

SENATE BILL NO. 1598

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BECK.

6521S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 516.105, 538.205, and 538.210, RSMo, and to enact in lieu thereof three new sections relating to liability for the use of artificial intelligence by health care providers.

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

Section A. Sections 516.105, 538.205, and 538.210, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 516.105, 538.205, and 538.210, to read as
4 follows:

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

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

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

17 which the patient in the exercise of ordinary care should
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 act of neglect complained of**
37 **is the negligent use, selection, or implementation or**
38 **unduly, detrimentally, or erroneously relying on artificial**
39 **intelligence, as such term is defined in section 538.205, in**
40 **the diagnosis, treatment, and care of a patient, the action**
41 **shall be brought within two years from the date of the**
42 **discovery of such alleged negligence or reliance, or from**
43 **the date on which the patient in the exercise of ordinary**
44 **care should have discovered such alleged negligence or**
45 **reliance, whichever date first occurs; and**

46 (4) In cases in which the person bringing the action
47 is a minor less than eighteen years of age, such minor shall

48 have until his or her twentieth birthday to bring such
49 action.

50 In no event shall any action for damages for malpractice,
51 error, or mistake be commenced after the expiration of ten
52 years from the date of the act of neglect complained of or
53 for two years from a minor's eighteenth birthday, whichever
54 is later.

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

538.205. As used in sections 538.205 to [538.230]
2 538.235, the following terms shall mean:

3 (1) **"Artificial intelligence", a computer system,**
4 **computer software or algorithms, or physical hardware that**
5 **provide or generate human-like perception, cognition,**
6 **planning, learning, decision-making, communication, or**
7 **physical action in the rendering or assisting of rendering**
8 **of health care services;**

9 (2) **"Catastrophic personal injury", a physical injury**
10 **resulting in:**

11 (a) Quadriplegia defined as the permanent loss of
12 functional use of all four limbs;

13 (b) Paraplegia defined as the permanent loss of
14 functional use of two limbs;

15 (c) Loss of two or more limbs;

16 (d) An injury to the brain that results in permanent
17 cognitive impairment resulting in the permanent inability to
18 make independent decisions or engage in one or more of the
19 following activities of daily living: eating, dressing,
20 bathing, toileting, transferring, and walking;

21 (e) An injury that causes irreversible failure of one
22 or more major organ systems; or

23 (f) Vision loss such that the patient's central visual
24 acuity is no more than twenty/two-hundred in the better eye
25 with the best correction or whose field of vision in the
26 better eye is restricted to a degree that its widest
27 diameter subtends an angle no greater than twenty degrees;

28 [(2)] (3) "Economic damages", damages arising from
29 pecuniary harm including, without limitation, medical
30 damages, and those damages arising from lost wages and lost
31 earning capacity;

32 [(3)] (4) "Employee", any individual who is directly
33 compensated by a health care provider for health care
34 services rendered by such individual and other nonphysician
35 individuals who are supplied to a health care provider by an
36 entity that provides staffing;

37 [(4)] (5) "Equitable share", the share of a person or
38 entity in an obligation that is the same percentage of the
39 total obligation as the person's or entity's allocated share
40 of the total fault, as found by the trier of fact;

41 [(5)] (6) "Future damages", damages that the trier of
42 fact finds will accrue after the damages findings are made;

43 [(6)] (7) "Health care provider", any physician,
44 hospital, health maintenance organization, ambulatory

45 surgical center, long-term care facility including those
46 licensed under chapter 198, dentist, registered or licensed
47 practical nurse, optometrist, podiatrist, pharmacist,
48 chiropractor, professional physical therapist, psychologist,
49 physician-in-training, and any other person or entity that
50 provides health care services under the authority of a
51 license or certificate;

52 [(7)] (8) "Health care services", any services that a
53 health care provider renders to a patient in the ordinary
54 course of the health care provider's profession or, if the
55 health care provider is an institution, in the ordinary
56 course of furthering the purposes for which the institution
57 is organized. Professional services shall include, but are
58 not limited to, transfer to a patient of goods or services
59 incidental or pursuant to the practice of the health care
60 provider's profession or in furtherance of the purposes for
61 which an institutional health care provider is organized;

62 [(8)] (9) "Medical damages", damages arising from
63 reasonable expenses for necessary drugs, therapy, and
64 medical, surgical, nursing, x-ray, dental, custodial and
65 other health and rehabilitative services;

66 [(9)] (10) "Noneconomic damages", damages arising from
67 nonpecuniary harm including, without limitation, pain,
68 suffering, mental anguish, inconvenience, physical
69 impairment, disfigurement, loss of capacity to enjoy life,
70 and loss of consortium but shall not include punitive
71 damages;

72 [(10)] (11) "Past damages", damages that have accrued
73 when the damages findings are made;

74 [(11)] (12) "Punitive damages", damages intended to
75 punish or deter malicious misconduct or conduct that

76 intentionally caused damage to the plaintiff, including
77 exemplary damages and damages for aggravating circumstances;

78 [(12)] (13) "Self-insurance", a formal or informal
79 plan of self-insurance or no insurance of any kind.

538.210. 1. A statutory cause of action for damages
2 against a health care provider for personal injury or death
3 arising out of the rendering of or failure to render health
4 care services is hereby created, replacing any such common
5 law cause of action. The elements of such cause of action
6 are that the health care provider failed to use that degree
7 of skill and learning ordinarily used under the same or
8 similar circumstances by members of the defendant's
9 profession and that such failure directly caused or
10 contributed to cause the plaintiff's injury or death. **A**
11 **health care provider failing to use that degree of skill and**
12 **learning ordinarily used under the same or similar**
13 **circumstances by members of the defendant's profession and**
14 **where the failure directly causes or contributed to cause**
15 **the plaintiff's injury or death includes, but is not limited**
16 **to, a health care provider negligently using, selecting, or**
17 **implementing or unduly, detrimentally, or erroneously**
18 **relying on artificial intelligence in the diagnosis,**
19 **treatment, and care of a patient and such negligence or**
20 **reliance directly causes or contributes to the plaintiff's**
21 **injury.**

22 2. (1) In any action against a health care provider
23 for damages for personal injury arising out of the rendering
24 of or the failure to render health care services, no
25 plaintiff shall recover more than four hundred thousand
26 dollars for noneconomic damages irrespective of the number
27 of defendants.

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

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

40 3. This section shall also apply to any individual or
41 entity, or their employees or agents:

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

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

49 4. No health care provider whose liability is limited
50 by the provisions of this chapter shall be liable to any
51 plaintiff based on the actions or omissions of any other
52 entity or individual who is not an employee of such health
53 care provider, unless the individual is an employee of a
54 subsidiary in which the health care provider has a
55 controlling interest and the subsidiary does not carry a
56 professional liability insurance policy or self-insurance
57 covering said individual of at least one million dollars per
58 occurrence and a professional liability insurance policy or

59 self-insurance covering said subsidiary of at least one
60 million dollars per occurrence.

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

63 6. In any action against a health care provider for
64 damages for personal injury or death arising out of the
65 rendering of or the failure to render health care services,
66 where the trier of fact is a jury, such jury shall not be
67 instructed by the court with respect to the limitation on an
68 award of noneconomic damages, nor shall counsel for any
69 party or any person providing testimony during such
70 proceeding in any way inform the jury or potential jurors of
71 such limitation.

72 7. For purposes of sections 538.205 to 538.230, any
73 spouse claiming damages for loss of consortium of their
74 spouse shall be considered to be the same plaintiff as their
75 spouse.

76 8. Any provision of law or court rule to the contrary
77 notwithstanding, an award of punitive damages against a
78 health care provider governed by the provisions of sections
79 538.205 to [538.230] **538.235** shall be made only upon a
80 finding by the jury that the evidence clearly and
81 convincingly demonstrated that the health care provider
82 intentionally caused damage to the plaintiff or demonstrated
83 malicious misconduct that caused damage to the plaintiff.
84 Evidence of negligence including, but not limited to,
85 indifference to or conscious disregard for the safety of
86 others shall not constitute intentional conduct or malicious
87 misconduct.

88 9. For purposes of sections 538.205 to [538.230]
89 **538.235**, all individuals and entities asserting a claim for

90 a wrongful death under section 537.080 shall be considered
91 to be one plaintiff.

92 10. The limitations on awards for noneconomic damages
93 provided for in this section shall be increased by one and
94 seven-tenths percent on an annual basis effective January
95 first of each year. The current value of the limitation
96 shall be calculated by the director of the department of
97 commerce and insurance, who shall furnish that value to the
98 secretary of state, who shall publish such value in the
99 Missouri Register on the first business day following
100 January first, but the value shall otherwise be exempt from
101 the provisions of section 536.021.

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

108 12. If a court of competent jurisdiction enters a
109 final judgment on the merits that is not subject to appeal
110 and that declares any provision or part of either section
111 1.010 or this section to be unconstitutional or
112 unenforceable, then section 1.010 and this section, as
113 amended by this act and in their entirety, are invalid and
114 shall have no legal effect as of the date of such judgment,
115 and this act, including its repealing clause, shall likewise
116 be invalid and of no legal effect. In such event, the
117 versions of sections 1.010 and this section that were in
118 effect prior to the enactment of this act shall remain in
119 force.

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