

# SENATE BILL NO. 1695

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WEBBER.

6505S.02I

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 537.035, RSMo, and to enact in lieu thereof one new section relating to the admissibility of evidence resulting from peer review committees for health care professionals.

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

Section A. Section 537.035, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 537.035,  
3 to read as follows:

537.035. 1. As used in this section, unless the  
2 context clearly indicates otherwise, the following words and  
3 terms shall have the meanings indicated:

4 (1) "Health care professional", a physician or surgeon  
5 licensed under the provisions of chapter 334, or a dentist  
6 licensed under the provisions of chapter 332, or a  
7 podiatrist licensed under the provisions of chapter 330, or  
8 an optometrist licensed under the provisions of chapter 336,  
9 or a pharmacist licensed under the provisions of chapter  
10 338, or a chiropractor licensed under the provisions of  
11 chapter 331, or a psychologist licensed under the provisions  
12 of chapter 337, or a nurse licensed under the provisions of  
13 chapter 335, or a social worker licensed under the  
14 provisions of chapter 337, or a professional counselor  
15 licensed under the provisions of chapter 337, or a mental

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

16 health professional as defined in section 632.005, while  
17 acting within their scope of practice;

18 (2) "Peer review committee", a committee of health  
19 care professionals with the responsibility to evaluate,  
20 maintain, or monitor the quality and utilization of health  
21 care services or to exercise any combination of such  
22 responsibilities.

23 2. A peer review committee may be constituted as  
24 follows:

25 (1) Comprised of, and appointed by, a state, county or  
26 local society of health care professionals;

27 (2) Comprised of, and appointed by, the partners,  
28 shareholders, or employed health care professionals of a  
29 partnership or professional corporation of health care  
30 professionals, or employed health care professionals of a  
31 university or an entity affiliated with a university  
32 operating under chapter 172, 174, 352, or 355;

33 (3) Appointed by the board of trustees, chief  
34 executive officer, or the organized medical staff of a  
35 licensed hospital, or other health facility operating under  
36 constitutional or statutory authority, including long-term  
37 care facilities licensed under chapter 198, or an  
38 administrative entity of the department of mental health  
39 recognized pursuant to the provisions of subdivision (3) of  
40 subsection 1 of section 630.407;

41 (4) Any other organization formed pursuant to state or  
42 federal law authorized to exercise the responsibilities of a  
43 peer review committee and acting within the scope of such  
44 authorization;

45 (5) Appointed by the board of directors, chief  
46 executive officer or the medical director of the licensed  
47 health maintenance organization.

48           3. Each member of a peer review committee and each  
49 person, hospital governing board, health maintenance  
50 organization board of directors, and chief executive officer  
51 of a licensed hospital or other hospital operating under  
52 constitutional or statutory authority, chief executive  
53 officer or medical director of a licensed health maintenance  
54 organization who testifies before, or provides information  
55 to, acts upon the recommendation of, or otherwise  
56 participates in the operation of, such a committee shall be  
57 immune from civil liability for such acts so long as the  
58 acts are performed in good faith, without malice and are  
59 reasonably related to the scope of inquiry of the peer  
60 review committee.

61           4. Except as otherwise provided in this section, the  
62 [interviews,] memoranda, [proceedings,] findings,  
63 deliberations, **and** reports[, and minutes] of peer review  
64 committees[, or the existence of the same,] concerning the  
65 health care provided any **individual identifiable** patient are  
66 privileged and [shall] **may** not be [subject to discovery,  
67 subpoena, or other means of legal compulsion for their  
68 release to any person or entity or be] admissible into  
69 evidence in any judicial or administrative action for  
70 failure to provide appropriate care. Except as otherwise  
71 provided in this section, no person who was in attendance at  
72 any peer review committee proceeding shall be permitted or  
73 required [to disclose any information acquired in connection  
74 with or in the course of such proceeding, or] to disclose  
75 any opinion, recommendation, or evaluation of the committee  
76 or board, or any member thereof[; provided, however, that].  
77 **Such** information otherwise discoverable or admissible [from  
78 original sources] is not to be construed as immune from  
79 discovery or use in any proceeding merely because it was

80 presented, **discovered, or considered** during proceedings  
81 before a peer review committee nor is a member, employee, or  
82 agent of such committee, or other person appearing before  
83 it, to be prevented from testifying as to matters [within  
84 his personal knowledge] **in accordance with the rules of**  
85 **evidence** and in accordance with the other provisions of this  
86 section, but such witness cannot be questioned about  
87 [testimony or other proceedings before any health care  
88 review committee or board or about] opinions formed **solely**  
89 as a result of such committee hearings. [The disclosure of  
90 any interview, memoranda, proceedings, findings,  
91 deliberations, reports, or minutes to any person or entity,  
92 including but not limited to governmental agencies,  
93 professional accrediting agencies, or other health care  
94 providers, whether proper or improper, shall not waive or  
95 have any effect upon its confidentiality,  
96 nondiscoverability, or nonadmissibility.]

97 5. The provisions of subsection 4 of this section  
98 limiting [discovery and] admissibility of testimony as well  
99 as the [proceedings,] findings[, ] **and** records[, and minutes]  
100 of peer review committees do not apply in any judicial or  
101 administrative action brought by a peer review committee or  
102 the legal entity which formed or within which such committee  
103 operates to deny, restrict, or revoke the hospital staff  
104 privileges or license to practice of a physician or other  
105 health care providers; or when a member, employee, or agent  
106 of the peer review committee or the legal entity which  
107 formed such committee or within which such committee  
108 operates is sued for actions taken by such committee which  
109 operate to deny, restrict or revoke the hospital staff  
110 privileges or license to practice of a physician or other  
111 health care provider.

112           6. Nothing in this section shall limit authority  
113 otherwise provided by law of a health care licensing board  
114 of the state of Missouri to obtain information by subpoena  
115 or other authorized process from peer review committees or  
116 to require disclosure of otherwise confidential information  
117 relating to matters and investigations within the  
118 jurisdiction of such health care licensing boards.

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