

FIRST REGULAR SESSION

SENATE BILL NO. 105

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Pre-filed January 3, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0571S.011

AN ACT

To repeal sections 1.010 and 538.210, RSMo, and to enact in lieu thereof two 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Section A. Sections 1.010 and 538.210, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 1.010 and 538.210, to read as follows:

1.010. The common law of England and all statutes and acts of parliament made prior to the fourth year of the reign of James the First, of a general nature, which are not local to that kingdom and not repugnant to or inconsistent with the Constitution of the United States, the constitution of this state, or the statute laws in force for the time being, are the rule of action and decision in this state, any custom or usage to the contrary notwithstanding, but no act of the general assembly or law of this state shall be held to be invalid, or limited in its scope or effect by the courts of this state, for the reason that it is in derogation of, or in conflict with, the common law, or with such statutes or acts of parliament; but all acts of the general assembly, or laws, shall be liberally construed, so as to effectuate the true intent and meaning thereof. **The general assembly expressly excludes from this section the common law of England as it relates to claims arising out of the rendering of or failure to render health care services by a health care provider, it being the intent of the general assembly to replace those claims with statutory causes of action.**

538.210. 1. **A statutory cause of action for damages against a health care provider for personal injury or death arising out of the**

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

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 similarly situated health care providers and that such**
8 **failure proximately caused injury or death.**

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

13 **[2.] 3.** (1) Such limitation shall also apply to any individual or entity, or
14 their employees or agents that provide, refer, coordinate, consult upon, or arrange
15 for the delivery of health care services to the plaintiff; and

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

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

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

31 **[4.] 5.** For purposes of sections 538.205 to 538.230, any spouse claiming
32 damages for loss of consortium of their spouse shall be considered to be the same
33 plaintiff as their spouse.

34 **[5.] 6.** Any provision of law or court rule to the contrary notwithstanding,
35 an award of punitive damages against a health care provider governed by the
36 provisions of sections 538.205 to 538.230 shall be made only upon a showing by
37 a plaintiff that the health care provider demonstrated willful, wanton or
38 malicious misconduct with respect to his actions which are found to have injured

39 or caused or contributed to cause the damages claimed in the petition.

40 [6.] 7. For purposes of sections 538.205 to 538.230, all individuals and
41 entities asserting a claim for a wrongful death under section 537.080 shall be
42 considered to be one plaintiff.

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