

SENATE BILL NO. 1190

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CARTER.

5445S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 516.105, RSMo, and to enact in lieu thereof two new sections relating to actions against health care providers.

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

Section A. Section 516.105, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 516.105 and 538.212, to read as follows:

516.105. 1. All actions against physicians, hospitals, dentists, registered or licensed practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical therapists, mental health professionals licensed under chapter 337, and any other entity providing health care services and all employees of any of the foregoing acting in the course and scope of their employment, for damages for malpractice, negligence, error or mistake related to health care shall be brought within two years from the date of occurrence of the act of neglect complained of, except that:

(1) In cases in which the act of neglect complained of is introducing and negligently permitting any foreign object to remain within the body of a living person, the action shall be brought within two years from the date of the discovery of such alleged negligence, or from the date on which the patient in the exercise of ordinary care should

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

18 have discovered such alleged negligence, whichever date
19 first occurs; [and]

20 (2) In cases in which the act of neglect complained of
21 is the negligent failure to inform the patient of the
22 results of medical tests, the action for failure to inform
23 shall be brought within two years from the date of the
24 discovery of such alleged negligent failure to inform, or
25 from the date on which the patient in the exercise of
26 ordinary care should have discovered such alleged negligent
27 failure to inform, whichever date first occurs; except that,
28 no such action shall be brought for any negligent failure to
29 inform about the results of medical tests performed more
30 than two years before August 28, 1999. For purposes of this
31 subdivision, the act of neglect based on the negligent
32 failure to inform the patient of the results of medical
33 tests shall not include the act of informing the patient of
34 the results of negligently performed medical tests or the
35 act of informing the patient of erroneous test results; [and]

36 (3) In cases in which the person bringing the action
37 is a minor less than eighteen years of age, such minor shall
38 have until his or her twentieth birthday to bring such
39 action; and

40 (4) In cases in which the act of neglect complained of
41 is related to the provision of a gender transition surgery
42 or other gender transition services or in the course of
43 prescribing or administering cross-sex hormones or puberty-
44 blocking drugs, the action shall be brought within fifteen
45 years from the date of discovery of the injury and of the
46 causal relationship between the injury and the provision of
47 a gender transition surgery or other gender transition
48 services or in the course of prescribing or administering
49 cross-sex hormones or puberty-blocking drugs. As used in

50 this subdivision, the terms "gender transition", "gender
51 transition services", "cross-sex hormones", and "puberty
52 blocking drugs" shall have the same meaning as such terms in
53 section 191.1720.

54 **Except for those actions provided in subdivision (4) of this**
55 **subsection**, in no event shall any action for damages for
56 malpractice, error, or mistake be commenced after the
57 expiration of ten years from the date of the act of neglect
58 complained of or for two years from a minor's eighteenth
59 birthday, whichever is later.

60 2. Any service on a defendant by a plaintiff after the
61 statute of limitations set forth in subsection 1 of this
62 section has expired or after the expiration of any extension
63 of the time provided to commence an action pursuant to law
64 shall be made within one hundred eighty days of the filing
65 of the petition. If such service is not made on a defendant
66 within one hundred eighty days of the filing of the
67 petition, the court shall dismiss the action against the
68 defendant. The dismissal shall be without prejudice unless
69 the plaintiff has previously taken or suffered a nonsuit, in
70 which case the dismissal shall be with prejudice.

538.212. 1. Notwithstanding any other provision of
2 **this chapter to the contrary, there shall be a statutory**
3 **cause of action for damages against a health care provider**
4 **for personal injury or death arising out of the rendering or**
5 **failure to render health care services while in the course**
6 **of performing a gender transition surgery or other gender**
7 **transition services or in the course of prescribing or**
8 **administering cross-sex hormones or puberty-blocking drugs.**
9 **This section shall replace any such common law cause of**

10 action and actions covered by section 538.210 that are filed
11 after August 28, 2026.

12 2. The limitation on damages provided in section
13 538.210 shall not apply to actions brought pursuant to
14 subsection 1 of this section. In any action against a
15 health care provider for damages pursuant to subsection 1 of
16 this section, a prevailing plaintiff may recover economic
17 and noneconomic damages and punitive damages, without
18 limitation to the amount, but shall not recover less than
19 five hundred thousand dollars in the aggregate. The
20 judgment against a defendant in an action brought pursuant
21 to this section shall be in an amount of three times the
22 amount of any economic and noneconomic damages or punitive
23 damages assessed. Any award of damages in an action brought
24 pursuant to this subsection to a prevailing plaintiff shall
25 include attorney's fees and court costs.

26 3. Any purported waiver of liability by an injured
27 party for the provision of services or for the failure to
28 perform services related to a gender transition surgery or
29 other gender transition services or in the prescription or
30 administration of cross-sex hormones or puberty-blocking
31 drugs by a health care provider shall be void and
32 unenforceable.

33 4. For purposes of this section, the following terms
34 mean:

35 (1) "Biological sex", the biological indication of
36 male or female in the context of reproductive potential or
37 capacity, such as sex chromosomes, naturally occurring sex
38 hormones, gonads, and nonambiguous internal and external
39 genitalia present at birth, without regard to an
40 individual's psychological, chosen, or subjective experience
41 of gender;

42 (2) "Cross-sex hormones", testosterone, estrogen, or
43 other androgens given to an individual in amounts that are
44 greater or more potent than would normally occur naturally
45 in a healthy individual of the same age and sex;

46 (3) "Gender", the psychological, behavioral, social,
47 and cultural aspects of being male or female;

48 (4) "Gender transition", the process in which an
49 individual transitions from identifying with and living as a
50 gender that corresponds to his or her biological sex to
51 identifying with and living as a gender different from his
52 or her biological sex, and may involve social, legal, or
53 physical changes;

54 (5) "Gender transition surgery", a surgical procedure
55 performed for the purpose of assisting an individual with a
56 gender transition, including, but not limited to:

57 (a) Surgical procedures that sterilize, including, but
58 not limited to, castration, vasectomy, hysterectomy,
59 oophorectomy, orchiectomy, or penectomy;

60 (b) Surgical procedures that artificially construct
61 tissue with the appearance of genitalia that differs from
62 the individual's biological sex, including, but not limited
63 to, metoidioplasty, phalloplasty, or vaginoplasty; or

64 (c) Augmentation mammoplasty or subcutaneous
65 mastectomy;

66 (6) "Puberty-blocking drugs", gonadotropin-releasing
67 hormone analogues or other synthetic drugs used to stop
68 luteinizing hormone secretion and follicle stimulating
69 hormone secretion, synthetic antiandrogen drugs to block the
70 androgen receptor, or any other drug used to delay or
71 suppress pubertal development in children for the purpose of
72 assisting an individual with a gender transition.

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