

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 237
99TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, January 26, 2017, with recommendation that the Senate Committee Substitute do pass.

ADRIANE D. CROUSE, Secretary.

1000S.02C

AN ACT

To repeal section 538.205, RSMo, and to enact in lieu thereof one new section relating to the liability of an employee of a health care provider.

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

Section A. Section 538.205, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 538.205, to read as follows:

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

2 mean:

3 (1) "Catastrophic personal injury", a physical injury resulting in:

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

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

8 (c) Loss of two or more limbs;

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

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

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

19 (2) "Economic damages", damages arising from pecuniary harm including,

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

20 without limitation, medical damages, and those damages arising from lost wages
21 and lost earning capacity;

22 (3) **"Employee", any person or entity who either works for a**
23 **health care provider for compensation paid directly by said health care**
24 **provider to the person or entity or under an employment contract**
25 **between said health care provider and the person or entity and who in**
26 **either circumstance is covered by liability insurance or self-insurance**
27 **provided by said health care provider for acts performed at the**
28 **direction or under control of said health care provider;**

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

32 [(4)] (5) "Future damages", damages that the trier of fact finds will
33 accrue after the damages findings are made;

34 [(5)] (6) "Health care provider", any physician, hospital, health
35 maintenance organization, ambulatory surgical center, long-term care facility
36 including those licensed under chapter 198, dentist, registered or licensed
37 practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional
38 physical therapist, psychologist, physician-in-training, and any other person or
39 entity that provides health care services under the authority of a license or
40 certificate;

41 [(6)] (7) "Health care services", any services that a health care provider
42 renders to a patient in the ordinary course of the health care provider's profession
43 or, if the health care provider is an institution, in the ordinary course of
44 furthering the purposes for which the institution is organized. Professional
45 services shall include, but are not limited to, transfer to a patient of goods or
46 services incidental or pursuant to the practice of the health care provider's
47 profession or in furtherance of the purposes for which an institutional health care
48 provider is organized;

49 [(7)] (8) "Medical damages", damages arising from reasonable expenses
50 for necessary drugs, therapy, and medical, surgical, nursing, x-ray, dental,
51 custodial and other health and rehabilitative services;

52 [(8)] (9) "Noneconomic damages", damages arising from nonpecuniary
53 harm including, without limitation, pain, suffering, mental anguish,
54 inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life,
55 and loss of consortium but shall not include punitive damages;

56 [(9)] **(10)** "Past damages", damages that have accrued when the damages
57 findings are made;

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

62 (11) "Punitive damages", damages intended to punish or deter willful,
63 wanton or malicious misconduct, including exemplary damages and damages for
64 aggravating circumstances;

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

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Bill

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