

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 239

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:

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2 repealed and three new sections enacted in lieu thereof, to be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

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

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

6 538.205. As used in sections 538.205 to 538.230, the
7 following terms shall mean:

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

10 (a) Quadriplegia defined as the permanent loss of
11 functional use of all four limbs;

12 (b) Paraplegia defined as the permanent loss of functional
13 use of two limbs;

14 (c) Loss of two or more limbs;

15 (d) An injury to the brain that results in permanent
16 cognitive impairment resulting in the permanent inability to make
17 independent decisions or engage in one or more of the following
18 activities of daily living: eating, dressing, bathing,
19 toileting, transferring, and walking;

20 (e) An injury that causes irreversible failure of one or
21 more major organ systems; or

22 (f) Vision loss such that the patient's central visual
23 acuity is no more than twenty-two/two-hundredths in the better
24 eye with the best correction or whose field of vision in the
25 better eye is restricted to a degree that its widest diameter
26 subtends an angle no greater than twenty degrees;

27 (2) "Economic damages", damages arising from pecuniary harm
28 including, without limitation, medical damages, and those damages

1 arising from lost wages and lost earning capacity;

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

6 [(3)] (4) "Future damages", damages that the trier of fact
7 finds will accrue after the damages findings are made;

8 [(4)] (5) "Health care provider", any physician, hospital,
9 health maintenance organization, ambulatory surgical center,
10 long-term care facility including those licensed under chapter
11 198, dentist, registered or licensed practical nurse,
12 optometrist, podiatrist, pharmacist, chiropractor, professional
13 physical therapist, psychologist, physician-in-training, and any
14 other person or entity that provides health care services under
15 the authority of a license or certificate;

16 [(5)] (6) "Health care services", any services that a
17 health care provider renders to a patient in the ordinary course
18 of the health care provider's profession or, if the health care
19 provider is an institution, in the ordinary course of furthering
20 the purposes for which the institution is organized.

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

26 [(6)] (7) "Medical damages", damages arising from
27 reasonable expenses for necessary drugs, therapy, and medical,
28 surgical, nursing, x-ray, dental, custodial and other health and

1 rehabilitative services;

2 [(7)] (8) "Noneconomic damages", damages arising from
3 nonpecuniary harm including, without limitation, pain, suffering,
4 mental anguish, inconvenience, physical impairment,
5 disfigurement, loss of capacity to enjoy life, and loss of
6 consortium but shall not include punitive damages;

7 [(8)] (9) "Past damages", damages that have accrued when
8 the damages findings are made;

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

14 [(10)] (11) "Punitive damages", damages intended to punish
15 or deter willful, wanton or malicious misconduct, including
16 exemplary damages and damages for aggravating circumstances;

17 [(11)] (12) "Self-insurance", a formal or informal plan of
18 self-insurance or no insurance of any kind.

19 538.210. 1. A statutory cause of action for damages
20 against a health care provider for personal injury or death
21 arising out of the rendering of or failure to render health care
22 services is hereby created, replacing any such common law cause
23 of action. The elements of such cause of action are that the
24 health care provider failed to use that degree of skill and
25 learning ordinarily used under the same or similar circumstances
26 by members of the defendant's profession and that such failure
27 directly caused or contributed to cause the plaintiff's injury or
28 death.

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

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

13 (3) In any action against a health care provider for
14 damages for death arising out of the rendering of or the failure
15 to render health care services, no plaintiff shall recover more
16 than five hundred thousand dollars for noneconomic damages
17 irrespective of the number of defendants.

18 [2.] 3. (1) Such limitation shall also apply to any
19 individual or entity, or their employees or agents that provide,
20 refer, coordinate, consult upon, or arrange for the delivery of
21 health care services to the plaintiff; and

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

26 (3) No individual or entity whose liability is limited by
27 the provisions of this chapter shall be liable to any plaintiff
28 based on the actions or omissions of any other entity or person

1 who is not an employee of such individual or entity whose
2 liability is limited by the provisions of this chapter.

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4 Such limitation shall apply to all claims for contribution.

5 [3.] 4. In any action against a health care provider for
6 damages for personal injury or death arising out of the rendering
7 of or the failure to render health care services, where the trier
8 of fact is a jury, such jury shall not be instructed by the court
9 with respect to the limitation on an award of noneconomic
10 damages, nor shall counsel for any party or any person providing
11 testimony during such proceeding in any way inform the jury or
12 potential jurors of such limitation.

13 [4.] 5. For purposes of sections 538.205 to 538.230, any
14 spouse claiming damages for loss of consortium of their spouse
15 shall be considered to be the same plaintiff as their spouse.

16 [5.] 6. Any provision of law or court rule to the contrary
17 notwithstanding, an award of punitive damages against a health
18 care provider governed by the provisions of sections 538.205 to
19 538.230 shall be made only upon a showing by a plaintiff that the
20 health care provider demonstrated willful, wanton or malicious
21 misconduct with respect to his actions which are found to have
22 injured or caused or contributed to cause the damages claimed in
23 the petition.

24 [6.] 7. For purposes of sections 538.205 to 538.230, all
25 individuals and entities asserting a claim for a wrongful death
26 under section 537.080 shall be considered to be one plaintiff.

27 8. The limitations on awards for noneconomic damages
28 provided for in this section shall be increased by one and seven-

1 tenths percent on an annual basis effective January first of each
2 year. The current value of the limitation shall be calculated by
3 the director of the department of insurance, who shall furnish
4 that value to the secretary of state, who shall publish such
5 value in the Missouri Register on the first business day
6 following January first, but the value shall otherwise be exempt
7 from the provisions of section 536.021.

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

14 10. If a court of competent jurisdiction enters a final
15 judgment on the merits that is not subject to appeal and that
16 declares any provision or part of either section 1.010 or this
17 section to be unconstitutional or unenforceable, then section
18 1.010 and this section, as amended by this act and in their
19 entirety, are invalid and shall have no legal effect as of the
20 date of such judgment, and this act, including its repealing
21 clause, shall likewise be invalid and of no legal effect. In
22 such event, the versions of sections 1.010 and this section that
23 were in effect prior to the enactment of this act shall remain in
24 force.