

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 452

99TH GENERAL ASSEMBLY

1145H.02P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 538.205 and 538.210, RSMo, and to enact in lieu thereof two new sections relating to the liability of an employee of a health care provider.

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

Section A. Sections 538.205 and 538.210, RSMo, are repealed and two news sections enacted in lieu thereof, to be known as sections 538.205 and 538.210, to read as follows: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 individual who is directly compensated by a health care**  
18 **provider for health care services rendered by such individual;**

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

22 [(4)] (5) "Future damages", damages that the trier of fact finds will accrue after the  
23 damages findings are made;

24 [(5)] (6) "Health care provider", any physician, hospital, health maintenance  
25 organization, ambulatory surgical center, long-term care facility including those licensed under  
26 chapter 198, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist,  
27 chiropractor, professional physical therapist, psychologist, physician-in-training, and any other  
28 person or entity that provides health care services under the authority of a license or certificate;

29 [(6)] (7) "Health care services", any services that a health care provider renders to a  
30 patient in the ordinary course of the health care provider's profession or, if the health care  
31 provider is an institution, in the ordinary course of furthering the purposes for which the  
32 institution is organized. Professional services shall include, but are not limited to, transfer to a  
33 patient of goods or services incidental or pursuant to the practice of the health care provider's  
34 profession or in furtherance of the purposes for which an institutional health care provider is  
35 organized;

36 [(7)] (8) "Medical damages", damages arising from reasonable expenses for necessary  
37 drugs, therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and  
38 rehabilitative services;

39 [(8)] (9) "Noneconomic damages", damages arising from nonpecuniary harm including,  
40 without limitation, pain, suffering, mental anguish, inconvenience, physical impairment,  
41 disfigurement, loss of capacity to enjoy life, and loss of consortium but shall not include punitive  
42 damages;

43 [(9)] (10) "Past damages", damages that have accrued when the damages findings are  
44 made;

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

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

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

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 and learning ordinarily used under the same or similar circumstances by members of the defendant's profession and that such failure directly caused or contributed to cause the plaintiff's injury or death.

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

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

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

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

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

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

~~Such limitation shall apply to all claims for contribution.]~~

**4. No health care provider whose liability is limited by the provisions of this chapter shall be liable to any plaintiff based on the actions or omissions of any other entity or person who is not an employee of such health care provider.**

**5. This section shall apply to all claims for contribution.**

6. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, where the trier of fact

37 is a jury, such jury shall not be instructed by the court with respect to the limitation on an award  
38 of noneconomic damages, nor shall counsel for any party or any person providing testimony  
39 during such proceeding in any way inform the jury or potential jurors of such limitation.

40 ~~[5-]~~ 7. For purposes of sections 538.205 to 538.230, any spouse claiming damages for  
41 loss of consortium of their spouse shall be considered to be the same plaintiff as their spouse.

42 ~~[6-]~~ 8. Any provision of law or court rule to the contrary notwithstanding, an award of  
43 punitive damages against a health care provider governed by the provisions of sections 538.205  
44 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider  
45 demonstrated willful, wanton or malicious misconduct with respect to his actions which are  
46 found to have injured or caused or contributed to cause the damages claimed in the petition.

47 ~~[7-]~~ 9. For purposes of sections 538.205 to 538.230, all individuals and entities asserting  
48 a claim for a wrongful death under section 537.080 shall be considered to be one plaintiff.

49 ~~[8-]~~ 10. The limitations on awards for noneconomic damages provided for in this section  
50 shall be increased by one and seven-tenths percent on an annual basis effective January first of  
51 each year. The current value of the limitation shall be calculated by the director of the  
52 department of insurance, financial institutions and professional registration, who shall furnish  
53 that value to the secretary of state, who shall publish such value in the Missouri Register on the  
54 first business day following January first, but the value shall otherwise be exempt from the  
55 provisions of section 536.021.

56 ~~[9-]~~ 11. In any claim for damages under this chapter, and upon post-trial motion  
57 following a jury verdict with noneconomic damages exceeding four hundred thousand dollars,  
58 the trial court shall determine whether the limitation in subsection 2 of this section shall apply  
59 based on the severity of the most severe injuries.

60 ~~[10-]~~ 12. If a court of competent jurisdiction enters a final judgment on the merits that  
61 is not subject to appeal and that declares any provision or part of either section 1.010 or this  
62 section to be unconstitutional or unenforceable, then section 1.010 and this section, as amended  
63 by this act and in their entirety, are invalid and shall have no legal effect as of the date of such  
64 judgment, and this act, including its repealing clause, shall likewise be invalid and of no legal  
65 effect. In such event, the versions of sections 1.010 and this section that were in effect prior to  
66 the enactment of this act shall remain in force.

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