

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 186
100TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, April 30, 2019, with recommendation that the Senate Committee Substitute do pass.

0323S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 407.025, 507.040, 507.050, 508.010, 508.012, 510.263, 510.265, 537.065, 537.762, 538.205, and 538.210, RSMo, and to enact in lieu thereof sixteen new sections relating to civil actions.

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

Section A. Sections 407.025, 507.040, 507.050, 508.010, 508.012, 510.263, 510.265, 537.065, 537.762, 538.205, and 538.210, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 375.1800, 375.1803, 375.1806, 407.025, 507.040, 507.050, 508.010, 508.012, 510.259, 510.263, 510.265, 516.099, 537.065, 537.762, 538.205, and 538.210, to read as follows:

375.1800. 1. A domestic insurance company shall be deemed for all purposes, including venue, to reside in, and be a resident of, the county where its registered office is maintained.

2. A foreign insurance company shall be deemed for all purposes, including venue, to reside in, and be a resident of, the county where its registered office is maintained. A foreign insurance company that does not maintain a registered office in any county in Missouri shall be deemed to reside in, and be a resident of, Cole County.

375.1803. 1. Notwithstanding any provision of law to the contrary, in all actions in which there is any count against an insurer, whether in tort or contract, regarding the rights, benefits, or duties under an insurance contract or any action arising from an insurance contract, including but not limited to claims of breach of contract, bad faith, or breach of fiduciary duty, venue shall be in the county where

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

7 the insurer resides, or if the insured was a resident of Missouri at the
8 time the insurance contract was issued, the county of the insured's
9 principal place of residence, as defined in section 508.010, at the time
10 the insurance contract was issued. Venue shall be determined by this
11 section even if the insured's rights or claims under the policy have
12 been assigned or otherwise transferred to another party. However,
13 intervention by an insurer in an action pursuant to section 537.065
14 shall not affect the venue of the action.

15 2. (1) The provisions of this section shall not apply to any action
16 against an insurer relating to uninsured motorist coverage or
17 underinsured motorist coverage, including any action to enforce such
18 coverage.

19 (2) Venue for a vexatious refusal to pay claim under section
20 375.296 or section 375.420 to collect an amount due under uninsured
21 motorist or underinsured motorist coverage shall not be determined in
22 accordance with the provisions of this section, but shall be determined
23 by the provisions of section 375.1806. However, venue for any other
24 vexatious refusal to pay claim to collect an amount due under any other
25 type of policy or coverage shall be determined in accordance with the
26 provisions of this section.

375.1806. Notwithstanding any provision of law to the contrary,
2 in all actions against an insurer relating to uninsured motorist
3 coverage or underinsured motorist coverage, including any action to
4 enforce such coverage, venue as to that individual plaintiff shall be
5 determined as follows:

6 (1) If the accident involving the uninsured or underinsured
7 motor vehicle occurred in Missouri, then venue shall be in the county
8 where the accident occurred;

9 (2) If the accident involving the uninsured or underinsured
10 motor vehicle occurred outside the state of Missouri, then venue shall
11 either be in:

12 (a) The county where the insurer resides; or

13 (b) If the insured's principal place of residence was in the state
14 of Missouri on the date the insured was first injured by the accident
15 involving an uninsured or underinsured motor vehicle, the county of
16 the insured's principal place of residence on the date the insured was
17 first injured by such accident.

407.025. 1. Any person who purchases or leases merchandise primarily
2 for personal, family or household purposes and thereby suffers an ascertainable
3 loss of money or property, real or personal, as a result of the use or employment
4 by another person of a method, act or practice declared unlawful by section
5 407.020, may bring a private civil action in either the circuit court of the county
6 in which the seller or lessor resides or in which the transaction complained of
7 took place, to recover actual damages.

8 **2. A person seeking to recover damages shall establish:**

9 **(1) That the person acted as a reasonable consumer would in**
10 **light of all circumstances;**

11 **(2) That the method, act, or practice declared unlawful by**
12 **section 407.020 caused the person to enter into the transaction that**
13 **resulted in damages; and**

14 **(3) Individual damages with sufficiently definitive and objective**
15 **evidence to allow the loss to be calculated with a reasonable degree of**
16 **certainty.**

17 **A court may dismiss a claim as a matter of law where the claim fails to**
18 **show a likelihood that the method, act, or practice alleged to be**
19 **unlawful would mislead a reasonable consumer.**

20 **3. The court may, in its discretion[,]:**

21 **(1) Award punitive damages [and may];**

22 **(2) Award to the prevailing party attorney's fees, based on the amount of**
23 **time reasonably expended[,]; and [may]**

24 **(3) Provide such equitable relief as it deems necessary or proper to**
25 **protect the prevailing party from the methods, acts, or practices**
26 **declared unlawful by section 407.020.**

27 **4. No action may be brought under this section to recover**
28 **damages for personal injury or death.**

29 **5. A cause of action under this section accrues on the date of**
30 **purchase or lease described in subsection 1 of this section.**

31 **[2.] 6. Persons entitled to bring an action pursuant to subsection 1 of this**
32 **section may, if the unlawful method, act or practice has caused similar injury to**
33 **numerous other persons, institute an action as representative or representatives**
34 **of a class against one or more defendants as representatives of a class, and the**
35 **petition shall allege such facts as will show that these persons or the named**
36 **defendants specifically named and served with process have been fairly chosen**

37 and adequately and fairly represent the whole class, to recover damages as
38 provided for in subsection 1 of this section. The plaintiff shall be required to
39 prove such allegations, unless all of the members of the class have entered their
40 appearance, and it shall not be sufficient to prove such facts by the admission or
41 admissions of the defendants who have entered their appearance. In any action
42 brought pursuant to this section, the court may in its discretion order, in addition
43 to damages, injunction or other equitable relief and reasonable attorney's
44 fees. **Attorney's fees, if awarded, shall bear a reasonable relationship**
45 **to the amount of the judgment.**

46 [3.] 7. An action may be maintained as a class action in a manner
47 consistent with Rule 23 of the Federal Rules of Civil Procedure and Missouri rule
48 of civil procedure 52.08 to the extent such state rule is not inconsistent with the
49 federal rule if:

50 (1) The class is so numerous that joinder of all members is impracticable;
51 (2) There are questions of law or fact common to the class;
52 (3) The claims or defenses of the representative parties are typical of the
53 claims or defenses of the class; and

54 (4) The representative parties will fairly and adequately protect the
55 interests of the class; and, in addition

56 (5) The prosecution of separate action by or against individual members
57 of the class would create a risk of:

58 (a) Inconsistent or varying adjudications with respect to individual
59 members of the class which would establish incompatible standards of conduct for
60 the party opposing the class; or

61 (b) Adjudications with respect to individual members of the class which
62 would as a practical matter be dispositive of the interests of the other members
63 not parties to the adjudications or substantially impair or impede their ability to
64 protect their interests; or

65 (6) The party opposing the class has acted or refused to act on grounds
66 generally applicable to the class, thereby making appropriate final injunctive
67 relief or corresponding declaratory relief with respect to the class as a whole; or

68 (7) The court finds that the questions of law or fact common to the
69 members of the class predominate over any questions affecting only individual
70 members, and that a class action is superior to other available methods for the
71 fair and efficient adjudication of the controversy. The matters pertinent to the
72 findings include:

73 (a) The interest of members of the class in individually controlling the
74 prosecution or defense of separate actions;

75 (b) The extent and nature of any litigation concerning the controversy
76 already commenced by or against members of the class;

77 (c) The desirability or undesirability of concentrating the litigation of the
78 claims in the particular forum;

79 (d) The difficulties likely to be encountered in the management of a class
80 action.

81 [4.] 8. (1) As soon as practicable after the commencement of an action
82 brought as a class action, the court shall determine by order whether it is to be
83 so maintained. An order pursuant to this subdivision may be conditional, and
84 may be altered or amended before the decision on the merits.

85 (2) In any class action maintained pursuant to subdivision (7) of
86 subsection [3] 7 of this section, the court shall direct to the members of the class
87 the best notice practicable under the circumstances, including individual notice
88 to all members who can be identified through reasonable effort. The notice shall
89 advise each member that:

90 (a) The court will exclude such member from the class if such member so
91 requests by a specified date;

92 (b) The judgment, whether favorable or not, will include all members who
93 do not request exclusion; and

94 (c) Any member who does request exclusion may, if such member desires,
95 enter an appearance through such member's counsel.

96 (3) The judgment in an action maintained as a class action pursuant to
97 subdivision (5) of subsection [3] 7 of this section or subdivision (6) of subsection
98 [3] 7 of this section, whether or not favorable to the class, shall include and
99 describe those whom the court finds to be members of the class. The judgment
100 in an action maintained as a class action pursuant to subdivision (7) of subsection
101 [3] 7 of this section, whether or not favorable to the class, shall include and
102 specify or describe those to whom the notice provided in subdivision (2) of this
103 subsection was directed, and who have requested exclusion, and whom the court
104 finds to be members of the class.

105 (4) When appropriate an action may be brought or maintained as a class
106 action with respect to particular issues, or a class may be divided into subclasses
107 and each subclass treated as a class, and the provisions of this section shall then
108 be construed and applied accordingly.

109 **[5.] 9.** In the conduct of actions to which this section applies, the court
110 may make appropriate orders:

111 (1) Determining the course of proceedings or prescribing measures to
112 prevent undue repetition or complication in the presentation of evidence or
113 argument;

114 (2) Requiring, for the protection of the members of the class or otherwise
115 for the fair conduct of the action, that notice be given in such manner as the court
116 may direct to some or all of the members of any step in the action, or of the
117 proposed extent of the judgment, or of the opportunity of members to signify
118 whether they consider the representation fair and adequate, to intervene and
119 present claims or defenses, or otherwise to come into the action;

120 (3) Imposing conditions on the representative parties or on intervenors;

121 (4) Requiring that the pleadings be amended to eliminate therefrom
122 allegations as to representation of absent persons, and that the action proceed
123 accordingly;

124 (5) Dealing with similar procedural matters.

125 **[6.] 10.** A class action shall not be dismissed or compromised without the
126 approval of the court, and notice of the proposed dismissal or compromise shall
127 be given to all members of the class in such manner as the court directs.

128 **[7.] 11.** Upon commencement of any action brought pursuant to
129 subsection 1 of this section, the plaintiff or plaintiffs shall inform the clerk of the
130 court in which such action is brought, on forms to be provided by such clerk, that
131 the action is brought pursuant to this section. The clerk of the court shall
132 forthwith inform the attorney general of the commencement of such action,
133 together with a copy of the complaint or other initial pleading, and, upon entry
134 of any judgment or decree in the action, the clerk shall mail a copy of such
135 judgment or decree to the attorney general.

136 **[8.] 12.** Any permanent injunction, judgment or order of the court made
137 pursuant to section 407.100 shall be prima facie evidence in an action brought
138 pursuant to this section that the respondent used or employed a method, act or
139 practice declared unlawful by section 407.020.

507.040. 1. All persons may join in one action as plaintiffs if they assert
2 any right to relief jointly, severally, or in the alternative in respect of or arising
3 out of the same transaction, occurrence, or series of transactions or occurrences
4 and if any question of law or fact common to all of them will arise in the action.
5 All persons may be joined in one action as defendants if there is asserted against

6 them jointly, severally, or in the alternative, any right to relief in respect of or
7 arising out of the same transaction, occurrence, or series of transactions or
8 occurrences and if any question of law or fact common to all of them will arise in
9 the action. **Notwithstanding any other provision of law to the contrary,**
10 **claims arising out of separate purchases of the same product or service,**
11 **or separate incidents involving the same product or services shall not**
12 **satisfy this section.** A plaintiff or defendant need not be interested in
13 obtaining or defending against all the relief demanded. Judgment may be given
14 for one or more of the plaintiffs according to their respective rights to relief, and
15 against one or more defendants according to their respective liabilities.

16 2. **The general assembly hereby expressly adopts the holding of**
17 ***State ex rel. Johnson & Johnson v. Burlison*, No. SC96704, as issued on**
18 **February 13, 2019, as it relates to joinder and venue.**

19 3. The court may make such orders as will prevent a party from being
20 embarrassed, delayed, or put to expense by the inclusion of a party against whom
21 he asserts no claim and who asserts no claim against him, and may order
22 separate trials or make other orders to prevent delay or prejudice.

507.050. 1. Misjoinder of parties is not ground for dismissal of an
2 action. Parties may be dropped [or], added, **or severed** by order of the court on
3 motion of any party or of its own initiative at any stage of the action and on such
4 terms as are just. Any claim against a party may be severed and proceeded with
5 separately.

6 2. A motion to drop or add parties may be made at the same time as other
7 motions provided for in section 509.290, and if so made, the provisions of section
8 509.340 with reference to the consolidation of motions and waiver of objections
9 shall also apply. If said motion is made at any other time, the hearing and
10 determination thereof shall not delay the trial. Objections on account of
11 misjoinder or nonjoinder of parties may also be raised by answer or reply.

508.010. 1. As used in this section, "principal place of residence" shall
2 mean the county which is the main place where an individual resides in the state
3 of Missouri. [There shall be a rebuttable presumption that the county of voter
4 registration at the time of injury is the principal place of residence.] There shall
5 be only one principal place of residence.

6 **(1) For an individual person, there shall be a rebuttable**
7 **presumption that the county of voter registration at the time of injury**
8 **is the principal place of residence.**

9 **(2) Notwithstanding subdivision (1) of this subsection, for an**
10 **individual whose conduct at issue was alleged in at least one count to**
11 **be in the course and scope of his or her employment with a**
12 **corporation, the individual's principal place of residence for venue**
13 **purposes shall be deemed to be the applicable corporation's principal**
14 **place of residence.**

15 **(3) For a corporation, the county where the corporation has its**
16 **registered agent is the principal place of residence.**

17 2. In all actions in which there is no count alleging a tort, venue shall be
18 determined as follows:

19 (1) When the defendant is a resident of the state, either in the county
20 within which the defendant resides, or in the county within which the plaintiff
21 resides, and the defendant may be found;

22 (2) When there are several defendants, and they reside in different
23 counties, the suit may be brought in any such county;

24 (3) When there are several defendants, some residents and others
25 nonresidents of the state, suit may be brought in any county in this state in
26 which any defendant resides;

27 (4) When all the defendants are nonresidents of the state, suit may be
28 brought in any county in this state, **provided there is personal jurisdiction**
29 **over each defendant, independent of each other defendant.**

30 3. The term "tort" shall include claims based upon improper health care,
31 under the provisions of chapter 538.

32 4. Notwithstanding any other provision of law, in all actions in which
33 there is any count alleging a tort and in which the plaintiff was first injured in
34 the state of Missouri, venue shall be in the county where the plaintiff was first
35 injured by the [wrongful] acts or [negligent] conduct alleged in the action.

36 5. Notwithstanding any other provision of law, in all actions in which
37 there is any count alleging a tort and in which the plaintiff was first injured
38 outside the state of Missouri, venue **as to that individual plaintiff** shall be
39 determined as follows:

40 (1) If the defendant is a corporation, then venue shall be in any county
41 where a defendant corporation's registered agent is located or, if the plaintiff's
42 principal place of residence was in the state of Missouri on the date the plaintiff
43 was first injured, then venue may be in the county of the plaintiff's principal
44 place of residence on the date the plaintiff was first injured;

45 (2) If the defendant is an individual, then venue shall be in [any] the
46 county [of] **where** the [individual defendant's] **defendant has his or her**
47 principal place of residence in the state of Missouri, **which for venue purposes**
48 **shall be deemed to be that of his or her employer corporation if any**
49 **count alleges conduct in the course and scope of his or her employment**
50 **with that corporation**, or, if the plaintiff's principal place of residence was in
51 the state of Missouri on the date the plaintiff was first injured, then venue **as to**
52 **that individual plaintiff** may be in the county containing the plaintiff's
53 principal place of residence on the date the plaintiff was first injured;

54 (3) Notwithstanding subdivisions (1) and (2) of this subsection, if the
55 plaintiff was first injured in a foreign country in connection with any railroad
56 operations therein and any defendant is a:

57 (a) Corporation that, either directly or through its subsidiaries, wholly
58 owns or operates the foreign railroad; or

59 (b) Wholly owned subsidiary of a corporation that, either directly or
60 through its subsidiaries, wholly owns or operates the foreign railroad;
61 then venue shall exclusively be in the county where any such defendant
62 corporation's registered agent is located, regardless of venue as to any other
63 defendant or, if the plaintiff's principal place of residence was in the state of
64 Missouri on the date the plaintiff was first injured, then venue may be in the
65 county of the plaintiff's principal place of residence on the date the plaintiff was
66 first injured.

67 6. Any action, in which any county shall be a plaintiff, may be commenced
68 and prosecuted to final judgment in the county in which the defendant or
69 defendants reside, or in the county suing and where the defendants, or one of
70 them, may be found.

71 7. In all actions, process shall be issued by the court in which the action
72 is filed and process may be served in any county within the state.

73 8. In any action for defamation or for invasion of privacy, the plaintiff
74 shall be considered first injured in the county in which the defamation or
75 invasion was first published.

76 9. In all actions, venue shall be determined as of the date the plaintiff was
77 first injured.

78 10. All motions to dismiss or to transfer based upon a claim of improper
79 venue shall be deemed granted if not denied within ninety days of filing of the
80 motion unless such time period is waived in writing by all parties.

81 11. In a wrongful death action, the plaintiff shall be considered first
82 injured where the decedent was first injured by the wrongful acts or negligent
83 conduct alleged in the action. In any spouse's claim for loss of consortium, the
84 plaintiff claiming consortium shall be considered first injured where the other
85 spouse was first injured by the wrongful acts or negligent conduct alleged in the
86 action.

87 12. The provisions of this section shall apply irrespective of whether the
88 defendant is a for-profit or a not-for-profit entity.

89 13. In any civil action, if all parties agree in writing to a change of venue,
90 the court shall transfer venue to the county within the state unanimously chosen
91 by the parties. If any parties are added to the cause of action after the date of
92 said transfer who do not consent to said transfer then the cause of action shall
93 be transferred to such county in which venue is appropriate under this section,
94 based upon the amended pleadings.

95 14. A plaintiff is considered first injured where the trauma or exposure
96 occurred rather than where symptoms are first manifested.

97 **15. If the county where the plaintiff's claim is filed is not a**
98 **proper venue, that plaintiff shall be transferred to a county where**
99 **proper venue can be established. If no such county exists in the state**
100 **of Missouri, the claim shall be dismissed without prejudice.**

101 **16. Denial of a motion to transfer venue pursuant to sections**
102 **507.040, 507.050, or 508.010, if denied in error, requires reversal, and no**
103 **finding of prejudice under Missouri supreme court rule 84.13(b) is**
104 **required for reversal.**

105 **17. For the purposes of this section, a domestic insurance**
106 **company shall be deemed to reside in, and be a resident of, the county**
107 **where its registered office is maintained. A foreign insurance company**
108 **shall be deemed to reside in, and be a resident of, the county where its**
109 **registered office is maintained. If a foreign insurance company does**
110 **not maintain a registered office in any county in Missouri, the foreign**
111 **insurance company shall be deemed to reside in, and be a resident of,**
112 **Cole County.**

 508.012. At any time prior to the commencement of a trial, if a plaintiff
2 or defendant, including a third-party plaintiff or defendant, is either added [or]
3 **to**, removed, **or severed** from a petition filed in any court in the state of
4 Missouri which would have, if originally added [or] **to**, removed [to], **or severed**

5 **from** the initial petition, altered the determination of venue under section
6 508.010, then the judge shall upon application of any party transfer the case to
7 a proper forum [under section 476.410].

8 **510.259. 1. Except as otherwise provided by statute, punitive**
9 **damages shall not be awarded unless the claimant proves by clear and**
10 **convincing evidence that the defendant intentionally harmed the**
11 **plaintiff without just cause or acted with a deliberate and flagrant**
12 **disregard for the safety of others.**

13 **2. Punitive damages may only be recovered if the trier of fact**
14 **awards more than nominal damages or if the claim or claims for which**
15 **nominal damages are solely awarded invoke privacy rights, property**
16 **rights, or rights protected by the United States Constitution or the**
17 **Missouri Constitution.**

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

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

24 **(2) During or after the act or conduct, the employer or principal,**
25 **with full knowledge of the doing and manner of the act or conduct,**
26 **expressly ratified the act or conduct; or**

27 **(3) The employee or agent was unfit to perform acts or duties of**
28 **the kind for which a punitive damage award is sought, the employer or**
29 **principal knew or had reason to know that the employee or agent was**
30 **unfit to perform acts or duties of that kind, and the employer or**
31 **principal expressly authorized the employee or agent to perform acts**
32 **or duties of that kind.**

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

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

37 **(2) The members of the governing body of the legal entity or**
38 **partnership, when acting as such; or**

39 **(3) Any other officer, employee, or agent with policy-making**
40 **authority**

41 **shall be deemed to be the act, conduct, authorization, ratification, or**

35 intention of the employer or principal.

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

58 6. Punitive damages shall not be based, in whole or in part, on
59 harm to nonparties.

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

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

69 9. Except to the extent that they are expressly inconsistent with
70 this section, all common law limitations on punitive damages and all
71 limitations on the recovery of punitive damages contained in other

72 **sections of the laws of this state remain in full force and effect.**

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 jury shall determine, in a second
14 stage of trial, the amount of punitive damages to be awarded against such
15 defendant] **If an award of compensatory damages above nominal**
16 **damages has been made against a defendant, the court shall promptly**
17 **commence a hearing to determine whether punitive damages may be**
18 **considered by the same jury. Upon such a determination, the second**
19 **stage of the bifurcated trial shall be conducted and the jury shall**
20 **determine whether a defendant is liable for punitive damages and, if**
21 **so, the amount of punitive damages, subject to the provisions of section**
22 **510.265.** Evidence of such defendant's net worth shall be admissible during the
23 second stage of such trial.

24 4. Within the time for filing a motion for new trial, a defendant may file
25 a post-trial motion requesting the amount awarded by the jury as punitive
26 damages be credited by the court with amounts previously paid **in any state or**
27 **federal court** by the defendant for punitive damages arising out of the same
28 conduct on which the imposition of punitive damages is based. At any hearing,
29 the burden on all issues relating to such a credit shall be on the defendant and
30 either party may introduce relevant evidence on such motion. Such a motion
31 shall be determined by the trial court within the time and according to
32 procedures applicable to motions for new trial. If the trial court sustains such a
33 motion the trial court shall credit the jury award of punitive damages by the
34 amount found by the trial court to have been previously paid by the defendant
35 arising out of the same conduct and enter judgment accordingly. If the defendant

36 fails to establish entitlement to a credit under the provisions of this section, or
37 the trial court finds from the evidence that the defendant's conduct out of which
38 the prior punitive damage award arose was not the same conduct on which the
39 imposition of punitive damages is based in the pending action, or the trial court
40 finds the defendant unreasonably continued the conduct after acquiring actual
41 knowledge of the dangerous nature of such conduct, the trial court shall disallow
42 such credit, or, if the trial court finds that the laws regarding punitive damages
43 in the state **or federal court** in which the prior award of punitive damages was
44 entered substantially and materially deviate from the law of the state of Missouri,
45 **except with respect to section 537.675**, and that the nature of such deviation
46 provides good cause for disallowance of the credit based on the public policy of
47 Missouri, then the trial court may disallow all or any part of the credit provided
48 by this section.

49 5. The credit allowable under this section shall not apply to causes of
50 action for libel, slander, assault, battery, false imprisonment, criminal
51 conversation, malicious prosecution or fraud.

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

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

57 8. Discovery as to a defendant's assets shall be allowed only after [a
58 finding by the trial court that it is more likely than not that the plaintiff will be
59 able to present a submissible case to the trier of fact on the plaintiff's claim of
60 punitive damages] **a trial court has granted leave to file a pleading**
61 **seeking punitive damages in accordance with subsection 5 of section**
62 **510.259.**

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.**

516.099. 1. Any action to recover damages for economic loss,
2 **personal injury, property damage, or wrongful death arising out of a**
3 **defective or unsafe condition of any product that is sold, leased, or**
4 **otherwise placed in the stream of commerce, or arising out of the**
5 **negligent design, manufacture, sale, or distribution of any such product**
6 **shall be commenced within fifteen years of the date on which such**
7 **product is first sold or leased to any person or otherwise placed into**
8 **the stream of commerce.**

9 **2. This section shall apply to all actions falling within it, whether**
10 **arising under the common law or by operation of statute; except that,**
11 **if an action within this section is barred by another provision of law,**
12 **such other provision of law shall govern.**

13 **3. This section shall not apply:**

14 **(1) To any action brought with respect to a product that is real**
15 **property or an improvement to real property;**

16 **(2) If the person against whom an action is brought has**
17 **knowingly concealed any defective or unsafe condition in the product**
18 **that is the subject of the action, or has knowingly concealed any**
19 **negligence in the product's construction, manufacture, sale,**
20 **distribution, or placing into the stream of commerce, and if any matter**
21 **so concealed directly resulted in the economic loss, personal injury,**
22 **property damage, or wrongful death for which the action is brought;**

23 **(3) If a manufacturer, lessor, seller, or person who first placed**
24 **a product in the stream of commerce against whom an action within**
25 **this section is brought brings an action for indemnity or contribution**
26 **against a person who is or may be liable to such person for all or any**
27 **portion of any judgment rendered against such person, in which event**

28 such action for indemnity or contribution shall not be barred by this
29 section;

30 (4) If a manufacturer, lessor, seller, or person who first placed
31 a product in the stream of commerce has stated in a written warranty
32 or an advertisement to the public that the product has an expected
33 useful life for a period certain that is greater than fifteen years, in
34 which event any action that is otherwise within this section and is not
35 barred by any other provision of law shall be brought no later than two
36 years following the expiration of that period certain;

37 (5) To any action regarding negligent service or negligent
38 maintenance of a product;

39 (6) To any action regarding a defective or unsafe condition of a
40 product if the product is subject to a government mandated product
41 recall related to consumer safety, provided that the action shall be
42 limited to the extent that the subject of the action and the underlying
43 reason for the recall are the same;

44 (7) To any action regarding a defective or unsafe condition of a
45 product causing a respiratory or malignant disease with a latency of
46 more than fifteen years. No action shall be commenced under this
47 subdivision based upon strict product liability, or negligence against
48 a seller of a product, in which the product is alleged to contain or
49 possess a defective condition unreasonably dangerous to the buyer,
50 user, or consumer, unless such seller is also the manufacturer of the
51 product claimed to be defective; or

52 (8) Notwithstanding subdivision (4) of this subsection, to any
53 action against a manufacturer where the harm occurred during the
54 useful safe life of the product. In determining whether a product's
55 useful safe life has expired, the trier of fact may consider:

56 (a) The amount of wear and tear to which the product had been
57 subject;

58 (b) The effect of deterioration from natural causes, and from
59 climate and other conditions under which the product was used or
60 stored;

61 (c) The normal practices of the user, similar users, and the
62 product seller with respect to the circumstances, frequency, and
63 purposes of the product's use, and with respect to repairs, renewals,
64 and replacements;

65 **(d) Any representations, instructions, or warnings made by the**
66 **product manufacturer concerning proper maintenance, storage, and use**
67 **of the product or the expected useful safe life of the product; and**

68 **(e) Any modification or alteration of the product by a user or**
69 **third party.**

70 **4. This section shall apply to all civil actions commenced on or**
71 **after August 28, 2019, or any new causes of action asserted in civil**
72 **actions pending on or after that date; except that, any cause of action**
73 **falling within this section that accrued on or before August 28, 2019,**
74 **may, in any event, be brought no later than August 28, 2020, unless**
75 **barred by another provision of law.**

537.065. 1. Any person having an unliquidated claim for damages against
2 a tort-feasor, on account of personal injuries, bodily injuries, or death, provided
3 that, such tort-feasor's insurer or indemnitor has the opportunity to defend the
4 tort-feasor without reservation but refuses to do so, may enter into a contract
5 with such tort-feasor or any insurer on his or her behalf or both, whereby, in
6 consideration of the payment of a specified amount, the person asserting the
7 claim agrees that in the event of a judgment against the tort-feasor, neither such
8 person nor any other person, firm, or corporation claiming by or through him or
9 her will levy execution, by garnishment or as otherwise provided by law, except
10 against the specific assets listed in the contract and except against any insurer
11 which insures the legal liability of the tort-feasor for such damage and which
12 insurer is not excepted from execution, garnishment or other legal procedure by
13 such contract. Execution or garnishment proceedings in aid thereof shall lie only
14 as to assets of the tort-feasor specifically mentioned in the contract or the insurer
15 or insurers not excluded in such contract. Such contract, when properly
16 acknowledged by the parties thereto, may be recorded in the office of the recorder
17 of deeds in any county where a judgment may be rendered, or in the county of the
18 residence of the tort-feasor, or in both such counties, and if the same is so
19 recorded then such tort-feasor's property, except as to the assets specifically listed
20 in the contract, shall not be subject to any judgment lien as the result of any
21 judgment rendered against the tort-feasor, arising out of the transaction for
22 which the contract is entered into.

23 2. Before a judgment may be entered against any tort-feasor after such
24 tort-feasor has entered into a contract under this section, the insurer or insurers
25 shall be provided with written notice of the execution of the contract and shall

26 have thirty days after receipt of such notice to intervene as a matter of right in
27 any pending lawsuit involving the claim for damages. **Upon intervention**
28 **under this section, the intervenor shall have all rights afforded**
29 **defendants under the Missouri rules of civil procedure, including but**
30 **not limited to the right to conduct discovery, the right to engage in**
31 **motion practice, and the right to a trial by jury. The intervenor shall**
32 **also have the right to assert any rights or raise any defenses available**
33 **to the tort-feasor and to assert any rights or raise any defenses that**
34 **would have been available to the tort-feasor in the absence of the**
35 **contract entered into under this section or other agreement between**
36 **the parties to that contract. However, nothing in this section shall**
37 **alter or reduce the intervening insurer's obligations to any insureds**
38 **other than the tort-feasor, including any co-insureds of the defendant**
39 **tort-feasor.**

40 3. The provisions of this section shall apply to any covenant not to execute
41 or any contract to limit recovery to specified assets, regardless of whether it is
42 referred to as a contract under this section.

43 4. Nothing in this section shall be construed to prohibit an insured from
44 bringing a separate action asserting that the insurer acted in bad faith.

45 **5. As used in this section, the term "insurer" shall include any**
46 **entity which is subject to sections 537.700 to 537.756 or which provides**
47 **risk management services to any public or private entity.**

537.762. 1. A defendant whose liability is based solely on his status as
2 a seller in the stream of commerce may be dismissed from a products liability
3 claim as provided in this section.

4 2. This section shall apply to any products liability claim in which another
5 defendant, including the manufacturer, is properly before the court and from
6 whom total recovery may be had for plaintiff's claim.

7 3. A defendant may move for dismissal under this section within the time
8 for filing an answer or other responsive pleading unless permitted by the court
9 at a later time for good cause shown. The motion shall be accompanied by an
10 affidavit which shall be made under oath and shall state that the defendant is
11 aware of no facts or circumstances upon which a verdict might be reached against
12 him, other than his status as a seller in the stream of commerce.

13 4. The parties shall have sixty days in which to conduct discovery on the
14 issues raised in the motion and affidavit. The court for good cause shown, may

15 extend the time for discovery, and may enter a protective order pursuant to the
16 rules of civil procedure regarding the scope of discovery on other issues.

17 5. Any party may move for a hearing on a motion to dismiss under this
18 section. If the requirements of subsections 2 and 3 of this section are met, and
19 no party comes forward at such a hearing with evidence of facts which would
20 render the defendant seeking dismissal under this section liable on some basis
21 other than his status as a seller in the stream of commerce, the court shall
22 dismiss without prejudice the claim as to that defendant.

23 6. [No order of dismissal under this section shall operate to divest a court
24 of venue or jurisdiction otherwise proper at the time the action was commenced.
25 A defendant dismissed pursuant to this section shall be considered to remain a
26 party to such action only for such purposes.

27 7.] An order of dismissal under this section shall be interlocutory until
28 final disposition of plaintiff's claim by settlement or judgment and may be set
29 aside for good cause shown at anytime prior to such disposition.

 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.

✓

Bill

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