

FIRST REGULAR SESSION

SENATE BILL NO. 65

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0353S.02I

AN ACT

To repeal sections 510.263, 510.265, 538.205, and 538.210, RSMo, and to enact in lieu thereof five new sections relating to punitive damages.

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

Section A. Sections 510.263, 510.265, 538.205, and 538.210, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 510.259, 510.263, 510.265, 538.205, and 538.210, to read as follows:

**510.259. 1. Except as otherwise provided by statute, punitive
2 damages shall not be awarded unless the claimant proves by clear and
3 convincing evidence that the defendant intentionally harmed the
4 plaintiff without just cause or acted with a deliberate and flagrant
5 disregard for the safety of others.**

**6 2. Punitive damages may only be recovered if the trier of fact
7 awards more than nominal damages or if the claim or claims for which
8 nominal damages are solely awarded invoke privacy rights, property
9 rights, or rights protected by the United States Constitution or the
10 Missouri Constitution.**

**11 3. Punitive damages shall not be awarded against an employer
12 or a principal because of the act or conduct of an employee or agent
13 unless the claimant can satisfy the standard of proof in subsection 1 of
14 this section and:**

**15 (1) Prior to the act or conduct, the employer or principal
16 expressly authorized the doing and manner of the act or conduct;**

**17 (2) During or after the act or conduct, the employer or principal,
18 with full knowledge of the doing and manner of the act or conduct,**

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

19 expressly ratified the act or conduct; or

20 (3) The employee or agent was unfit to perform acts or duties of
21 the kind for which a punitive damage award is sought, and the
22 employer or principal expressly authorized the employee or agent to
23 perform acts or duties of that kind.

24 4. For purposes of this section, with respect to an employer or
25 principal that is a legal entity or partnership, only the act, conduct,
26 authorization, ratification, or intention of or by:

27 (1) The president, chair, or chief executive officer;

28 (2) The members of the governing body of the legal entity or
29 partnership, when acting as such; or

30 (3) Any other officer, employee, or agent with policy-making
31 authority

32 shall be deemed to be the act, conduct, authorization, ratification, or
33 intention of the employer or principal.

34 5. No initial pleading in a civil action shall contain a claim for
35 a punitive damage award. Any later pleading containing a claim for a
36 punitive damage award may be filed only with leave of the court. A
37 trial court may grant leave to file such a pleading only on written
38 motion by the claimant, filed no later than one hundred twenty days
39 prior to the final pretrial conference in the case or, if there is no
40 scheduled pretrial conference, one hundred twenty days prior to the
41 date set for trial, that is supported by affidavits, exhibits, or discovery
42 materials establishing a reasonable basis for recovery of punitive
43 damages. Any party opposing leave may file affidavits, exhibits, or
44 discovery materials demonstrating that the standards for a punitive
45 damages award under this section have not been established. If the
46 trial court concludes, following its review of all materials submitted in
47 connection with the motion, that based on the evidence to be admitted
48 at trial a reasonable trier of fact is likely to conclude, based on clear
49 and convincing evidence, that the standards for a punitive damages
50 award contained in this section have been met, the court shall grant
51 leave to file the pleading seeking a punitive damages award. The court
52 shall rule on a motion for leave to file a pleading seeking punitive
53 damages no later than forty-five days after a hearing on the motion or,
54 if no hearing is held on the motion, after the party opposing the motion
55 has filed its response to the motion.

56 **6. Punitive damages shall not be based, in whole or in part, on**
57 **harm to nonparties.**

58 **7. As used in this section, the term "punitive damage award"**
59 **means an award for punitive or exemplary damages or an award for**
60 **aggravating circumstances.**

61 **8. No judgment that includes a punitive damage award shall be**
62 **entered in any civil action in any court of this state, or in any court in**
63 **which claims are asserted based on the constitution, statutes, or**
64 **common law of this state, unless the requirements and procedures for**
65 **a punitive damage award contained in this section and sections 510.263**
66 **and 537.675 are met.**

67 **9. Except to the extent that they are expressly inconsistent with**
68 **this section, all common law limitations on punitive damages, including**
69 **the doctrine of remittitur, and all limitations on the recovery of**
70 **punitive damages contained in other sections of the laws of this state**
71 **remain in full force and effect.**

72 **10. The provisions of this section shall apply to:**

73 **(1) Any civil action pending on August 28, 2019, in which a claim**
74 **for a punitive damage award has been asserted in any pleading, unless**
75 **in that action a verdict or judgment containing a punitive damage**
76 **award has been returned or entered prior to such date;**

77 **(2) Any civil action pending on August 28, 2019, in which a party**
78 **seeks, on or after such date, to assert a claim for a punitive damage**
79 **award; and**

80 **(3) Any civil action filed on or after August 28, 2019.**

510.263. 1. All actions tried before a jury involving punitive damages[,
2 including tort actions based upon improper health care,] shall be conducted in a
3 bifurcated trial before the same jury if requested by any party.

4 2. In the first stage of a bifurcated trial, [in which the issue of punitive
5 damages is submissible,] the jury shall determine [liability for] **whether**
6 **compensatory damages**[, the amount of compensatory damages, including nominal
7 damages, and the liability of a defendant for] **are to be awarded and in what**
8 **amount, but shall not determine whether** punitive damages **are to be**
9 **awarded.** Evidence of defendant's financial condition shall [not] be [admissible]
10 **inadmissible** in the first stage of such trial unless admissible for a proper
11 purpose [other than the amount of] **unrelated to** punitive damages.

12 3. [If during the first stage of a bifurcated trial the jury determines that

13 a defendant is liable for punitive damages, that] **If an award of compensatory**
14 **damages above nominal damages has been made against a defendant,**
15 **the court shall promptly commence a hearing to determine whether**
16 **punitive damages may be considered by the same jury. The court shall**
17 **determine whether the issue of punitive damages may be submitted to**
18 **the jury and, if so, the jury shall determine[, in a second stage of trial, the**
19 **amount of] whether to award** punitive damages [to be awarded against such
20 defendant] **and in what amount.** Evidence of such defendant's net worth shall
21 be admissible during the second stage of such trial.

22 4. Within the time for filing a motion for new trial, a defendant may file
23 a post-trial motion requesting the amount awarded by the jury as punitive
24 damages be credited by the court with amounts previously paid **in any state or**
25 **federal court** by the defendant for punitive damages arising out of the same
26 conduct on which the imposition of punitive damages is based. At any hearing,
27 the burden on all issues relating to such a credit shall be on the defendant and
28 either party may introduce relevant evidence on such motion. Such a motion
29 shall be determined by the trial court within the time and according to
30 procedures applicable to motions for new trial. If the trial court sustains such a
31 motion the trial court shall credit the jury award of punitive damages by the
32 amount found by the trial court to have been previously paid by the defendant
33 arising out of the same conduct and enter judgment accordingly. If the defendant
34 fails to establish entitlement to a credit under the provisions of this section, or
35 the trial court finds from the evidence that the defendant's conduct out of which
36 the prior punitive damages award arose was not the same conduct on which the
37 imposition of punitive damages is based in the pending action, or the trial court
38 finds the defendant unreasonably continued the conduct after acquiring actual
39 knowledge of the dangerous nature of such conduct, the trial court shall disallow
40 such credit, or, if the trial court finds that the laws regarding punitive damages
41 in the state **or federal court** in which the prior award of punitive damages was
42 entered substantially and materially deviate from the law of the state of Missouri,
43 **except with respect to section 537.675,** and that the nature of such deviation
44 provides good cause for disallowance of the credit based on the public policy of
45 Missouri, then the trial court may disallow all or any part of the credit provided
46 by this section.

47 5. The credit allowable under this section shall not apply to causes of
48 action for libel, slander, assault, battery, false imprisonment, criminal

49 conversation, malicious prosecution or fraud.

50 6. [The doctrines of remittitur and additur, based on the trial judge's
51 assessment of the totality of the surrounding circumstances, shall apply to
52 punitive damage awards.

53 7.] As used in this section, "punitive damage award" means an award for
54 punitive or exemplary damages or an award for aggravating circumstances.

55 [8.] 7. Discovery as to a defendant's assets shall be allowed only after [a
56 finding by the trial court that it is more likely than not that the plaintiff will be
57 able to present a submissible case to the trier of fact on the plaintiff's claim of
58 punitive damages] **a trial court has granted leave to file a pleading**
59 **seeking punitive damages in accordance with subsection 5 of section**
60 **510.259.**

61 8. **The provisions of this section shall apply to:**

62 (1) **Any civil action pending on August 28, 2019, in which a claim**
63 **for a punitive damage award has been asserted in any pleading, unless**
64 **in that action a verdict or judgment containing a punitive damage**
65 **award has been returned or entered prior to such date;**

66 (2) **Any civil action pending on August 28, 2019, in which a party**
67 **seeks, on or after such date, to assert a claim for a punitive damage**
68 **award; and**

69 (3) **Any civil action filed on or after August 28, 2019.**

510.265. 1. No award of punitive damages against any defendant shall
2 exceed the greater of:

3 (1) Five hundred thousand dollars; or

4 (2) Five times the net amount of the judgment awarded to the plaintiff
5 against the defendant.

6 Such limitations shall not apply if the state of Missouri is the plaintiff requesting
7 the award of punitive damages, or the defendant pleads guilty to or is convicted
8 of a felony arising out of the acts or omissions pled by the plaintiff.

9 2. The provisions of this section shall not apply to civil actions brought
10 under section 213.111 that allege a violation of section 213.040, 213.045, 213.050,
11 or 213.070, to the extent that the alleged violation of section 213.070 relates to
12 or involves a violation of section 213.040, 213.045, or 213.050, or subdivision (3)
13 of subsection 1 of section 213.070 as it relates to housing.

14 3. **The provisions of sections 510.259 and 510.263, and subsection**
15 **4 of section 213.111 shall not apply to civil actions that allege a**

16 **violation of section 213.040, 213.045, 213.050, or 213.070, to the extent**
17 **that the alleged violation of section 213.070 relates to or involves a**
18 **violation of section 213.040, 213.045, or 213.050, or subdivision (3) of**
19 **subsection 1 of section 213.070 as it relates to housing.**

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,
20 without limitation, medical damages, and those damages arising from lost wages
21 and lost earning capacity;
22 (3) "Employee", any individual who is directly compensated by a health
23 care provider for health care services rendered by such individual and other
24 nonphysician individuals who are supplied to a health care provider by an entity
25 that provides staffing;
26 (4) "Equitable share", the share of a person or entity in an obligation that
27 is the same percentage of the total obligation as the person's or entity's allocated
28 share of the total fault, as found by the trier of fact;
29 (5) "Future damages", damages that the trier of fact finds will accrue after
30 the damages findings are made;
31 (6) "Health care provider", any physician, hospital, health maintenance
32 organization, ambulatory surgical center, long-term care facility including those

33 licensed under chapter 198, dentist, registered or licensed practical nurse,
34 optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist,
35 psychologist, physician-in-training, and any other person or entity that provides
36 health care services under the authority of a license or certificate;

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

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

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

52 (10) "Past damages", damages that have accrued when the damages
53 findings are made;

54 (11) "Punitive damages", damages intended to punish or deter [willful,
55 wanton or malicious misconduct] **malicious misconduct or conduct that**
56 **intentionally caused damage to the plaintiff**, including exemplary damages
57 and damages for aggravating circumstances;

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

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

8 2. (1) In any action against a health care provider for damages for
9 personal injury arising out of the rendering of or the failure to render health care

10 services, no plaintiff shall recover more than four hundred thousand dollars for
11 noneconomic damages irrespective of the number of defendants.

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

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

21 3. [(1)] This section shall also apply to any individual or entity, or their
22 employees or agents[,]:

23 (1) That provide, refer, coordinate, consult upon, or arrange for the
24 delivery of health care services to the plaintiff; and

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

28 4. No health care provider whose liability is limited by the provisions of
29 this chapter shall be liable to any plaintiff based on the actions or omissions of
30 any other entity or individual who is not an employee of such health care
31 provider, unless the individual is an employee of a subsidiary in which the health
32 care provider has a controlling interest and the subsidiary does not carry a
33 professional liability insurance policy or self-insurance covering said individual
34 of at least one million dollars per occurrence and a professional liability insurance
35 policy or self-insurance covering said subsidiary of at least one million dollars per
36 occurrence.

37 5. The limitations on liability as provided for in this section shall apply
38 to all claims for contribution.

39 6. In any action against a health care provider for damages for personal
40 injury or death arising out of the rendering of or the failure to render health care
41 services, where the trier of fact is a jury, such jury shall not be instructed by the
42 court with respect to the limitation on an award of noneconomic damages, nor
43 shall counsel for any party or any person providing testimony during such
44 proceeding in any way inform the jury or potential jurors of such limitation.

45 7. For purposes of sections 538.205 to 538.230, any spouse claiming

46 damages for loss of consortium of their spouse shall be considered to be the same
47 plaintiff as their spouse.

48 8. Any provision of law or court rule to the contrary notwithstanding, an
49 award of punitive damages against a health care provider governed by the
50 provisions of sections 538.205 to 538.230 shall be made only upon a [showing by
51 a plaintiff] **finding by the jury that the evidence clearly and convincingly**
52 **demonstrated** that the health care provider [demonstrated willful, wanton or
53 malicious misconduct with respect to his actions which are found to have injured
54 or caused or contributed to cause the damages claimed in the petition]
55 **intentionally caused damage to the plaintiff or demonstrated malicious**
56 **misconduct that caused damage to the plaintiff. Evidence of**
57 **negligence, including, but not limited to, indifference to or conscious**
58 **disregard for the safety of others shall not constitute a basis for an**
59 **award of punitive damages against a health care provider.**

60 9. For purposes of sections 538.205 to 538.230, all individuals and entities
61 asserting a claim for a wrongful death under section 537.080 shall be considered
62 to be one plaintiff.

63 10. The limitations on awards for noneconomic damages provided for in
64 this section shall be increased by one and seven-tenths percent on an annual
65 basis effective January first of each year. The current value of the limitation
66 shall be calculated by the director of the department of insurance, financial
67 institutions and professional registration, who shall furnish that value to the
68 secretary of state, who shall publish such value in the Missouri Register on the
69 first business day following January first, but the value shall otherwise be
70 exempt from the provisions of section 536.021.

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

76 12. If a court of competent jurisdiction enters a final judgment on the
77 merits that is not subject to appeal and that declares any provision or part of
78 either section 1.010 or this section to be unconstitutional or unenforceable, then
79 section 1.010 and this section, as amended by this act and in their entirety, are
80 invalid and shall have no legal effect as of the date of such judgment, and this
81 act, including its repealing clause, shall likewise be invalid and of no legal effect.

82 In such event, the versions of sections 1.010 and this section that were in effect
83 prior to the enactment of this act shall remain in force.

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Unofficial

Bill

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