FIRST REGULAR SESSION

[P E R F E C T E D**]**

SENATE SUBSTITUTE FOR

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 280

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Offered March 12, 2003.

Senate Substitute for Senate Substitute adopted, March 14, 2003.

Taken up for Perfection March 14, 2003. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0410S.12P

AN ACT

To repeal sections 105.711, 258.100, 307.178, 355.176, 408.040, 430.225, 508.010, 508.040, 508.120, 509.290, 510.263, 512.020, 537.046, 537.067, 538.205, 538.210, and 538.225, RSMo, and to enact in lieu thereof thirty-two new sections relating to tort reform.

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

Section A. Sections 105.711, 258.100, 307.178, 355.176, 408.040, 430.225, 508.010, 508.040, 508.120, 509.290, 510.263, 512.020, 537.046, 537.067, 538.205, 538.210, and 538.225, RSMo, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 34.360, 34.363, 34.366, 34.369, 34.371, 105.711, 258.100, 307.178, 355.176, 408.040, 430.225, 508.010, 508.040, 508.075, 508.120, 509.290, 510.263, 512.020, 512.099, 516.600, 537.046, 537.067, 537.072, 537.327, 537.530, 538.205, 538.210, 538.225, 538.227, 538.301, 1, and 2, to read as follows:

34.360. This act may be known and may be cited as the "Private Attorney Retention Act".

34.363. For the purposes of sections 34.360 to 34.371, a contract is a contract or contracts in which the fee paid to an attorney or group of attorneys, either in the form of a flat, hourly, or contingent fee, and their expenses, exceeds or can be reasonably expected to exceed one hundred thousand dollars in any fiscal year.

34.366. Any state agency that wishes to retain a lawyer or law firm to perform legal services on behalf of the agency shall obtain such services through open and competitive bids. Any bank account of the state with a value of ten thousand dollars or more shall be obtained through open and competitive bids.

34.369. No state agency shall enter into a contract or contracts for legal services or encumber on behalf of any such contract or contracts in an amount exceeding one hundred thousand dollars in any fiscal year without a specific appropriation for that purpose.

34.371. 1. At the conclusion of any legal proceeding for which a state agency retained outside counsel on a contingent fee basis, the state agency shall receive from counsel a statement of the hours worked on the case, expenses incurred, the aggregate fee amount, and a breakdown as to the hourly rate, based on hours worked divided into fee recovered, less expenses. Each state agency shall transmit the information to the office of administration on October first for the preceding fiscal year and the office of administration shall submit a report to the general assembly before January first, annually.

2. In no case shall any state agency pay expenses in excess of one thousand dollars per hour for legal services.

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 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

or county jails 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 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 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 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 **or utilized** by the state for use as a public hiking, biking**,** or recreational trail**,** or any land or interest therein acquired **or utilized** 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.

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 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.

355.176. 1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent annual report filed pursuant to section 355.856. Service is perfected under this subsection on the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

4. Suits against a corporation shall be commenced only in one of the following locations:

(1) The county where the cause of action accrued; or

(2) The county in which the office of the registered agent for the corporation is maintained.

408.040. 1. Interest shall be allowed on all money due upon any judgment or order of any court from the day of rendering the same until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

2. **Notwithstanding the provisions of subsection 1,** in tort actions, if a claimant has made a demand for payment of a claim or an offer of settlement of a claim, to the party, parties or their representatives and the amount of the judgment or order exceeds the demand for payment or offer of settlement, prejudgment interest **and post-judgment interest**, at **[**the rate specified in subsection 1 of this section**] a per annum interest rate equal to the coupon issue yield equivalent, as determined by the Federal Reserve Board, of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment**, shall be calculated from a date sixty days after the demand or offer was made, or from the date the demand or offer was rejected without counter offer, whichever is earlier. Any such demand or offer shall be made in writing and sent by certified mail and shall be left open for sixty days unless rejected earlier. Nothing contained herein shall limit the right of a claimant, in actions other than tort actions, to recover prejudgment interest as otherwise provided by law or contract. **The state courts administrator shall distribute notice of such rate and any changes in such rate to the circuit clerks of all circuit courts in Missouri.**

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;

(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 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 **or the county where the defendant resides [**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.

(7) The residence of a corporation for venue purpose shall be in the county where the office of its registered agent as reported pursuant to chapter 351, RSMo, is located. If the corporation has not reported or maintained a registered agent, then the residence of the corporation shall be Cole County.

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**] or in the county where the corporation resides. Notwithstanding any other statute to the contrary, the residence of a foreign or domestic corporation for all purposes of this chapter shall be deemed the county where the office of its registered agent as reported pursuant to chapter 351, RSMo, is located. If the corporation has not reported or maintained a registered agent, then the residence of the corporation shall be Cole County.**

508.075. 1. Each court of this state shall dismiss or transfer venue of any cause of action accruing outside the county in which the court is located if there is another forum with jurisdiction of the parties in which venue is proper and the trial can be more conveniently held taking into account the following factors:

(1) Place of accrual of the cause of action;

(2) Location of witnesses, other than retained experts, and health care providers whose principal office or facility is more than one hundred miles from the residence of the plaintiff;

(3) Residence of the parties which, in the case of a corporation, shall be the county in which the corporation's registered office or agent is located.

2. Any party, within ninety days after the last day allowed for the filing of that party's answer, may file a motion to transfer venue of the action to a more convenient

forum within the state of Missouri or to dismiss the action so the plaintiff may file the action in a more convenient forum, if venue would have been proper if originally filed in such forum, in another state based upon the convenience factors enumerated in this section. A party who files an action in a county other than a county where one or more of the defendants reside or where the cause of action accrued shall bear the burden of establishing that the forum in which the action is pending is more convenient than an alternative forum where one or more of the defendants reside or where the cause of action accrued provided that jurisdiction and venue would be proper in such alternative forum. If the court finds that a more convenient forum exists, the court shall grant such motion and immediately transfer the action to a more convenient forum within the state of Missouri or dismiss the action without prejudice on the conditions enumerated in subsection 5 of this section so the plaintiff may file the action in a more convenient forum in another state.

3. In ruling on a motion pursuant to this section, the court shall not consider the residence of a defendant or the availability of an alternative forum for suing that defendant if the court finds from the pleadings and affidavits on file with the court that the plaintiff does not have a cause of action against that defendant.

4. If any defendant is voluntarily dismissed from the action prior to the case being submitted to the court or the jury for determination, any defendant remaining in the lawsuit may file a motion pursuant to this section, which motion shall be decided by the court before entering judgment in the pending cause based on the residence of the defendants who are still in the lawsuit.

5. If a court dismisses an action pursuant to subsection 2 of this section, the dismissal shall be under the following conditions:

(1) The plaintiff elects to file the action in another state having jurisdiction over the defendants within six months of the order of dismissal pursuant to this section, the defendants who were parties in the action at the time the dismissal was ordered pursuant to this section shall accept service of process from the court in such other state;

(2) If the plaintiff elects to file the action in another state within six months of the dismissal pursuant to this section and if the statute of limitations has run as to such action when the action is filed in such other state, the defendants who were parties in the action at the time the dismissal was ordered pursuant to this section shall waive the statute of limitations as a defense for that period of time the cause of action was pending in this state and for six months following dismissal with respect to all causes of action plead in the action that was dismissed pursuant to this section. If any defendant in an action that is dismissed pursuant to this section refuses to

abide by the conditions of this subsection, the plaintiff's action shall be reinstated against that defendant only in the court in which the dismissal was ordered, or if the court in the other forum refuses to accept jurisdiction, the plaintiff may, within thirty days of the final order refusing jurisdiction in such other forum, reinstate the action in the court in which the dismissal was ordered pursuant to this section.

6. If a court transfers a case pursuant to this section, the clerk of the court from which the transfer is granted shall immediately certify and transmit to the clerk of the court to which the transfer is ordered the originals of all papers filed in the case, together with copies of all orders entered in such case.

508.120. **1.** No defendant shall be allowed a change of venue and no application by a defendant to disqualify a judge shall be granted unless the application therefor is made before the filing of his **or her** answer to the merits, except when the cause for the change of venue or disqualification arises, or information or knowledge of the existence thereof first comes to **[**him**]** **the defendant**, after the filing of his **or her** answer in which case the application shall state the time when the cause arose or when applicant acquired information and knowledge thereof, and the application must be made within **[**five**]** **thirty** days thereafter.

2. In all actions, if the plaintiff amends the petition to name an additional defendant which would have, if initially named a defendant, rendered venue inappropriate in the court where the action was initially filed, then venue shall, upon motion of any defendant, be transferred to a venue which would be an appropriate venue if the new defendant had been initially named a defendant.

509.290. 1. The following objections and other matters may be raised by motion whether or not the same may appear from the pleadings and other papers filed in the cause:

(1) Lack of jurisdiction over the subject matter;

(2) Lack of jurisdiction over the person;

(3) Improper venue;

(4) Insufficiency of process;

(5) Insufficiency of service of process;

(6) That plaintiff should furnish security for costs;

(7) That plaintiff has not legal capacity to sue;

(8) That there is another action pending between the same parties for the same cause in this state;

(9) That several claims have been improperly united;

(10) That the counterclaim or cross-claim is one which cannot be properly interposed in the action**;**

(11) That the action be transferred to a more convenient forum within the state or dismissed so it may be filed by the plaintiff in a more convenient forum in another

state.

2. The grounds of any of the **[**above**]** **motions described in subsection 1 of this section** may be supplied by affidavit and may be controverted by opposing affidavit in accordance with subsection 4 of section 506.060, RSMo.

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 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 any**];**

(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 of appeals so orders;

(4) Order granting or denying a motion to dismiss or to transfer an action on the grounds that a more convenient forum exists for the trial of the action;

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

(6) 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 fifty 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 fifty 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 fifty million dollars pursuant to this section and any part of the judgment in excess of fifty 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.

516.600. Any action to recover damages from injury or illness caused by childhood sexual abuse in an action brought pursuant to section 537.046, RSMo, shall be commenced within ten years of the plaintiff attaining the age of twenty-one or within three years of the date of discovering, or reasonably should have discovered, that the injury or illness was caused by childhood sexual abuse, whichever later occurs.

537.046. 1. As used in this section, the following terms mean:

(1) "Childhood sexual abuse", any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of section 566.030, 566.040, 566.050, 566.060, 566.070, 566.080, 566.090, 566.100, 566.110, or 566.120, RSMo, or section 568.020, RSMo;

(2) "Injury" or "illness", either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

2. **[**In any civil action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within five years of the date the plaintiff attains the age of eighteen or within three years of the date the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by child sexual abuse, whichever later occurs.

3.**]** This section shall apply to any action commenced on or after August 28, 1990, including any action which would have been barred by the application of the statute of limitation applicable prior to that date.

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 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:

(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;

(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;

(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;

(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 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.

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

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

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

(3) "Future damages", damages that the trier of fact finds will accrue after the damages

findings are made;

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

(5) "Health care services", any services that a health care provider renders to a patient in the ordinary course of the health care provider's profession or, if the health care provider is an institution, in the ordinary course of furthering the purposes for which the institution is organized. Professional services shall include, but are not limited to, transfer to a patient of goods or services incidental or pursuant to the practice of the health care provider's profession or in furtherance of the purposes for which an institutional health care provider is organized;

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

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

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

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

(10) "Punitive damages", damages intended to punish or deter willful, wanton or malicious misconduct**, including exemplary damages and damages for aggravating circumstances**;

(11) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any kind.

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;

(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) Any other individual or entity that is a defendant in a lawsuit brought against a health care provider pursuant to this chapter, or that is a defendant in any lawsuit that arises out of the rendering of or the failure to render health care services;

(5) No hospital or other health care provider shall be liable to any plaintiff based on the actions or omissions of any other entity or person who is not an employee of that hospital or other health care provider.

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. **The written opinion shall be subject to in camera review at the request of any defendant for a determination of whether the health care provider offering such an opinion meets the qualifications set forth in subsection 6 of this section.**

2. The affidavit shall state 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 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.

538.301. The records, written proceedings or documents of a quality assessment and assurance committee formed pursuant to federal law 42 U.S.C. Section 1395i-3(b)(1)(B) or 42 U.S.C. Section 1396r(b)(1)(B) shall be confidential and absolutely privileged and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person nor are they admissible in any criminal, civil, or administrative proceeding. No person shall be civilly liable as a result of his or her acts, omissions or decisions done in good faith as a member of a quality

assessment and assurance committee in connection with such person's duties therefor. No person who reviews or creates documents, records or reports of a quality assessment and assurance committee or participates in any proceeding that reviews or creates such documents, records or reports may be required to testify in any criminal, civil or administrative proceeding with respect to such documents, records or reports or with respect to any finding, proceeding, recommendation, evaluation, opinion or action taken by such person or such committee in connection with such documents, records or reports.

Section 1. If any provision of this act is found by a court of competent jurisdiction to be invalid or unconstitutional it is the stated intent of the legislature that the legislature would have approved the remaining portions of the act, and the remaining portions of the act shall remain in full force and effect.

Section 2. The provisions of this act shall only apply to causes of action filed after August 28, 2003.

[355.176. 1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent annual report filed pursuant to section 355.856. Service is perfected under this subsection on the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.**]**

[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;

(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.**]**

T