

FIRST REGULAR SESSION

# SENATE BILL NO. 237

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Pre-filed December 27, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1000S.01I

## 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Section A. Section 538.205, RSMo, is repealed and one new section  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 works for a health care**  
23 **provider for a salary or under an employment contract and who is**  
24 **covered by a policy of insurance or self-insurance by said health care**  
25 **provider for acts performed at the direction or under control of said**  
26 **health care provider;**

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

30 [(4)] (5) "Future damages", damages that the trier of fact finds will  
31 accrue after the damages findings are made;

32 [(5)] (6) "Health care provider", any physician, hospital, health  
33 maintenance organization, ambulatory surgical center, long-term care facility  
34 including those licensed under chapter 198, dentist, registered or licensed  
35 practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional  
36 physical therapist, psychologist, physician-in-training, and any other person or  
37 entity that provides health care services under the authority of a license or  
38 certificate;

39 [(6)] (7) "Health care services", any services that a health care provider  
40 renders to a patient in the ordinary course of the health care provider's profession  
41 or, if the health care provider is an institution, in the ordinary course of  
42 furthering the purposes for which the institution is organized. Professional  
43 services shall include, but are not limited to, transfer to a patient of goods or  
44 services incidental or pursuant to the practice of the health care provider's  
45 profession or in furtherance of the purposes for which an institutional health care  
46 provider is organized;

47 [(7)] (8) "Medical damages", damages arising from reasonable expenses  
48 for necessary drugs, therapy, and medical, surgical, nursing, x-ray, dental,  
49 custodial and other health and rehabilitative services;

50 [(8)] (9) "Noneconomic damages", damages arising from nonpecuniary  
51 harm including, without limitation, pain, suffering, mental anguish,  
52 inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life,  
53 and loss of consortium but shall not include punitive damages;

54 [(9)] (10) "Past damages", damages that have accrued when the damages  
55 findings are made;

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

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

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

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