

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 591

100TH GENERAL ASSEMBLY

2020

3061S.14T

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2 538.210, RSMo, are repealed and eight new sections enacted in lieu thereof, to be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
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.

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

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.**

✓
Unofficial

Bill

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