SECOND REGULAR SESSION

SENATE BILL NO. 1094

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS SCOTT, KINDER, VOGEL, YECKEL, LOUDON, GROSS, CHILDERS, CHAMPION, GIBBONS, SHIELDS, CAUTHORN, NODLER, RUSSELL, GRIESHEIMER, DOLAN, KLINDT, FOSTER AND CLEMENS.

Read 1st time January 15, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

3029S.06I

AN ACT

To repeal sections 408.040, 490.065, 508.010, 508.040, 508.070, 510.263, 516.105, 537.067, 538.205, 538.210, 538.225, and 538.230, RSMo, and to enact in lieu thereof fifteen new sections relating to tort reform.

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

Section A. Sections 408.040, 490.065, 508.010, 508.040, 508.070, 510.263, 516.105, 537.067, 538.205, 538.210, 538.225, and 538.230, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 408.040, 490.065, 508.010, 510.263, 516.105, 537.067, 537.072, 538.205, 538.210, 538.213, 538.225, 538.227, 538.301, 1, and 2, to read as follows:

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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**, except as provided by subsection 3 of this section,** all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

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2. 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 to such party's liability insurer if known to the claimant,** and the amount of the judgment or order exceeds the demand for payment or offer of settlement, **then** prejudgment interest, **[**at the rate specified in subsection 1 of this section, shall**] may** be **awarded,** calculated from a date **[**sixty**] ninety** days after the demand or offer was **[**made**] received, as shown by the certified mail return receipt**, 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.**] In order**

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

to qualify as a demand or offer pursuant to this section, such demand must:

(1) Be in writing and sent by certified mail return receipt requested; and

(2) Be accompanied by an affidavit of the claimant describing the nature of the claim and theory of liability, the nature of any injuries claimed and a computation of any category of damages sought by the claimant with supporting documentation; and

(3) For personal injury and bodily injury claims, be accompanied by a list of the names and addresses of medical providers who have provided treatment to the claimant for such injuries, copies of all medical bills, a list of employers if the claimant is seeking damages for loss of wages or earnings, and written authorizations sufficient to allow the party, its representatives, and liability insurer if known to the claimant to obtain records from all employers and medical care providers; and

(4) Reference this section and be left open for ninety days.

If the claimant is a minor or incompetent or deceased, the affidavit may be signed by any person who reasonably appears to be qualified to act as next friend or conservator or personal representative. If the claim is one for wrongful death, the affidavit may be signed by any person qualified pursuant to section 537.080, RSMo, to make claim for the death. The trial court, in its discretion, shall determine whether prejudgment interest is awarded. 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.

3. Notwithstanding the provisions of subsection 1 of this section, in tort actions, a judgment for prejudgment interest awarded pursuant to subsection 2 of this section and post judgment interest should bear interest at 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. The judgement shall state the applicable interest rate. 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.

490.065. 1. In any civil action, if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise**, if:**

(1) The testimony is based upon sufficient facts or data;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts

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of the case.

2. Testimony by such an expert witness in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

3. The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable.

4. If a reasonable foundation is laid, an expert may testify in terms of opinion or inference and give the reasons therefor without the use of hypothetical questions, unless the court believes the use of a hypothetical question will make the expert's opinion more understandable or of greater assistance to the jury due to the particular facts of the case.

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 **at the time the cause of action arises**, 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,** the suit **[**may**]** **shall** be brought **only** 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 the county where the defendant or defendants reside which in the case of a corporation shall be 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**

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shall be Cole county;

(7) In all actions commenced against a not-for-profit corporation organization pursuant to chapter 355, RSMo, the suit shall be brought only in the county where the cause of action accrued or the county in which the office of the registered agent for the corporation is maintained, and process therein shall be issued by the court of such county and may be served in any county within the state.

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 **by clear and convincing evidence that a defendant's actions or omissions were willful, wanton, or malicious so** 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

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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, "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.

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516.105. All actions against physicians, hospitals, dentists, registered or licensed practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical therapists, and any other entity providing health care services and all employees of any of the foregoing acting in the course and scope of their employment, for damages for malpractice, negligence, error or mistake related to health care shall be brought within two years from the date of occurrence of the act of neglect complained of, except that:

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(1) In cases in which the act of neglect complained of is introducing and negligently permitting any foreign object to remain within the body of a living person, the action shall be brought within two years from the date of the discovery of such alleged negligence, or from the date on which the patient in the exercise of ordinary care should have discovered such alleged negligence, whichever date first occurs; and

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(2) In cases in which the act of neglect complained of is the negligent failure to inform the patient of the results of medical tests, the action for failure to inform shall be brought within two years from the date of the discovery of such alleged negligent failure to inform, or from the date on which the patient in the exercise of ordinary care should have discovered such alleged negligent failure to inform, whichever date first occurs; except that, no such action shall be brought for any negligent failure to inform about the results of medical tests performed more than two years before August 28, 1999; and

(3) In cases in which the person bringing the action is a minor less than **[**eighteen**]** **six** years of age, such minor shall have until his or her **[**twentieth**]** **eighth** birthday to bring such action.

In no event shall any action for damages for malpractice, error, or mistake be commenced

after the expiration of ten years from the date of the act of neglect complained of **[**or for ten years from a minor's twentieth birthday, whichever is later**]**.

537.067. **[**1.**]** In all tort actions for damages,**[**in which fault is not assessed to the plaintiff, the defendants**] including tort actions based upon improper health care, a defendant** shall **not** be jointly **[**and**] or** severally liable for **[**the amount of the judgment rendered against such defendants**] more than the percentage of the judgment 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

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circuit court.

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, **professional corporation, business corporation,** and any other person or entity that provides health care services **either** under the authority of a license or certificate **or through one or more employees possessing 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**;

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(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**] all plaintiffs** shall recover **no** more than **[**three**] two** hundred fifty thousand dollars **[**per occurrence**]** for noneconomic damages **[**from any one defendant as defendant is defined in subsection 2 of this section**] per cause of action**.

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 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**] 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. **[**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

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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.**

538.213. 1. Any physician licensed pursuant to chapter 334, RSMo, or dentist licensed pursuant to chapter 332, RSMo, or hospital, or employee of a hospital as defined in section 197.020, RSMo, or other health care provider as defined in section 538.205, who renders any care or assistance in a hospital shall not be held liable for more than one hundred fifty thousand dollars in civil damages, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant arising out of any act or omission in rendering that care or assistance when:

(1) The care or assistance is rendered in a hospital emergency room;

(2) The care or assistance rendered is necessitated by a traumatic injury demanding immediate medical attention for which the patient enters the hospital through its emergency room or trauma center; and

(3) The care or assistance is rendered in good faith and in a manner not amounting to gross negligence or reckless, willful, or wanton conduct.

2. The limitation on liability provided pursuant to this section does not apply to any act or omission in rendering care or assistance which:

(1) Occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient; or

(2) Is unrelated to the original traumatic injury.

3. A rebuttable presumption that the medical condition was the result of the original traumatic injury and that the limitation on liability provided by subsection 1 of this section shall apply with respect to the medical condition that arises during the course of the follow-up care, arises if:

(1) A physician or dentist provides a follow-up care to a patient to whom he or she rendered care or assistance pursuant to subsection 1 of this section;

(2) A medical condition arises during the course of the follow-up care that is directly related to the original traumatic injury for which care or assistance was rendered pursuant to subsection 1 of this section; and

(3) The patient files an action for damages based on the medical condition that arises during the course of the follow-up care.

4. For the purposes of this section, the following terms mean:

(1) "Reckless, willful, or wanton conduct", as it applies to a person to whom subsection 1 of this section applies, is deemed to be that conduct which the person

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knew or should have known at the time he or she rendered the care or assistance would be likely to result in injury so as to affect the life or health of another person, taking into consideration to the extent applicable:

(a) The extent or serious nature of the prevailing circumstances;

(b) The lack of time or ability to obtain appropriate consultation;

(c) The lack of a prior medical relationship with the patient;

(d) The inability to obtain an appropriate medical history of the patient; and

(e) The time constraints imposed by coexisting emergencies;

(2) "Traumatic injury", any acute injury which, according to standardized criteria for triage in the field, involves a significant risk of death or the precipitation of complications or disabilities.

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.

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 the same profession and substantially the same 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 the following terms mean:

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(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 sections 408.040, 508.010, 510.263, 516.105, 537.067, 537.072, 538.205, 538.210, 538.213, 538.225, 538.227, and 538.301 shall only apply to causes of action filed after August 28, 2004.

[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.**]**

[508.070. 1. Suit may be brought against any motor carrier which is subject to regulation pursuant to chapter 390, RSMo, in any county where the cause of action may arise, in any town or county where the motor carrier operates, or judicial circuit where the cause of action accrued, or where the defendant maintains an office or agent, and service may be had upon the motor carrier whether an individual person,

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firm, company, association, or corporation, by serving process upon the director, division of motor carrier and railroad safety.

2. When a summons and petition are served upon the director, division of motor carrier and railroad safety, naming any motor carrier, either a resident or nonresident of this state, as a defendant in any action, the director shall immediately mail the summons and petition by registered United States mail to the motor carrier at the business address of the motor carrier as it appears upon the records of the commission. The director shall request from the postmaster a return receipt from the motor carrier to whom the registered letter enclosing copy of summons and petition is mailed. The director shall inform the clerk of the court out of which the summons was issued that the summons and petition were mailed to the motor carrier, as herein described, and the director shall forward to the clerk the return receipt showing delivery of the registered letter.

3. Each motor carrier not a resident of this state and not maintaining an office or agent in this state shall, in writing, designate the director as its authorized agent upon whom legal service may be had in all actions arising in this state from any operation of the motor vehicle pursuant to authority of any certificate or permit, and service shall be had upon the nonresident motor carrier as herein provided.

4. There shall be kept in the office of the director, division of motor carrier and railroad safety a permanent record showing all process served, the name of the plaintiff and defendant, the court from which the summons issued, the name and title of the officer serving the same, the day and the hour of service, the day and date on which petition and summons were forwarded to the defendant or defendants by registered letter, the date on which return receipt is received by the director, and the date on which the return receipt was forwarded to the clerk of the court out of which the summons was issued.**]**

[538.230. 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 where fault is apportioned among the parties and persons released pursuant to subsection 3 of this section, the court, unless otherwise agreed by all the parties, shall instruct the jury to apportion fault among such persons and parties, or the court, if there is no jury, shall make findings, indicating the percentage of total fault of all the parties to each claim that is allocated to each party and person who has been released from liability under subsection 3 of this section. 2. The court shall determine the award of damages to each plaintiff in accordance with the findings, subject to any reduction under subsection 3 of this section and enter judgment against each party liable on the basis of the rules of joint and several liability. However, notwithstanding the provisions of this subsection, any defendant against whom an

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award of damages is made shall be jointly liable only with those defendants whose apportioned percentage of fault is equal to or less than such defendant.

3. Any release, covenant not to sue, or similar agreement entered into by a claimant and a person or entity against which a claim is asserted arising out of the alleged transaction which is the basis for plaintiff's cause of action, whether actually made a party to the action or not, discharges that person or entity from all liability for contribution or indemnity but it does not discharge other persons or entities liable upon such claim unless it so provides. However, the claim of the releasing person against other persons or entities is reduced by the amount of the released persons' or entities' equitable share of the total obligation imposed by the court pursuant to a full apportionment of fault under this section as though there had been no release.**]**

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