FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 280

92ND GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 5, 2003, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

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AN ACT

To repeal sections 105.711, 258.100, 307.178, 430.225, 508.010, 508.040, 510.263, 512.020, 537.067, 538.210, and 538.225, RSMo, and to enact in lieu thereof seventeen new sections relating to tort reform.

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

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Section A. Sections 105.711, 258.100, 307.178, 430.225, 508.010, 508.040, 510.263, 512.020, 537.067, 538.210, and 538.225, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 105.711, 258.100, 307.178, 430.225, 508.010, 508.040, 510.263, 512.020, 512.099, 537.067, 537.072, 537.327, 537.530, 538.210, 538.225, 538.227, and 1, to read as follows:

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105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 536.087, RSMo, or section 537.600, RSMo;

(2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions and members of the Missouri national guard upon conduct of such officer or employee arising out of

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

and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state, under formal contract to conduct disability reviews on behalf of the department of elementary and secondary education or provide services to patients or inmates of state correctional facilities on a part-time basis;

(b) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo, who is employed by or under contract with a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city charter, or a combined city-county health department to provide services to patients for medical care caused by pregnancy, delivery and child care, if such medical services are provided by the physician pursuant to the contract without compensation or the physician is paid from no other source than a governmental agency except for patient co-payments required by federal or state law or local ordinance;

(c) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, who is employed by or under contract with a federally funded community health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery and child care, if such medical services are provided by the physician pursuant to the contract or employment agreement without compensation or the physician is paid from no other source than a governmental agency or such a federally funded community health center except for patient co-payments required by federal or state law or local ordinance. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of one million dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause against any such physician, and shall not exceed one million dollars for any one claimant;

(d) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, dental or nursing treatment within the scope of his license or registration at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or a combined city-county health department, or a nonprofit community health center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment

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is restricted to primary care and preventive health services, provided that such treatment shall not include the performance of an abortion, and if such medical, dental or nursing services are provided by the physician, dentist, physician assistant, dental hygienist or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered to practice medicine, nursing or dentistry or to act as a physician assistant or dental hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, nursing or dental treatment within the scope of his license or registration to students of a school whether a public, private or parochial elementary or secondary school, if such physician's treatment is restricted to primary care and preventive health services and if such medical, dental or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(4) Staff employed by the juvenile division of any judicial circuit**; or**

(5) Any attorney licensed to practice law in the state of Missouri who practices law at or through a nonprofit community social services center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or through a legal clinic operated by or through any public or private school of law located in this state or through any agency of any federal, state, or local government, if such legal practice is provided by the attorney without compensation. In the case of any claim or judgment that arises under this subdivision, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars.

3. The department of health and senior services shall promulgate rules regarding contract procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of

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subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection **[**5**]** **6** of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or her private practice and assets shall not be considered available under subsection **[**5**]** **6** of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. However, a physician, nurse, dentist, physician assistant, or dental hygienist may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is repealed or modified, the state legal expense fund shall be available for damages which occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is in effect.

4. **The attorney general shall promulgate rules regarding contract procedures and the documentation of legal practice provided under subdivision (5) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to section 105.721 as provided in subsection 6 of this section shall not apply to any claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance otherwise obtained and maintained in force shall not be considered available under subsection 6 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under subdivision (5) of subsection 2 of this section. However, an attorney may obtain liability or malpractice insurance for coverage of liability claims or judgments based upon legal practice rendered under subdivision (5) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of subsection 2 of this section is repealed or**

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amended, the state legal expense fund shall be available for damages which occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.

5. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from the state legal expense fund of a claim or final judgment award against a physician, dentist, physician assistant, dental hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section **or against an attorney in subdivision (5) of subsection 2 of this section** shall only be made for services rendered in accordance with the conditions of such paragraphs.

[5.**]** **6.** Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability insurance have been exhausted. **In no event shall the state legal expense fund pay more than five hundred thousand dollars to any one claimant. For purposes of this section, all individuals and entities asserting a claim for a wrongful death pursuant to section 537.080, RSMo, shall be considered to be one claimant. Payment from the state legal expense fund resulting from a claim against an individual precludes execution of a judgment against such individual or the individual's estate for tort actions committed by such individual.**

[6.**]** **7.** The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to the credit of the state legal expense fund at the end of an appropriation period shall not be transferred to general revenue.

[7.**]** **8.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

258.100. 1. As used in this section, the word "trail" means any land **[**previously used as a railroad right-of-way**]** which was acquired by the state for use as a public hiking, biking or

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recreational trail or any land or interest therein acquired hereafter by a **[**municipality or county**]** **political subdivision** for use as a public hiking, biking or recreational trail**[**, located in any county of the first classification which contains a city with a population of one hundred thousand or more inhabitants which adjoins no other county of the first classification, or in a county of the first classification with a population of over nine hundred thousand**]**. However, a trail not acquired by the state must be designated by the governing body of the **[**municipality or county**]** **political subdivision** as a greenway system of trails **or part of a dedicated system of trails**, the acquisition **[**deed**]** **conveyance whether by deed, easement agreement, grant assignment, or reservation of rights** to the **[**city or county**]** **political subdivision** must state the interest in the land is being granted for such purposes, the greenway system **or dedicated system** of trails must be designed exclusively for the purposes herein designated, and shall not include roads or streets, nor sidewalks, walkways or paths which are intended to connect neighborhoods for pedestrian traffic, such as common sidewalks or walkways.

2. Any person owning land adjoining the trail shall be immune from civil liability for injuries to person or property of persons trespassing or entering on such person's land without implied or expressed permission, invitation, or consent where:

(1) The person who was injured entered the land by way of the trail; and

(2) Such person was subsequently injured on lands adjoining the trail.

3. The immunity created by this section does not apply if the injuries were caused by:

(1) The intentional or unlawful act of the owner or possessor of such land; or

(2) The willful or wanton act of the owner or possessor of such land**; or**

(3) The failure of the possessor of land to warn of an artificial condition which is likely to cause death or serious injury created or maintained by the possessor of the land.

307.178. 1. As used in this section, the term "passenger car" means every motor vehicle designed for carrying ten persons or less and used for the transportation of persons; except that, the term "passenger car" shall not include motorcycles, motorized bicycles, motor tricycles and trucks with a licensed gross weight of twelve thousand pounds or more.

2. Each driver, except persons employed by the United States Postal Service while performing duties for that federal agency which require the operator to service postal boxes from their vehicles, or which require frequent entry into and exit from their vehicles, and front seat passenger of a passenger car manufactured after January 1, 1968, operated on a street or highway in this state, and persons less than eighteen years of age operating or riding in a truck, as defined in section 301.010, RSMo, on a street or highway of this state shall wear a properly adjusted and fastened safety belt that meets federal National Highway, Transportation and Safety Act requirements; except that, a child less than four years of age shall be protected as required in section 210.104, RSMo. No person shall be stopped, inspected, or detained solely to

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determine compliance with this subsection. The provisions of this section shall not be applicable to persons who have a medical reason for failing to have a seat belt fastened about their body, nor shall the provisions of this section be applicable to persons while operating or riding a motor vehicle being used in agricultural work-related activities. Noncompliance with this subsection shall not constitute probable cause for violation of any other provision of law.

3. Each driver of a motor vehicle transporting a child four years of age or more, but less than sixteen years of age, shall secure the child in a properly adjusted and fastened safety belt.

4. In any action to recover damages arising out of the ownership, common maintenance or operation of a motor vehicle, failure to wear a safety belt in violation of this section shall **[**not**]** be considered **as** evidence of comparative negligence. Failure to wear a safety belt in violation of this section may **also** be admitted to mitigate damages**[**, but only under the following circumstances:

(1) Parties seeking to introduce evidence of the failure to wear a safety belt in violation of this section must first introduce expert evidence proving that a failure to wear a safety belt contributed to the injuries claimed by plaintiff;

(2) If the evidence supports such a finding, the trier of fact may find that the plaintiff's failure to wear a safety belt in violation of this section contributed to the plaintiff's claimed injuries, and may reduce the amount of the plaintiff's recovery by an amount not to exceed one percent of the damages awarded after any reductions for comparative negligence**] of an insurer or party to the action**.

5. Each driver who violates the provisions of subsection 2 or 3 of this section is guilty of an infraction for which a fine not to exceed ten dollars may be imposed. All other provisions of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any person due to a violation of this section. In no case shall points be assessed against any person, pursuant to section 302.302, RSMo, for a violation of this section.

6. The department of public safety shall initiate and develop a program of public information to develop understanding of, and ensure compliance with, the provisions of this section. The department of public safety shall evaluate the effectiveness of this section and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits to NHTSA and FHWA pursuant to 23 U.S.C. 402.

7. If there are more persons than there are seat belts in the enclosed area of a motor vehicle, then the driver and passengers are not in violation of this section.

430.225. 1. As used in sections 430.225 to 430.250, the following terms shall mean:

(1) "Claim", a claim of a patient for:

(a) Damages from a tort-feasor; or

(b) Benefits from an insurance carrier;

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(2) "Clinic", a group practice of health practitioners or a sole practice of a health practitioner who has incorporated his or her practice;

(3) "Health practitioner", a chiropractor licensed pursuant to chapter 331, RSMo, a podiatrist licensed pursuant to chapter 330, RSMo, a dentist licensed pursuant to chapter 332, RSMo, a physician or surgeon licensed pursuant to chapter 334, RSMo, or an optometrist licensed pursuant to chapter 336, RSMo, while acting within the scope of their practice;

(4) "Insurance carrier", any person, firm, corporation, association or aggregation of persons conducting an insurance business pursuant to chapter 375, 376, 377, 378, 379, 380, 381 or 383, RSMo;

(5) "Other institution", a legal entity existing pursuant to the laws of this state which delivers treatment, care or maintenance to patients who are sick or injured;

(6) "Patient", any person to whom a health practitioner, hospital, clinic or other institution delivers treatment, care or maintenance for sickness or injury caused by a tort-feasor from whom such person seeks damages or any insurance carrier which has insured such tort-feasor.

2. Clinics, health practitioners and other institutions, as defined in this section shall have the same rights granted to hospitals in sections 430.230 to 430.250.

3. If the liens of such health practitioners, hospitals, clinics or other institutions exceed fifty percent of the amount due the patient, every health care practitioner, hospital, clinic or other institution giving notice of its lien, as aforesaid, shall share in up to fifty percent of the net proceeds due the patient, in the proportion that each claim bears to the total amount of all other liens of health care practitioners, hospitals, clinics or other institutions. "Net proceeds", as used in this section, means the amount remaining after the payment of contractual attorney fees, if any, and other expenses of recovery.

4. In administering the lien of the health care provider, the insurance carrier may pay the amount due secured by the lien of the health care provider directly, if the claimant authorizes it and does not challenge the amount of the customary charges or that the treatment provided was for injuries caused by the tort-feasor.

5. Any health care provider electing to receive benefits hereunder releases the claimant from further liability on the cost of the services and treatment provided to that point in time.

508.010. Suits instituted by summons shall, except as otherwise provided by law, be brought:

(1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may

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be found;

(2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

(3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;

(4) When all the defendants are nonresidents of the state, suit may be brought in any county in this state;

(5) Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found;

(6) In all tort actions**, including tort actions based upon improper health care, except as provided in section 508.070,** the suit may **only** be brought in the county where the cause of action accrued regardless of the residence of the parties, and process therein shall be issued by the court of such county and may be served in any county within the state; provided, however, that in any action for defamation or for invasion of privacy the cause of action shall be deemed to have accrued in the county in which the defamation or invasion was first published. **If in a tort action the cause of action did not accrue in the state of Missouri then venue shall be determined as if the cause of action was not a tort action.**

508.040. Suits against corporations shall be commenced **[**either**]** in the county where the cause of action accrued**[**, or in case the corporation defendant is a railroad company owning, controlling or operating a railroad running into or through two or more counties in this state, then in either of such counties, or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business**]**.

510.263. 1. All actions tried before a jury involving punitive damages**, including tort actions based upon improper health care,** shall be conducted in a bifurcated trial before the same jury if requested by any party.

2. In the first stage of a bifurcated trial, in which the issue of punitive damages is submissible, the jury shall determine liability for compensatory damages, the amount of compensatory damages, including nominal damages, and the liability of a defendant for punitive damages. Evidence of defendant's financial condition shall not be admissible in the first stage of such trial unless admissible for a proper purpose other than the amount of punitive damages.

3. If during the first stage of a bifurcated trial the jury determines that a defendant is liable for punitive damages, that jury shall determine, in a second stage of trial, the amount of punitive damages to be awarded against such defendant. Evidence of such defendant's net worth shall be admissible during the second stage of such trial.

4. Within the time for filing a motion for new trial, a defendant may file a post-trial

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motion requesting the amount awarded by the jury as punitive damages be credited by the court with amounts previously paid by the defendant for punitive damages arising out of the same conduct on which the imposition of punitive damages is based. At any hearing, the burden on all issues relating to such a credit shall be on the defendant and either party may introduce relevant evidence on such motion. Such a motion shall be determined by the trial court within the time and according to procedures applicable to motions for new trial. If the trial court sustains such a motion the trial court shall credit the jury award of punitive damages by the amount found by the trial court to have been previously paid by the defendant arising out of the same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to a credit under the provisions of this section, or the trial court finds from the evidence that the defendant's conduct out of which the prior punitive damages award arose was not the same conduct on which the imposition of punitive damages is based in the pending action, or the trial court finds the defendant unreasonably continued the conduct after acquiring actual knowledge of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial court finds that the laws regarding punitive damages in the state in which the prior award of punitive damages was entered substantially and materially deviate from the law of the state of Missouri and that the nature of such deviation provides good cause for disallowance of the credit based on the public policy of Missouri, then the trial court may disallow all or any part of the credit provided by this section.

5. The credit allowable under this section shall not apply to causes of action for libel, slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution or fraud.

6. The doctrines of remittitur and additur, based on the trial judge's assessment of the totality of the surrounding circumstances, shall apply to punitive damage awards.

7. As used in this section, the term "punitive damage award" means an award for punitive or exemplary damages or an award for aggravating circumstances.

8. Discovery as to a defendant's assets shall be allowed only after a finding by the trial court that it is more likely than not that the plaintiff will be able to present a submissible case to the trier of fact on the plaintiff's claim of punitive damages.

512.020. Any party to a suit aggrieved by any judgment of any trial court in any civil cause from which an appeal is not prohibited by the constitution, nor clearly limited in special statutory proceedings, may take his appeal to a court having appellate jurisdiction from any**:**

(1) Order granting a new trial**[**, or**];**

(2) Order refusing to revoke, modify, or change an interlocutory order appointing a receiver or receivers, or dissolving an injunction**[**, or from and**];**

(3) Order granting or denying class action certification provided that an appeal of such an order shall not stay proceedings in the court unless the judge or the court

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of appeals so orders;

(4) Interlocutory judgments in actions of partition which determine the rights of the parties**[**, or from any**]; or**

(5) Final judgment in the case or from any special order after final judgment in the cause;

but a failure to appeal from any action or decision of the court before final judgment shall not prejudice the right of the party so failing to have the action of the trial court reviewed on an appeal taken from the final judgment in the case.

512.099. 1. The supersedeas bond that an appellant is required to post to stay execution on a judgment during the period an appeal is pending shall be determined in accordance with applicable provisions of the Missouri statutes and court rules, except that the supersedeas bond shall not exceed fifty million dollars regardless of the value of the judgment if the appellant proves to the satisfaction of the trial court that it has, and pledges to maintain, unencumbered assets subject to execution, which equal or exceed that amount of the judgment in excess of twenty-five million dollars.

2. If at any time during the appeal appellant's unencumbered assets do not exceed that amount of the judgment in excess of twenty-five million dollars or evidence is presented that the appellant is dissipating, transferring, encumbering, diminishing, or concealing any of its assets, the court shall require the appellant to post a bond equal to the full amount of the judgment. If a bond has been capped at twenty-five million dollars pursuant to this section and any part of the judgment in excess of twenty-five million dollars is upheld by an appellate court, the appellant shall thereafter be required to file a supersedeas bond in the full amount of such judgment as a condition of staying execution for purposes of further appeals.

537.067. **[**1.**]** In all tort actions for damages**[**, in which fault is not assessed to the plaintiff**]**, **[**the defendants**] a defendant** shall be jointly and severally liable for the amount of **[**the judgment**] compensatory damages and noneconomic damages** rendered against such **[**defendants**] defendant if such defendant is found to bear ten percent or more of fault. A defendant may not be jointly or severally liable for more than the percentage of punitive damages for which fault is attributed to such defendant by the trier of fact**.

[2. In all tort actions for damages in which fault is assessed to plaintiff the defendants shall be jointly and severally liable for the amount of the judgment rendered against such defendants except as follows:

(1) In all such actions in which the trier of fact assesses a percentage of fault to the plaintiff, any party, including the plaintiff, may within thirty days of the date the verdict is rendered move for reallocation of any uncollectible amounts;

(2) If such a motion is filed the court shall determine whether all or part of a party's

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equitable share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault;

(3) The party whose uncollectible amount is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment;

(4) No amount shall be reallocated to any party whose assessed percentage of fault is less than the plaintiff's so as to increase that party's liability by more than a factor of two;

(5) If such a motion is filed, the parties may conduct discovery on the issue of collectibility prior to a hearing on such motion;

(6) Any order of reallocation pursuant to this section shall be entered within one hundred twenty days after the date of filing such a motion for reallocation. If no such order is entered within that time, such motion shall be deemed to be overruled;

(7) Proceedings on a motion for reallocation shall not operate to extend the time otherwise provided for post-trial motion or appeal on other issues.

Any appeal on an order or denial of reallocation shall be taken within the time provided under applicable rules of civil procedure and shall be consolidated with any other appeal on other issues in the case.

3. This section shall not be construed to expand or restrict the doctrine of joint and several liability except for reallocation as provided in subsection 2.**]**

537.072. In all tort actions, including tort actions based upon improper health care, except for those cases in which the court makes a written finding that mediation would have no chance of success, the court shall establish a discovery period after which the action or proceeding shall be referred to mediation, which shall be conducted by a trained mediator selected from a list approved by the circuit court.

537.327. 1. As used in this section, unless the context provides otherwise, the following terms shall mean:

(1) "Canoe", a watercraft which has an open top and is designed to hold one or more participants;

(2) "Canoeing, rafting, kayaking, or tubing", riding in or on, training in or on, using, paddling, or being a passenger in or on a canoe, kayak, raft, or tube including a person assisting a participant;

(3) "Equipment", any accessory to a watercraft which is used for propulsion, safety, comfort, or convenience including but not limited to paddles, oars, and personal floatation devices;

(4) "Inherent risks of paddlesport activities", those dangers, hazards, or conditions which are an integral part of paddlesport activities in Missouri's free-flowing streams or rivers, including but not limited to:

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(a) Risks typically associated with watercraft including change in water flow or current, submerged, semi-submerged, and overhanging objects, capsizing, swamping, or sinking of watercraft and resultant injury, hypothermia, or drowning;

(b) Cold weather or heat-related injuries and illnesses including hypothermia, frostbite, heat exhaustion, heat stroke, and dehydration;

(c) An "act of nature" which may include rock fall, inclement weather, thunder and lightning, severe or varied temperature, weather conditions, and winds including tornadoes;

(d) Equipment failure or operator error;

(e) Attack or bite by animals;

(f) The aggravation of injuries or illnesses because they occurred in remote places where there are no available medical facilities;

(5) "Kayak", a watercraft similar to a canoe with a covered top which may have more than one circular opening to hold participants, or designed to permit a participant to sit on top of an enclosed formed seat;

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(6) "Outfitter", any individual, group, club, partnership, corporation, or business entity, whether or not operating for profit or not-for-profit, or any employee or agent, which sponsors, organizes, rents, or provides to the general public, the opportunity to use any watercraft by a participant on Missouri's free-flowing streams or rivers;

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(7) "Paddlesport activity", canoeing, rafting, or kayaking in or on a watercraft as follows:

(a) A competition, exercise, or undertaking that involves a watercraft;

(b) Training or teaching activities;

(c) A ride, trip, tour, or other activity, however informal or impromptu, whether or not a fee is paid, that is sponsored by an outfitter;

(d) A guided trip, tour or other activity, whether or not a fee is paid, that is sponsored by an outfitter;

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(8) "Participant", any person, whether amateur or professional, whether or not a fee is paid, which rents, leases, or uses watercraft or is a passenger on a rented, leased, or used watercraft participating in a paddlesport activity;

(9) "Personal floatation device", a life jacket, floatable cushion, or other device approved by the United States Coast Guard;

(10) "Raft", an inflatable watercraft which has an open top and is designed to hold one or more participants;

(11) "Tube", an inflatable tire inner tube or similar inflatable watercraft which has an open top capable of holding one or more participants;

(12) "Watercraft", any canoe, kayak, raft, or tube propelled by the use of paddles, oars, hands, poles, or other nonmechanical, nonmotorized means of propulsion.

2. Except as provided in subsection 4 of this section, an outfitter shall not be liable for any injury to or the death of a participant resulting from the inherent risks of paddlesport activities and, except as provided in subsection 4 of this section, no participant or a participant's representative shall make any claim against, maintain any action against, or recover from an outfitter for injury, loss, damage, or death of the participant resulting from any of the inherent risks of paddlesport activities.

3. This section shall not apply to any employer-employee relationship governed by the provisions of chapter 287, RSMo.

4. The provisions of subsection 2 of this section shall not prevent or limit the liability of an outfitter that:

(1) Intentionally injures the participant;

(2) Commits an act or omission that constitutes negligence for the safety of a participant in a paddlesport activity and that negligence is the proximate cause of the injury or death of a participant;

(3) Provides unsafe equipment or watercraft to a participant and knew or should have known that the equipment or watercraft was unsafe to the extent that it did cause the injury;

(4) Fails to provide a participant a United States Coast Guard approved personal floatation device; or

(5) Fails to use that degree of care that an ordinarily careful and prudent person would use under the same or similar circumstances.

5. Every outfitter shall post and maintain signs which contain the warning notice specified in this subsection. Such signs shall be placed in a clearly visible location on or near areas where the outfitter conducts paddlesport activities. The warning notice specified in this subsection shall appear on the sign in black letters on a white background with each letter to be a minimum of one inch in height. Every written contract entered into by an outfitter for the providing of watercraft to a participant shall contain the warning notice specified in this subsection. The signs and contracts described in this subsection shall contain the following warning notice:

"WARNING

Under Missouri law, an outfitter is not liable for an injury to or the death of a participant in paddlesport activities resulting from the inherent risks of paddlesport activities pursuant to the Revised Statutes of Missouri.".

6. This section shall not be construed to limit or modify any defense or

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immunity already existing in statute or common law or to affect any claim occurring prior to August 28, 2003.

537.530. 1. In any action for damages in excess of three thousand dollars against an individual or entity licensed to practice a profession by this state, or any agency or court thereof, on account of the rendering of or failure to render professional services, the plaintiff or his or her attorney shall file an affidavit with the court stating that he or she has obtained the written opinion of a similarly licensed professional which states that the defendant failed to use such care as a reasonably prudent and careful professional would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.

2. The affidavit shall state the name, address, and qualifications of all similarly licensed professionals offering such opinion.

3. A separate affidavit shall be filed for each defendant named in the petition.

4. Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended for a period of time not to exceed an additional ninety days.

5. If the plaintiff or his or her attorney fails to file such affidavit the court shall, upon motion of any party, dismiss the action against such moving party without prejudice.

6. "License" for purposes of this section shall not include a license to operate a vehicle.

7. "Similarly licensed professional" for purposes of this section shall mean an individual licensed in this state, or any other state, who possesses the education, training, and experience to be licensed in the same or substantially the same profession as the defendant.

538.210. 1. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than three hundred fifty thousand dollars **[**per occurrence**]** for noneconomic damages from any one defendant as defendant is defined in subsection 2 of this section.

2. "Defendant" for purposes of sections 538.205 to 538.230 shall be defined as:

(1) A hospital as defined in chapter 197, RSMo, and its employees and physician employees who are insured under the hospital's professional liability insurance policy or the hospital's self-insurance maintained for professional liability purposes;

(2) A physician, including his nonphysician employees who are insured under the physician's professional liability insurance or under the physician's self-insurance maintained for professional liability purposes;

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(3) Any other health care provider**, including but not limited to a facility licensed under chapter 198, RSMo,** having the legal capacity to sue and be sued and who is not included in subdivisions (1) and (2) of this subsection, including employees of any health care providers who are insured under the health care provider's professional liability insurance policy or self-insurance maintained for professional liability purposes**;**

(4) All individuals or entities whose liability is based solely upon an act or omission of an agent, servant, or employee shall, for purposes of subsection 1 of this section, be considered the same defendant as the agent, servant, or employee.

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

4. **Beginning on August 28, 2003,** the limitation on awards for noneconomic damages provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.

5. **[**Any provision of law or court rule to the contrary notwithstanding, an award of punitive damages against a health care provider governed by the provisions of sections 538.205 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider demonstrated willful, wanton or malicious misconduct with respect to his actions which are found to have injured or caused or contributed to cause the damages claimed in the petition.**] For purposes of sections 538.205 to 538.230, all individuals and entities asserting a claim for a wrongful death pursuant to section 537.080, RSMo, shall be considered to be one plaintiff.**

538.225. 1. In any action against a health care provider for damages for personal injury or death on account of the rendering of or failure to render health care services, the plaintiff or **[**his**] the plaintiff's** attorney shall file an affidavit with the court stating that he **or she** has obtained the written opinion of a legally qualified health care provider which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.

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2. The affidavit shall state **the name and address of all health care providers offering such opinion and** the qualifications of such health care providers to offer such opinion.

3. A separate affidavit shall be filed for each defendant named in the petition.

4. Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended **for a period of time not to exceed an additional ninety days**.

5. If the plaintiff or his attorney fails to file such affidavit the court **[**may**] shall**, upon motion of any party, dismiss the action against such moving party without prejudice.

6. As used in this section, the term "legally qualified health care provider" means a health care provider licensed in this state or any other state in substantially the same profession and specialty, including certifications, as the defendant.

538.227. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action. A statement of fault, however, which is part of, or in addition to, any of the provisions of this subsection shall not be inadmissible pursuant to this section.

2. For the purposes of this section:

(1) "Benevolent gestures", actions which convey a sense of compassion or commiseration emanating from humane impulses;

(2) "Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, lifetime partner or significant other, adopted children of a parent, or spouse's parents of an injured party.

Section 1. 1. Any person may file a miscellaneous case for purpose of securing copies of their health care records or the health care records of any other person for whom he or she is the guardian or attorney-in-fact or is a potential claimant for a wrongful death.

2. A miscellaneous case shall be filed in the circuit in which any of the health care records sought to be obtained are located.

3. (1) The petition shall contain the following:

(a) The name of the individual who received the health care services or medical treatment;

(b) A brief summary of the health care services or medical treatment received;

(c) A brief summary of the outcome of the health care services or medical treatment; and

(d) The names of the health care providers from whom health care records are

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being sought.

(2) The petition shall not contain:

(a) Allegations of negligence; or

(b) Demands, other than a general demand for access to health care records.

4. Within five days of filing the miscellaneous case, the petitioner shall mail a copy of the petition by regular and certified mail to each health care provider listed in the petition. The petitioner shall certify to the court that the petition has been mailed as required.

5. After filing a miscellaneous case, the petitioner may request the health care records described in subsection 1 of this section by subpoena and, if necessary, subpoena the health care records custodian for a deposition for the sole purpose of securing copies of the health care records and verifying their authenticity. Refusal to provide the requested records may be the basis for the court to impose sanctions or orders of contempt.

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6. Filing of a miscellaneous case petition shall toll the applicable statute of limitations for one hundred twenty days on any claim for injuries or death caused by professional negligence of a health care provider, but in no event shall the applicable statute of limitations be tolled pursuant to this section for more than one hundred twenty days.

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7. The naming or listing of a health care provider as a person from whom records are requested shall not be considered for any reporting purposes as a claim made against the health care provider.

8. A health care provider, or any person or entity acting on behalf of a health care provider shall not charge more than is allowable pursuant to section 197.227, RSMo, for providing copies of health care records.

[430.225. 1. As used in sections 430.225 to 430.250, the following terms shall mean:

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(1) "Claim", a claim of a patient for:

(a) Damages from a tort-feasor; or

(b) Benefits from an insurance carrier;

(2) "Clinic", a group practice of health practitioners or a sole practice of a health practitioner who has incorporated his or her practice;

(3) "Health practitioner", a chiropractor licensed pursuant to chapter 331, RSMo, a podiatrist licensed pursuant to chapter 330, RSMo, a dentist licensed pursuant to chapter 332, RSMo, a physician or surgeon licensed pursuant to chapter 334, RSMo, or an optometrist licensed pursuant to chapter 336, RSMo, while acting within the scope of their practice;

(4) "Insurance carrier", any person, firm, corporation, association or aggregation of persons conducting an insurance business pursuant to chapter 375, 376, 377, 378, 379, 380, 381 or 383, RSMo;

(5) "Other institution", a legal entity existing pursuant to the laws of this state which delivers treatment, care or maintenance to patients who are sick or injured;

(6) "Patient", any person to whom a health practitioner, hospital, clinic or other institution delivers treatment, care or maintenance for sickness or injury caused by a tort-feasor from whom such person seeks damages or any insurance carrier which has insured such tort-feasor.

2. Clinics, health practitioners and other institutions, as defined in this section shall have the same rights granted to hospitals in sections 430.230 to 430.250.

3. If the liens of such health practitioners, hospitals, clinics or other institutions exceed fifty percent of the amount due the patient, every health care practitioner, hospital, clinic or other institution giving notice of its lien, as aforesaid, shall share in up to fifty percent of the net proceeds due the patient, in the proportion that each claim bears to the total amount of all other liens of health care practitioners, hospitals, clinics or other institutions. "Net proceeds", as used in this section, means the amount remaining after the payment of contractual attorney fees, if any, and other expenses of recovery.

4. In administering the lien of the health care provider, the insurance carrier may pay the amount due secured by the lien of the health care provider directly, if the claimant authorizes it and does not challenge the amount of the customary charges or that the treatment provided was for injuries cause by the tort-feasor.

5. Any health care provider electing to receive benefits hereunder releases the claimant from further liability on the cost of the services and treatment provided to that point in time.**]**

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