FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 239

98TH GENERAL ASSEMBLY

2015

AN ACT

To repeal sections 1.010, 538.205, and 538.210, RSMo, and to enact in lieu thereof three new sections relating to a statutory cause of action against healthcare providers.

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

Section A. Sections 1.010, 538.205, and 538.210, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 1.010, 538.205, and 538.210, to read as follows:

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

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

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

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
"Catastrophic personal injury", a physical injury resulting in:

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

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

(c) Loss of two or more limbs;

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

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

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

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

"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;

"Future damages", damages that the trier of fact finds will accrue after the damages findings are made;

"Health care provider", any physician, hospital, health maintenance organization, ambulatory surgical center, long-term care facility including those licensed under chapter 198, 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;

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

[(9)] (10) "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)] (11) "Punitive damages", damages intended to punish or deter
willful, wanton or malicious misconduct, including exemplary damages and
damages for aggravating circumstances;

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

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

2. (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] four hundred
[fifty] thousand dollars for noneconomic damages irrespective of the number of
defendants.

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

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

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

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

(3) No individual or entity whose liability is limited by the provisions of
this chapter shall be liable to any plaintiff based on the actions or omissions of
any other entity or person who is not an employee of such individual or entity
whose liability is limited by the provisions of this chapter.

Such limitation shall apply to all claims for contribution.

[3.] 4. 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.] 5. For purposes of sections 538.205 to 538.230, any spouse claiming
damages for loss of consortium of their spouse shall be considered to be the same
plaintiff as their spouse.

[5.] 6. 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.
[6.] 7. For purposes of sections 538.205 to 538.230, all individuals and
entities asserting a claim for a wrongful death under section 537.080 shall be
considered to be one plaintiff.

8. The limitations on awards for noneconomic damages provided
for in this section shall be increased by one and seven-tenths percent
on an annual basis effective January first of each year. 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 on the
first business day following January first, but the value shall otherwise
be exempt from the provisions of section 536.021.

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

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