

SECOND REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE NO. 2 FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 591**  
100TH GENERAL ASSEMBLY

---

---

INTRODUCED BY SENATOR WHITE.

Offered February 25, 2020.

Senate Substitute No. 2 adopted February 25, 2020.

Taken up for Perfection February 25, 2020. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

3061S.14P

---

---

**AN ACT**

To repeal sections 407.020, 407.025, 510.263, 510.265, 538.205, and 538.210, RSMo, and to enact in lieu thereof eight new sections relating to civil actions, with existing penalty provisions.

---

---

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

Section A. Sections 407.020, 407.025, 510.263, 510.265, 538.205, and  
2 538.210, RSMo, are repealed and eight new sections enacted in lieu thereof, to be  
3 known as sections 407.020, 407.025, 510.261, 510.263, 510.265, 538.205, 538.210,  
4 and 1, to read as follows:

407.020. 1. The act, use or employment by any person of any deception,  
2 fraud, false pretense, false promise, misrepresentation, unfair practice or the  
3 concealment, suppression, or omission of any material fact in connection with the  
4 sale or advertisement of any merchandise in trade or commerce or the solicitation  
5 of any funds for any charitable purpose, as defined in section 407.453, in or from  
6 the state of Missouri, is declared to be an unlawful practice. The use by any  
7 person, in connection with the sale or advertisement of any merchandise in trade  
8 or commerce or the solicitation of any funds for any charitable purpose, as defined  
9 in section 407.453, in or from the state of Missouri of the fact that the attorney  
10 general has approved any filing required by this chapter as the approval, sanction  
11 or endorsement of any activity, project or action of such person, is declared to be

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

12 an unlawful practice. Any act, use or employment declared unlawful by this  
13 subsection violates this subsection whether committed before, during or after the  
14 sale, advertisement or solicitation.

15 2. Nothing contained in this section shall apply to:

16 (1) The owner or publisher of any newspaper, magazine, publication or  
17 printed matter wherein such advertisement appears, or the owner or operator of  
18 a radio or television station which disseminates such advertisement when the  
19 owner, publisher or operator has no knowledge of the intent, design or purpose  
20 of the advertiser; [or]

21 (2) Any institution, company, or entity that is subject to chartering,  
22 licensing, or regulation by the director of the department of commerce and  
23 insurance under chapter 354 or chapters 374 to 385, the director of the division  
24 of credit unions under chapter 370, or director of the division of finance under  
25 chapters 361 to 369, or chapter 371, unless such directors specifically authorize  
26 the attorney general to implement the powers of this chapter or such powers are  
27 provided to either the attorney general or a private citizen by statute; or

28 **(3) Any advertisement, merchandise, or transaction in which the**  
29 **merchandise consists of a new residence in a transaction in which the**  
30 **buyer is offered and accepts in the sale contract an express warranty**  
31 **by the builder or through a third party warranty company paid for by**  
32 **the builder and the sale contract contains substantially the following**  
33 **disclaimer in all capital letters with characters of at least ten-point**  
34 **type: "THIS CONTRACT, MERCHANDISE AND PROPERTY CONVEYED**  
35 **UNDER THIS CONTRACT AND THE TRANSACTION BETWEEN THE**  
36 **SELLER AND BUYER IS EXCLUDED FROM COVERAGE UNDER THE**  
37 **MERCHANDISING PRACTICES ACT, SECTIONS 407.010 TO 407.130,**  
38 **RSMO.". As used in this section, the term "residence" shall mean a**  
39 **single-family house, duplex, triplex, quadruplex, or a unit in a multiunit**  
40 **residential structure in which title to each individual unit is**  
41 **transferred to the owner under a condominium or cooperative system**  
42 **and shall include common areas and common elements as defined in**  
43 **subdivision (4) of section 448.1-103.**

44 3. Any person who willfully and knowingly engages in any act, use,  
45 employment or practice declared to be unlawful by this section with the intent to  
46 defraud shall be guilty of a class E felony.

47 4. It shall be the duty of each prosecuting attorney and circuit attorney

48 in their respective jurisdictions to commence any criminal actions under this  
49 section, and the attorney general shall have concurrent original jurisdiction to  
50 commence such criminal actions throughout the state where such violations have  
51 occurred.

52 5. It shall be an unlawful practice for any long-term care facility, as  
53 defined in section 192.2300, except a facility which is a residential care facility  
54 or an assisted living facility, as defined in section 198.006, which makes, either  
55 orally or in writing, representation to residents, prospective residents, their  
56 families or representatives regarding the quality of care provided, or systems or  
57 methods utilized for assurance or maintenance of standards of care to refuse to  
58 provide copies of documents which reflect the facility's evaluation of the quality  
59 of care, except that the facility may remove information that would allow  
60 identification of any resident. If the facility is requested to provide any copies,  
61 a reasonable amount, as established by departmental rule, may be charged.

62 6. Any long-term care facility, as defined in section 192.2300, which  
63 commits an unlawful practice under this section shall be liable for damages in a  
64 civil action of up to one thousand dollars for each violation, and attorney's fees  
65 and costs incurred by a prevailing plaintiff, as allowed by the circuit court.

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

8 (2) A person seeking to recover damages shall establish:

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

11 (b) That the method, act, or practice declared unlawful by  
12 section 407.020 would cause a reasonable person to enter into the  
13 transaction that resulted in damages; and

14 (c) 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 **2. 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 **3. No action may be brought under this section to recover**  
28 **damages for personal injury or death in which a claim can be made**  
29 **under chapter 538.**

30 **4. A cause of action under this section accrues on the date of**  
31 **purchase or lease described in subsection 1 of this section or upon**  
32 **receipt of notice of a method, act, or practice declared unlawful by**  
33 **section 407.020.**

34 **[2.] 5. Persons entitled to bring an action pursuant to subsection 1 of this**  
35 **section may, if the unlawful method, act or practice has caused similar injury to**  
36 **numerous other persons, institute an action as representative or representatives**  
37 **of a class against one or more defendants as representatives of a class, and the**  
38 **petition shall allege such facts as will show that these persons or the named**  
39 **defendants specifically named and served with process have been fairly chosen**  
40 **and adequately and fairly represent the whole class, to recover damages as**  
41 **provided for in subsection 1 of this section. The plaintiff shall be required to**  
42 **prove such allegations, unless all of the members of the class have entered their**  
43 **appearance, and it shall not be sufficient to prove such facts by the admission or**  
44 **admissions of the defendants who have entered their appearance. The class**  
45 **representative or representatives shall establish:**

46 **(1) That the representative or representatives acted as a**  
47 **reasonable consumer would in light of all circumstances;**

48 **(2) That the method, act, or practice declared unlawful by**  
49 **section 407.020 would cause a reasonable person to enter into the**  
50 **transaction that resulted in damages; and**

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

54 **All other members of the class shall establish individual damages in a**

55 **manner determined by the court.** In any action brought pursuant to this  
56 section, the court may in its discretion order, in addition to damages, injunction  
57 or other equitable relief and reasonable attorney's fees. **Attorney's fees, if**  
58 **awarded, shall bear a reasonable relationship to the amount of the**  
59 **judgment. When the judgment grants equitable relief, the attorney's**  
60 **fees shall be based on the amount of time reasonably expended.**

61 [3.] 6. An action may be maintained as a class action in a manner  
62 consistent with Rule 23 of the Federal Rules of Civil Procedure and Missouri rule  
63 of civil procedure 52.08 to the extent such state rule is not inconsistent with the  
64 federal rule if:

65 (1) The class is so numerous that joinder of all members is impracticable;

66 (2) There are questions of law or fact common to the class;

67 (3) The claims or defenses of the representative parties are typical of the  
68 claims or defenses of the class; and

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

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

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

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

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

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

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

90 (b) The extent and nature of any litigation concerning the controversy

91 already commenced by or against members of the class;

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

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

96 [4.] 7. (1) As soon as practicable after the commencement of an action  
97 brought as a class action, the court shall determine by order whether it is to be  
98 so maintained. An order pursuant to this subdivision may be conditional, and  
99 may be altered or amended before the decision on the merits.

100 (2) In any class action maintained pursuant to subdivision (7) of  
101 subsection [3] 6 of this section, the court shall direct to the members of the class  
102 the best notice practicable under the circumstances, including individual notice  
103 to all members who can be identified through reasonable effort. The notice shall  
104 advise each member that:

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

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

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

111 (3) The judgment in an action maintained as a class action pursuant to  
112 subdivision (5) of subsection [3] 6 of this section or subdivision (6) of subsection  
113 [3] 6 of this section, whether or not favorable to the class, shall include and  
114 describe those whom the court finds to be members of the class. The judgment  
115 in an action maintained as a class action pursuant to subdivision (7) of subsection  
116 [3] 6 of this section, whether or not favorable to the class, shall include and  
117 specify or describe those to whom the notice provided in subdivision (2) of this  
118 subsection was directed, and who have requested exclusion, and whom the court  
119 finds to be members of the class.

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

124 [5.] 8. In the conduct of actions to which this section applies, the court  
125 may make appropriate orders:

126 (1) Determining the course of proceedings or prescribing measures to

127 prevent undue repetition or complication in the presentation of evidence or  
128 argument;

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

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

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

139 (5) Dealing with similar procedural matters.

140 [6.] 9. A class action shall not be dismissed or compromised without the  
141 approval of the court, and notice of the proposed dismissal or compromise shall  
142 be given to all members of the class in such manner as the court directs.

143 [7.] 10. Upon commencement of any action brought pursuant to  
144 subsection 1 of this section, the plaintiff or plaintiffs shall inform the clerk of the  
145 court in which such action is brought, on forms to be provided by such clerk, that  
146 the action is brought pursuant to this section. The clerk of the court shall  
147 forthwith inform the attorney general of the commencement of such action,  
148 together with a copy of the complaint or other initial pleading, and, upon entry  
149 of any judgment or decree in the action, the clerk shall mail a copy of such  
150 judgment or decree to the attorney general.

151 [8.] 11. Any permanent injunction, judgment or order of the court made  
152 pursuant to section 407.100 shall be prima facie evidence in an action brought  
153 pursuant to this section that the respondent used or employed a method, act or  
154 practice declared unlawful by section 407.020.

**510.261. 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 Constitution of the United States or  
10 the Constitution of the state of Missouri.

11 3. Punitive damages can properly be awarded against an  
12 employer or other principal because of an act by an agent if, but only  
13 if:

14 (1) The principal or a managerial agent of the principal  
15 authorized the doing and the manner of the act;

16 (2) The agent was unfit and the principal or a managerial agent  
17 of the principal was reckless in employing or retaining him or her;

18 (3) The agent was employed in a managerial capacity and was  
19 acting in the scope of employment; or

20 (4) The principal or a managerial agent of the principal ratified  
21 or approved the act.

22 4. When an employer admits liability for the actions of an agent  
23 in a claim for compensatory damages, the court shall grant limited  
24 discovery consisting only of employment records and documents or  
25 information related to the agent's qualifications.

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



46 **if no hearing is held on the motion, after the party opposing the motion**  
47 **has filed its response to the motion. The responsive pleading shall be**  
48 **limited to responding to the newly amended punitive damages claim.**

49 **6. The amount of punitive damages shall not be based, in whole**  
50 **or in part, on harm to nonparties.**

51 **7. No judgment that includes a punitive damage award shall be**  
52 **entered in any civil action in any court of this state, or in any court in**  
53 **which claims are asserted based on the constitution, statutes, or**  
54 **common law of this state, unless the requirements and procedures for**  
55 **a punitive damage award contained in this section and sections 510.263**  
56 **and 537.675 are met.**

57 **8. Except to the extent that they are expressly inconsistent with**  
58 **this section, all common law limitations on punitive damages and all**  
59 **limitations on the recovery of punitive damages contained in other**  
60 **sections of the laws of this state remain in full force and effect.**

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

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 compensatory  
6 damages, the amount of compensatory damages, including nominal damages, and  
7 the liability of a defendant for punitive damages. Evidence of defendant's  
8 financial condition shall not be admissible in the first stage of such trial unless  
9 admissible for a proper purpose other than the amount of punitive damages.

10 3. If during the first stage of a bifurcated trial the jury determines that  
11 a defendant is liable for punitive damages, that jury shall determine, in a second  
12 stage of trial, the amount of punitive damages to be awarded against such  
13 defendant. Evidence of such defendant's net worth shall be admissible during the  
14 second stage of such trial.

15 4. Within the time for filing a motion for new trial, a defendant may file  
16 a post-trial motion requesting the amount awarded by the jury as punitive  
17 damages be credited by the court with amounts previously paid **in any state or**  
18 **federal court** by the defendant for punitive damages arising out of the same

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

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

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

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

48 8. Discovery as to a defendant's assets shall be allowed only after a  
49 [finding by the trial court that it is more likely than not that the plaintiff will be  
50 able to present a submissible case to the trier of fact on the plaintiff's claim of  
51 punitive damages] **trial court has granted leave to file a pleading seeking**  
52 **punitive damages in accordance with subsection 5 of section 510.261.**

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 **and sections 510.261 and 510.263**  
10 shall not apply to civil actions brought under section 213.111 that allege a  
11 violation of section 213.040, 213.045, 213.050, or 213.070, to the extent that the  
12 alleged violation of section 213.070 relates to or involves a violation of section  
13 213.040, 213.045, or 213.050, or subdivision (3) of subsection 1 of section 213.070  
14 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 negligence**  
57 **including, but not limited to, indifference to or conscious disregard for**  
58 **the safety of others shall not constitute intentional conduct or**  
59 **malicious misconduct.**

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 commerce and insurance,  
67 who shall furnish that value to the secretary of state, who shall publish such  
68 value in the Missouri Register on the first business day following January first,  
69 but the value shall otherwise be exempt from the provisions of section 536.021.

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

74 injuries.

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

**Section 1. The provisions of this act shall apply to causes of  
2 action filed on or after August 28, 2020.**

✓

Bill

Copy