

SENATE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 452

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:

1           Section A. Sections 538.205 and 538.210, RSMo, are repealed  
2 and two news sections enacted in lieu thereof, to be known as  
3 sections 538.205 and 538.210, to read as follows:

4           538.205. As used in sections 538.205 to 538.230, the  
5 following terms shall mean:

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

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

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

12           (c) Loss of two or more limbs;

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

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

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

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

11 (3) "Employee", any individual who is directly compensated  
12 by a health care provider for health care services rendered by  
13 such individual and other nonphysician individuals who are  
14 supplied to a health care provider by an entity that provides  
15 staffing;

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

20 [(4)] (5) "Future damages", damages that the trier of fact  
21 finds will accrue after the damages findings are made;

22 [(5)] (6) "Health care provider", any physician, hospital,  
23 health maintenance organization, ambulatory surgical center,  
24 long-term care facility including those licensed under chapter  
25 198, dentist, registered or licensed practical nurse,  
26 optometrist, podiatrist, pharmacist, chiropractor, professional  
27 physical therapist, psychologist, physician-in-training, and any  
28 other person or entity that provides health care services under

1 the authority of a license or certificate;

2 [(6)] (7) "Health care services", any services that a  
3 health care provider renders to a patient in the ordinary course  
4 of the health care provider's profession or, if the health care  
5 provider is an institution, in the ordinary course of furthering  
6 the purposes for which the institution is organized.

7 Professional services shall include, but are not limited to,  
8 transfer to a patient of goods or services incidental or pursuant  
9 to the practice of the health care provider's profession or in  
10 furtherance of the purposes for which an institutional health  
11 care provider is organized;

12 [(7)] (8) "Medical damages", damages arising from  
13 reasonable expenses for necessary drugs, therapy, and medical,  
14 surgical, nursing, x-ray, dental, custodial and other health and  
15 rehabilitative services;

16 [(8)] (9) "Noneconomic damages", damages arising from  
17 nonpecuniary harm including, without limitation, pain, suffering,  
18 mental anguish, inconvenience, physical impairment,  
19 disfigurement, loss of capacity to enjoy life, and loss of  
20 consortium but shall not include punitive damages;

21 [(9)] (10) "Past damages", damages that have accrued when  
22 the damages findings are made;

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

27 (11) "Punitive damages", damages intended to punish or  
28 deter willful, wanton or malicious misconduct, including

1 exemplary damages and damages for aggravating circumstances;

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

4 538.210. 1. A statutory cause of action for damages  
5 against a health care provider for personal injury or death  
6 arising out of the rendering of or failure to render health care  
7 services is hereby created, replacing any such common law cause  
8 of action. The elements of such cause of action are that the  
9 health care provider failed to use that degree of skill and  
10 learning ordinarily used under the same or similar circumstances  
11 by members of the defendant's profession and that such failure  
12 directly caused or contributed to cause the plaintiff's injury or  
13 death.

14 2. (1) In any action against a health care provider for  
15 damages for personal injury arising out of the rendering of or  
16 the failure to render health care services, no plaintiff shall  
17 recover more than four hundred thousand dollars for noneconomic  
18 damages irrespective of the number of defendants.

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

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

1       irrespective of the number of defendants.

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

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

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

15  
16   Such limitation shall apply to all claims for contribution.]

17          4.   No health care provider whose liability is limited by  
18   the provisions of this chapter shall be liable to any plaintiff  
19   based on the actions or omissions of any other entity or  
20   individual who is not an Employee of such health care provider,  
21   unless the individual is an Employee of a subsidiary in which the  
22   health care provider has a controlling interest and the  
23   subsidiary does not carry a professional liability insurance  
24   policy or self-insurance covering said individual of at least one  
25   million dollars per occurrence and a professional liability  
26   insurance policy or self-insurance covering said subsidiary of  
27   least one million dollars per occurrence.

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

1           6. In any action against a health care provider for damages  
2 for personal injury or death arising out of the rendering of or  
3 the failure to render health care services, where the trier of  
4 fact is a jury, such jury shall not be instructed by the court  
5 with respect to the limitation on an award of noneconomic  
6 damages, nor shall counsel for any party or any person providing  
7 testimony during such proceeding in any way inform the jury or  
8 potential jurors of such limitation.

9           [5.] 7. For purposes of sections 538.205 to 538.230, any  
10 spouse claiming damages for loss of consortium of their spouse  
11 shall be considered to be the same plaintiff as their spouse.

12           [6.] 8. Any provision of law or court rule to the contrary  
13 notwithstanding, an award of punitive damages against a health  
14 care provider governed by the provisions of sections 538.205 to  
15 538.230 shall be made only upon a showing by a plaintiff that the  
16 health care provider demonstrated willful, wanton or malicious  
17 misconduct with respect to his actions which are found to have  
18 injured or caused or contributed to cause the damages claimed in  
19 the petition.

20           [7.] 9. For purposes of sections 538.205 to 538.230, all  
21 individuals and entities asserting a claim for a wrongful death  
22 under section 537.080 shall be considered to be one plaintiff.

23           [8.] 10. The limitations on awards for noneconomic damages  
24 provided for in this section shall be increased by one and seven-  
25 tenths percent on an annual basis effective January first of each  
26 year. The current value of the limitation shall be calculated by  
27 the director of the department of insurance, financial  
28 institutions and professional registration, who shall furnish

1 that value to the secretary of state, who shall publish such  
2 value in the Missouri Register on the first business day  
3 following January first, but the value shall otherwise be exempt  
4 from the provisions of section 536.021.

5 [9.] 11. In any claim for damages under this chapter, and  
6 upon post-trial motion following a jury verdict with noneconomic  
7 damages exceeding four hundred thousand dollars, the trial court  
8 shall determine whether the limitation in subsection 2 of this  
9 section shall apply based on the severity of the most severe  
10 injuries.

11 [10.] 12. If a court of competent jurisdiction enters a  
12 final judgment on the merits that is not subject to appeal and  
13 that declares any provision or part of either section 1.010 or  
14 this section to be unconstitutional or unenforceable, then  
15 section 1.010 and this section, as amended by this act and in  
16 their entirety, are invalid and shall have no legal effect as of  
17 the date of such judgment, and this act, including its repealing  
18 clause, shall likewise be invalid and of no legal effect. In  
19 such event, the versions of sections 1.010 and this section that  
20 were in effect prior to the enactment of this act shall remain in  
21 force.