

FIRST REGULAR SESSION

HOUSE BILL NO. 452

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE AUSTIN.

1145H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 538.205, RSMo, and to enact in lieu thereof one new section relating to the liability of an employee of a health care provider.

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

Section A. Section 538.205, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 538.205, to read as follows:

538.205. As used in sections 538.205 to 538.230, the following terms shall mean:

(1) "Catastrophic personal injury", a physical injury resulting in:

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

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

(c) Loss of two or more limbs;

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

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

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

(2) "Economic damages", damages arising from pecuniary harm including, without limitation, medical damages, and those damages arising from lost wages and lost earning capacity;

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.

17 (3) **"Employee", any person or entity who works for a health care provider for a**
18 **salary or under an employment contract and who is covered by a policy of insurance or**
19 **self-insurance by such health care provider for acts performed at the direction or under**
20 **control of such health care provider;**

21 (4) "Equitable share", the share of a person or entity in an obligation that is the same
22 percentage of the total obligation as the person's or entity's allocated share of the total fault, as
23 found by the trier of fact;

24 ~~[(4)]~~ (5) "Future damages", damages that the trier of fact finds will accrue after the
25 damages findings are made;

26 ~~[(5)]~~ (6) "Health care provider", any physician, hospital, health maintenance
27 organization, ambulatory surgical center, long-term care facility including those licensed under
28 chapter 198, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist,
29 chiropractor, professional physical therapist, psychologist, physician-in-training, and any other
30 person or entity that provides health care services under the authority of a license or certificate;

31 ~~[(6)]~~ (7) "Health care services", any services that a health care provider renders to a
32 patient in the ordinary course of the health care provider's profession or, if the health care
33 provider is an institution, in the ordinary course of furthering the purposes for which the
34 institution is organized. Professional services shall include, but are not limited to, transfer to a
35 patient of goods or services incidental or pursuant to the practice of the health care provider's
36 profession or in furtherance of the purposes for which an institutional health care provider is
37 organized;

38 ~~[(7)]~~ (8) "Medical damages", damages arising from reasonable expenses for necessary
39 drugs, therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and
40 rehabilitative services;

41 ~~[(8)]~~ (9) "Noneconomic damages", damages arising from nonpecuniary harm including,
42 without limitation, pain, suffering, mental anguish, inconvenience, physical impairment,
43 disfigurement, loss of capacity to enjoy life, and loss of consortium but shall not include punitive
44 damages;

45 ~~[(9)]~~ (10) "Past damages", damages that have accrued when the damages findings are
46 made;

47 ~~[(10)]~~ "Physician employee", any person or entity who works for hospitals for a salary or
48 under contract and who is covered by a policy of insurance or self-insurance by a hospital for acts
49 performed at the direction or under control of the hospital;]

50 (11) "Punitive damages", damages intended to punish or deter willful, wanton or
51 malicious misconduct, including exemplary damages and damages for aggravating
52 circumstances;

53 (12) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any
54 kind.

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