

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/HCS/House Bill Nos. 374 & 434, Page 2, Section A, Line 10

2 by inserting after all of said line the following:

3 "1.010. 1. The common law of England and all statutes and
 4 acts of parliament made prior to the fourth year of the reign of
 5 James the First, of a general nature, which are not local to that
 6 kingdom and not repugnant to or inconsistent with the
 7 Constitution of the United States, the constitution of this
 8 state, or the statute laws in force for the time being, are the
 9 rule of action and decision in this state, any custom or usage to
 10 the contrary notwithstanding, but no act of the general assembly
 11 or law of this state shall be held to be invalid, or limited in
 12 its scope or effect by the courts of this state, for the reason
 13 that it is in derogation of, or in conflict with, the common law,
 14 or with such statutes or acts of parliament; but all acts of the
 15 general assembly, or laws, shall be liberally construed, so as to
 16 effectuate the true intent and meaning thereof.

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

1 action."; and

2 Further amend said bill, page 39, 525.310, line 25 of said
3 page, by inserting after all of said line the following:

4 "538.210. 1. A statutory cause of action for damages
5 against a health care provider for personal injury or death
6 arising out of the rendering of or failure to render health care
7 services is hereby created, replacing any such common law cause
8 of action. The elements of such cause of action are that the
9 health care provider failed to use that degree of skill and
10 learning ordinarily used under the same or similar circumstances
11 by similarly situated health care providers and that such failure
12 proximately caused injury or death.

13 2. In any action [against a health care provider for
14 damages for personal injury or death arising out of the rendering
15 of or the failure to render health care services] referenced in
16 subsection 1 of this section, no plaintiff shall recover more
17 than three hundred fifty thousand dollars for noneconomic damages
18 irrespective of the number of defendants.

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

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

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

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

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4 Such limitation shall apply to all claims for contribution.

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

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

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

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

27 8. The limitation on awards for noneconomic damages
28 provided for in this section shall be increased or decreased on
29 an annual basis effective January first of each year in

1 accordance with the Implicit Price Deflator for Personal
2 Consumption Expenditures as published by the Bureau of Economic
3 Analysis of the United States Department of Commerce. The value
4 of the limitation shall be calculated by the director of the
5 department of insurance, financial institutions and professional
6 registration, who shall submit that value to the secretary of
7 state, to publish in the Missouri Register as soon after each
8 January first as practicable. Publication of the value shall be
9 exempt from the provisions of section 536.021. Notwithstanding
10 any provision of this subsection to the contrary, the limitation
11 on awards for noneconomic damages provided for in this section
12 shall not exceed five hundred thousand dollars."; and

13 Further amend the title and enacting clause accordingly.