

FIRST REGULAR SESSION

HOUSE BILL NO. 118

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BURLISON.

0725H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 1.010 and 538.210, RSMo, and to enact in lieu thereof two new sections relating to claims arising out of the rendering of or failure to render health care services.

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

Section A. Sections 1.010 and 538.210, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 1.010 and 538.210, to read as follows:

1.010. The common law of England and all statutes and acts of parliament made prior to the fourth year of the reign of James the First, of a general nature, which are not local to that kingdom and not repugnant to or inconsistent with the Constitution of the United States, the constitution of this state, or the statute laws in force for the time being, are the rule of action and decision in this state, any custom or usage to the contrary notwithstanding, but no act of the general assembly or law of this state shall be held to be invalid, or limited in its scope or effect by the courts of this state, for the reason that it is in derogation of, or in conflict with, the common law, or with such statutes or acts of parliament; but all acts of the general assembly, or laws, shall be liberally construed, so as to effectuate the true intent and meaning thereof. **The general assembly expressly excludes from this section the common law of England as it relates to claims arising out of the rendering of or failure to render health care services by a health care provider, with it being the intent of the general assembly to replace such claims with statutory causes of action.**

538.210. 1. **A statutory cause of action for damages against a health care provider for personal injury or death arising out of the rendering of or failure to render health care services is hereby created, replacing any such common law cause of action. The elements of such cause of action are that the health care provider failed to use that degree of skill**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 **and learning ordinarily used under the same or similar circumstances by similarly situated**
6 **health care providers and that such failure proximately caused injury or death.**

7 **2.** In any action against a health care provider for damages for personal injury or death
8 arising out of the rendering of or the failure to render health care services, no plaintiff shall
9 recover more than three hundred fifty thousand dollars for noneconomic damages irrespective
10 of the number of defendants.

11 **[2.] 3.** (1) Such limitation shall also apply to any individual or entity, or their employees
12 or agents that provide, refer, coordinate, consult upon, or arrange for the delivery of health care
13 services to the plaintiff; and

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

17 (3) No individual or entity whose liability is limited by the provisions of this chapter
18 shall be liable to any plaintiff based on the actions or omissions of any other entity or person who
19 is not an employee of such individual or entity whose liability is limited by the provisions of this
20 chapter.

21 Such limitation shall apply to all claims for contribution.

22 **[3.] 4.** In any action against a health care provider for damages for personal injury or
23 death arising out of the rendering of or the failure to render health care services, where the trier
24 of fact is a jury, such jury shall not be instructed by the court with respect to the limitation on an
25 award of noneconomic damages, nor shall counsel for any party or any person providing
26 testimony during such proceeding in any way inform the jury or potential jurors of such
27 limitation.

28 **[4.] 5.** For purposes of sections 538.205 to 538.230, any spouse claiming damages for
29 loss of consortium of their spouse shall be considered to be the same plaintiff as their spouse.

30 **[5.] 6.** Any provision of law or court rule to the contrary notwithstanding, an award of
31 punitive damages against a health care provider governed by the provisions of sections 538.205
32 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider
33 demonstrated willful, wanton or malicious misconduct with respect to his actions which are
34 found to have injured or caused or contributed to cause the damages claimed in the petition.

35 **[6.] 7.** For purposes of sections 538.205 to 538.230, all individuals and entities asserting
36 a claim for a wrongful death under section 537.080 shall be considered to be one plaintiff.

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