

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 452
99TH GENERAL ASSEMBLY

1145H.02C

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Section A. Section 538.205, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 538.205, to read as follows: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

- 2 (1) "Catastrophic personal injury", a physical injury resulting in:
 - 3 (a) Quadriplegia defined as the permanent loss of functional use of all four limbs;
 - 4 (b) Paraplegia defined as the permanent loss of functional use of two limbs;
 - 5 (c) Loss of two or more limbs;
 - 6 (d) An injury to the brain that results in permanent cognitive impairment resulting in the
 - 7 permanent inability to make independent decisions or engage in one or more of the following
 - 8 activities of daily living: eating, dressing, bathing, toileting, transferring, and walking;
 - 9 (e) An injury that causes irreversible failure of one or more major organ systems; or
 - 10 (f) Vision loss such that the patient's central visual acuity is no more than
 - 11 twenty/two-hundred in the better eye with the best correction or whose field of vision in the
 - 12 better eye is restricted to a degree that its widest diameter subtends an angle no greater than
 - 13 twenty degrees;
 - 14 (2) "Economic damages", damages arising from pecuniary harm including, without
 - 15 limitation, medical damages, and those damages arising from lost wages and lost earning
 - 16 capacity;
 - 17 (3) **"Employee", any person or entity who either works for a health care provider**
 - 18 **for compensation paid directly by said health care provider to the person or entity or**

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.

19 **under an employment contract between said health care provider and the person or entity**
20 **and who in either circumstance is covered by liability insurance or self-insurance provided**
21 **by said health care provider for acts performed at the direction or under control of said**
22 **health care provider;**

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

26 ~~[(4)]~~ (5) "Future damages", damages that the trier of fact finds will accrue after the
27 damages findings are made;

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

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

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

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

47 ~~[(9)]~~ (10) "Past damages", damages that have accrued when the damages findings are
48 made;

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

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

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

✓