or usage to the contrary notwithstanding, but
7 no act of the general assembly or law of this state shall be held to be invalid, or
8 limited in its scope or effect by the courts of this state, for the reason that it is
9 in derogation of, or in conflict with, the common law, or with such statutes or acts
10 of parliament; but all acts of the general assembly, or laws, shall be liberally
11 construed, so as to effectuate the true intent and meaning thereof.

12 **2. The general assembly expressly excludes from this section the**
13 **common law of England as it relates to claims arising out of the**
14 **rendering of or failure to render health care services by a health care**
15 **provider, it being the intent of the general assembly to replace those**
16 **claims with statutory causes of action.**

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

2 mean:

3 (1) "Catastrophic personal injury", a physical injury resulting in:

4 (a) **Quadriplegia defined as the permanent loss of functional use**
5 **of all four limbs;**

6 (b) **Paraplegia defined as the permanent loss of functional use of**
7 **two limbs;**

8 (c) **Loss of two or more limbs;**

9 (d) **An injury to the brain that results in permanent cognitive**
10 **impairment resulting in the permanent inability to make independent**
11 **decisions or engage in one or more of the following activities of daily**
12 **living: eating, dressing, bathing, toileting, transferring, and walking;**

13 (e) **An injury that causes irreversible failure of one or more**
14 **major organ systems; or**

15 (f) **Vision loss such that the patient's central visual acuity is no**
16 **more than twenty/two-hundred in the better eye with the best**
17 **correction or whose field of vision in the better eye is restricted to a**
18 **degree that its widest diameter subtends an angle no greater than**
19 **twenty degrees;**

20 (2) "Economic damages", damages arising from pecuniary harm including,
21 without limitation, medical damages, and those damages arising from lost wages
22 and lost earning capacity;

23 [(2)] (3) "Equitable share", the share of a person or entity in an
24 obligation that is the same percentage of the total obligation as the person's or
25 entity's allocated share of the total fault, as found by the trier of fact;

26 [(3)] (4) "Future damages", damages that the trier of fact finds will
27 accrue after the damages findings are made;

28 [(4)] (5) "Health care provider", any physician, hospital, health
29 maintenance organization, ambulatory surgical center, long-term care facility
30 including those licensed under chapter 198, dentist, registered or licensed
31 practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional
32 physical therapist, psychologist, physician-in-training, and any other person or
33 entity that provides health care services under the authority of a license or
34 certificate;

35 [(5)] (6) "Health care services", any services that a health care provider
36 renders to a patient in the ordinary course of the health care provider's profession
37 or, if the health care provider is an institution, in the ordinary course of
38 furthering the purposes for which the institution is organized. Professional

39 services shall include, but are not limited to, transfer to a patient of goods or
40 services incidental or pursuant to the practice of the health care provider's
41 profession or in furtherance of the purposes for which an institutional health care
42 provider is organized;

43 [(6)] (7) "Medical damages", damages arising from reasonable expenses
44 for necessary drugs, therapy, and medical, surgical, nursing, x-ray, dental,
45 custodial and other health and rehabilitative services;

46 [(7)] (8) "Noneconomic damages", damages arising from nonpecuniary
47 harm including, without limitation, pain, suffering, mental anguish,
48 inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life,
49 and loss of consortium but shall not include punitive damages;

50 [(8)] (9) "Past damages", damages that have accrued when the damages
51 findings are made;

52 [(9)] (10) "Physician employee", any person or entity who works for
53 hospitals for a salary or under contract and who is covered by a policy of
54 insurance or self-insurance by a hospital for acts performed at the direction or
55 under control of the hospital;

56 [(10)] (11) "Punitive damages", damages intended to punish or deter
57 willful, wanton or malicious misconduct, including exemplary damages and
58 damages for aggravating circumstances;

59 [(11)] (12) "Self-insurance", a formal or informal plan of self-insurance
60 or no insurance of any kind.

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

10 **2. (1)** In any action against a health care provider for damages for
11 personal injury [or death] arising out of the rendering of or the failure to render
12 health care services, no plaintiff shall recover more than [three] **four** hundred
13 [fifty] thousand dollars for noneconomic damages irrespective of the number of
14 defendants.

15 **(2) Notwithstanding the provisions of subdivision (1) of this**

16 subsection, in any action against a health care provider for damages for
17 a catastrophic personal injury arising out of the rendering or failure
18 to render health care services, no plaintiff shall recover more than
19 seven hundred thousand dollars for noneconomic damages irrespective
20 of the number of defendants.

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

26 [2.] 3. (1) Such limitation shall also apply to any individual or entity, or
27 their employees or agents that provide, refer, coordinate, consult upon, or arrange
28 for the delivery of health care services to the plaintiff; and

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

32 (3) No individual or entity whose liability is limited by the provisions of
33 this chapter shall be liable to any plaintiff based on the actions or omissions of
34 any other entity or person who is not an employee of such individual or entity
35 whose liability is limited by the provisions of this chapter.

36 Such limitation shall apply to all claims for contribution.

37 [3.] 4. In any action against a health care provider for damages for
38 personal injury or death arising out of the rendering of or the failure to render
39 health care services, where the trier of fact is a jury, such jury shall not be
40 instructed by the court with respect to the limitation on an award of noneconomic
41 damages, nor shall counsel for any party or any person providing testimony
42 during such proceeding in any way inform the jury or potential jurors of such
43 limitation.

44 [4.] 5. For purposes of sections 538.205 to 538.230, any spouse claiming
45 damages for loss of consortium of their spouse shall be considered to be the same
46 plaintiff as their spouse.

47 [5.] 6. Any provision of law or court rule to the contrary notwithstanding,
48 an award of punitive damages against a health care provider governed by the
49 provisions of sections 538.205 to 538.230 shall be made only upon a showing by
50 a plaintiff that the health care provider demonstrated willful, wanton or
51 malicious misconduct with respect to his actions which are found to have injured
52 or caused or contributed to cause the damages claimed in the petition.

53 [6.] 7. For purposes of sections 538.205 to 538.230, all individuals and
54 entities asserting a claim for a wrongful death under section 537.080 shall be
55 considered to be one plaintiff.

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

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

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

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