FIRST REGULAR SESSION

HOUSE BILL NO. 273

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BYRD, CUNNINGHAM (86), JETTON, HANAWAY, CROWELL, PORTWOOD, DUSENBERG, HUNTER, SCHAAF, HOLAND, COOPER (155), SHOEMAKER (8), BLACK, BEAN, ICET, ENGLER, DIXON, SCHLOTTACH, LEMBKE (85), PURGASON, AVERY, TOWNLEY, MYERS, PEARCE, STEFANICK, JOHNSON (47), BAKER, GUEST, BEARDEN, KINGERY, PAGE, YATES, WOOD, SCHNEIDER, SMITH (14), WASSON, HUBBARD (Co-sponsors), MARSH, LUETKEMEYER, ERVIN, COOPER (120), RICHARD, KING, WILSON (119), THRELKELD, RUESTMAN, DETHROW, SMITH (118), TAYLOR, VIEBROCK, STEVENSON, BEHNEN, PRATT, SUTHERLAND, BROWN, JACKSON (89), ANGST, ROARK, PHILLIPS, WRIGHT, KELLY (144), RECTOR, DEMPSEY, WALLACE, MILLER, RUPP, MOORE, FARES, EMERY, CUNNINGHAM (145), NIEVES, LAGER, MUNZLINGER, HOBBS, BIVINS, WILSON (130), SANDER, REINHART, CRAWFORD, DAVIS (19), BRUNS, DEEKEN, SELF, QUINN, MORRIS AND ST. ONGE.

Read 1st time January 23, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1052L.01I

AN ACT

To repeal sections 105.711, 430.225, 508.010, 508.120, 510.263, 512.080, 514.060, 516.105, 516.170, 537.067, 538.205, 538.210 and 538.225, RSMo, and to enact in lieu thereof twenty-two new sections relating to claims for damages for injuries to the person, with an emergency clause for a certain section.

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

Section A. Sections 105.711, 430.225, 508.010, 508.120, 510.263, 512.080, 514.060, 516.105, 516.170, 537.067, 538.205, 538.210 and 538.225, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 105.711, 430.225, 508.010, 508.120, 510.263, 512.023, 512.080, 514.035, 514.060, 516.105, 516.170, 537.067, 537.530, 537.767, 537.768, 537.770, 538.205, 538.210, 538.213, 538.225, 538.226 and 538.301 to read as follows:

105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

such fund pursuant to section 105.716.

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 536.087, RSMo, or section 537.600, RSMo;

(2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state, under formal contract to conduct disability reviews on behalf of the department of elementary and secondary education or provide services to patients or inmates of state correctional facilities on a part-time basis;

(b) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo, who is employed by or under contract with a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city charter, or a combined city-county health department to provide services to patients for medical care caused by pregnancy, delivery and child care, if such medical services are provided by the physician pursuant to the contract without compensation or the physician is paid from no other source than a governmental agency except for patient co-payments required by federal or state law or local ordinance;

(c) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, who is employed by or under contract with a federally funded community health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery and child care, if such medical services are provided by the physician pursuant to the contract or employment agreement without compensation or the physician is paid from no other source than a governmental agency or such a federally funded community health center except for patient co-payments required by federal or state law or local ordinance. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal

expense fund shall be limited to a maximum of **[**one million**]** **five hundred thousand** dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause against any such physician, and shall not exceed **[**one million**]** **five hundred thousand** dollars for any one claimant;

(d) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, dental or nursing treatment within the scope of his license or registration at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or a combined city-county health department, or a nonprofit community health center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment is restricted to primary care and preventive health services, provided that such treatment shall not include the performance of an abortion, and if such medical, dental or nursing services are provided by the physician, dentist, physician assistant, dental hygienist or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered to practice medicine, nursing or dentistry or to act as a physician assistant or dental hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, nursing or dental treatment within the scope of his license or registration to students of a school whether a public, private or parochial elementary or secondary school, if such physician's treatment is restricted to primary care and preventive health services and if such medical, dental or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(4) Staff employed by the juvenile division of any judicial circuit.

3. The department of health and senior services shall promulgate rules regarding contract

procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection 5 of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or her private practice and assets shall not be considered available under subsection 5 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. However, a physician, nurse, dentist, physician assistant, or dental hygienist may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is repealed or modified, the state legal expense fund shall be available for damages which occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is in effect.

4. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from the state legal expense fund of a claim or final judgment award against a physician, dentist, physician assistant, dental hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall only be made for services rendered in accordance with the conditions of such paragraphs.

5. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability insurance have been exhausted. **In no event shall the state legal defense fund pay more than five hundred thousand dollars to any one claimant. For purposes of**

this section, all individuals and entities asserting a claim for a wrongful death pursuant to section 537.080, RSMo, shall be considered to be one claimant.

6. The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to the credit of the state legal expense fund at the end of an appropriation period shall not be transferred to general revenue.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

430.225. 1. As used in sections 430.225 to 430.250, the following terms shall mean:

(1) "Claim", a claim of a patient for:

(a) Damages from a tort-feasor; or

(b) Benefits from an insurance carrier;

(2) "Clinic", a group practice of health practitioners or a sole practice of a health practitioner who has incorporated his or her practice;

(3) "Health practitioner", a chiropractor licensed pursuant to chapter 331, RSMo, a podiatrist licensed pursuant to chapter 330, RSMo, a dentist licensed pursuant to chapter 332, RSMo, a physician or surgeon licensed pursuant to chapter 334, RSMo, or an optometrist licensed pursuant to chapter 336, RSMo, while acting within the scope of their practice;

(4) "Insurance carrier", any person, firm, corporation, association or aggregation of persons conducting an insurance business pursuant to chapter 375, 376, 377, 378, 379, 380, 381 or 383, RSMo;

(5) "Other institution", a legal entity existing pursuant to the laws of this state which delivers treatment, care or maintenance to patients who are sick or injured;

(6) "Patient", any person to whom a health practitioner, hospital, clinic or other institution delivers treatment, care or maintenance for sickness or injury caused by a tort-feasor from whom such person seeks damages or any insurance carrier which has insured such tort-feasor.

2. Clinics, health practitioners and other institutions, as defined in this section shall have the same rights granted to hospitals in sections 430.230 to 430.250.

3. If the liens of such health practitioners, hospitals, clinics or other institutions exceed fifty percent of the amount due the patient, every health care practitioner, hospital, clinic or other institution giving notice of its lien, as aforesaid, shall share in up to fifty percent of the net proceeds due the patient, in the proportion that each claim bears to the total amount of all other liens of health care practitioners, hospitals, clinics or other institutions. "Net proceeds", as used in this section, means the amount remaining after the payment of contractual attorney fees, if any, and other expenses of recovery.

4. In administering the lien of the health care provider, the insurance carrier may pay the amount due secured by the lien of the health care provider directly, if the claimant authorizes it and does not challenge the amount of the customary charges or that the treatment provided was for injuries caused by the tort-feasor.

5. Any health care provider electing to receive benefits hereunder releases the claimant from further liability on the cost of the services and treatment provided to that point in time.

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that each claim bears to the total amount of all other liens of health care practitioners, hospitals, clinics or other institutions. "Net proceeds", as used in this section, means the amount remaining after the payment of contractual attorney fees, if any, and other expenses of recovery.

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508.010. Suits instituted by summons shall, except as otherwise provided by law, be brought:

(1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;

(2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

(3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;

(4) When all the defendants are nonresidents of the state, suit may be brought in any county in this state;

(5) Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found;

(6) In all tort actions**, including tort actions based upon improper health care, except as provided in section 508.070,** the suit may **only** be brought in the county where the cause of action accrued regardless of the residence of the parties, and process therein shall be issued by the court of such county and may be served in any county within the state; provided, however, that in any action for defamation or for invasion of privacy the cause of action shall be deemed to have accrued in the county in which the defamation or invasion was first published. **If in a tort action the cause of action did not accrue in the state of Missouri then venue shall be determined as if the cause of action was not a tort action.**

508.120. **1.** No defendant shall be allowed a change of venue and no application by a defendant to disqualify a judge shall be granted unless the application therefor is made before the filing of his **or her** answer to the merits, except when the cause for the change of venue or disqualification arises, or information or knowledge of the existence thereof first comes to **[**him**]** **the defendant**, after the filing of his **or her** answer in which case the application shall state the

time when the cause arose or when applicant acquired information and knowledge thereof, and the application must be made within **[**five**]** **thirty** days thereafter.

2. In all actions, if the plaintiff amends the petition to name an additional defendant which would have, if initially named a defendant, rendered venue inappropriate in the court where the action was initially filed, then venue shall, upon motion of any defendant, be transferred to a venue which would be an appropriate venue if the new defendant had been initially named a defendant.

510.263. 1. All actions tried before a jury involving punitive damages**, including tort actions based upon improper health care,** shall be conducted in a bifurcated trial before the same jury if requested by any party.

2. In the first stage of a bifurcated trial, in which the issue of punitive damages is submissible, the jury shall determine liability for compensatory damages, the amount of compensatory damages, including nominal damages, and the liability of a defendant for punitive damages. Evidence of defendant's financial condition shall not be admissible in the first stage of such trial unless admissible for a proper purpose other than the amount of punitive damages.

3. If during the first stage of a bifurcated trial the jury determines **by clear and convincing evidence that a defendant's actions or omissions were willful, wanton or malicious so** that a defendant is liable for punitive damages, that jury shall determine, in a second stage of trial, the amount of punitive damages to be awarded against such defendant. Evidence of such defendant's net worth shall be admissible during the second stage of such trial.

4. Within the time for filing a motion for new trial, a defendant may file a post-trial motion requesting the amount awarded by the jury as punitive damages be credited by the court with amounts previously paid by the defendant for punitive damages arising out of the same conduct on which the imposition of punitive damages is based. At any hearing, the burden on all issues relating to such a credit shall be on the defendant and either party may introduce relevant evidence on such motion. Such a motion shall be determined by the trial court within the time and according to procedures applicable to motions for new trial. If the trial court sustains such a motion the trial court shall credit the jury award of punitive damages by the amount found by the trial court to have been previously paid by the defendant arising out of the same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to a credit under the provisions of this section, or the trial court finds from the evidence that the defendant's conduct out of which the prior punitive damages award arose was not the same conduct on which the imposition of punitive damages is based in the pending action, or the trial court finds the defendant unreasonably continued the conduct after acquiring actual knowledge of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial court finds that the laws regarding punitive damages in the state in which the prior award of

punitive damages was entered substantially and materially deviate from the law of the state of Missouri and that the nature of such deviation provides good cause for disallowance of the credit based on the public policy of Missouri, then the trial court may disallow all or any part of the credit provided by this section.

5. The credit allowable under this section shall not apply to causes of action for libel, slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution or fraud.

6. The doctrines of remittitur and additur, based on the trial judge's assessment of the totality of the surrounding circumstances, shall apply to punitive damage awards.

7. As used in this section, the term "punitive damage award" means an award for punitive or exemplary damages or an award for aggravating circumstances.

8. Discovery as to a defendant's assets shall be allowed only after a finding by the trial court that the plaintiff has a submissible case to the trier of fact in the plaintiff's claim for punitive damages.

512.023. Any order certifying a class in a class action law suit pursuant to section 507.070, RSMo, shall be a final and appealable judgment.

512.080. 1. Appeals shall stay the execution in the following cases:

(1) When the appellant shall be a personal representative, guardian, or conservator, and the action shall be by or against him **or her** as such, or when the appellant shall be a county, city, town, township, school district, or other municipality;

(2) When the appellant, at or prior to the time of filing notice of appeal, presents to the court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The court may also at or prior to the time of filing notice of appeal, by order of record, fix the amount of the supersedeas bond and allow appellant reasonable time, not exceeding twenty days, from the date of the order to file the same subject to the approval of the court or clerk, and such appeal bond, approved by the court or clerk and filed within the time specified in such order, shall have the effect to stay the execution thereafter. If any execution shall have been taken prior to the filing of the bond as so approved by the court or clerk, the same shall be released.

2. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a

different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff, or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. The bond shall indicate the addresses of the sureties.

3. In any judgment against an appellant for a monetary amount in excess of three million dollars, the posting of a supersedeas bond in the amount of three million dollars shall be a bond sufficient to stay execution. The remainder of the judgment shall be an immediate but nonexecutable lien upon the assets of the appellant which lien shall have the same priority as a judgment lien.

514.035. The term "costs" means the total of fees, as defined in section 488.010, RSMo, miscellaneous charges, as defined in section 488.010, RSMo, and surcharges, as defined in section 488.010, RSMo, as well as all reasonable charges and fees of endorsed expert witnesses, all reasonable travel expenses, records retrieval expenses, photocopying expenses, long distance telephone expenses, all reasonable exhibit preparation expenses, videotaped deposition expenses, and court reporter fees.

514.060. **1.** In all civil actions, or proceedings of any kind, the party prevailing shall recover his **or her** costs against the other party, except **as provided in subsection 2 of this section or** in those cases in which a different provision is made by law.

2. In all tort actions, including tort actions based upon improper health care, in which all claims for damages exceed twenty-five thousand dollars, except for those cases in which the court makes a written finding that mediation would have no chance of success, the court shall establish a discovery period after which the action or proceeding shall be referred to mediation, which shall be conducted by a trained mediator selected from a list approved by the circuit court. If the plaintiff's net recovery is greater than the plaintiff's last position at mediation, then the plaintiff shall be deemed to be the prevailing party and the defendant shall pay all of the costs of the plaintiff. If the plaintiff's net recovery is less than the defendant's last position at mediation, the defendant shall be deemed to be the prevailing party and the plaintiff shall pay all of the defendant's costs, except in those cases where the defendant is a governmental entity and the trial court makes a written finding that the plaintiff filed the petition in good faith, in which case neither party shall pay the other party's costs. If the plaintiff's net recovery is between the amount of the plaintiff's last position at mediation and the defendant's last position at mediation, then neither party shall pay the other party's costs.

3. All claims for costs shall be submitted to the trial court for determination as to the reasonableness and necessity of the costs.

4. As used in this section, "plaintiff's net recovery" means the amount of the judgment reduced by the plaintiff's percentage of comparative fault.

516.105. All actions against physicians, hospitals, dentists, registered or licensed practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical therapists, and any other entity providing health care services and all employees of any of the foregoing acting in the course and scope of their employment, for damages for malpractice, negligence, error or mistake related to health care shall be brought within two years from the date of occurrence of the act of neglect complained of, except that:

(1) In cases in which the act of neglect complained of is introducing and negligently permitting any foreign object to remain within the body of a living person, the action shall be brought within two years from the date of the discovery of such alleged negligence, or from the date on which the patient in the exercise of ordinary care should have discovered such alleged negligence, whichever date first occurs; and

(2) In cases in which the act of neglect complained of is the negligent failure to inform the patient of the results of medical tests, the action for failure to inform shall be brought within two years from the date of the discovery of such alleged negligent failure to inform, or from the date on which the patient in the exercise of ordinary care should have discovered such alleged negligent failure to inform, whichever date first occurs; except that, no such action shall be brought for any negligent failure to inform about the results of medical tests performed more than two years before August 28, 1999**[**; and

(3) In cases in which the person bringing the action is a minor less than eighteen years of age, such minor shall have until his or her twentieth birthday to bring such action**]**.

In no event shall any action for damages for malpractice, error, or mistake be commenced after the expiration of ten years from the date of the act of neglect complained of **[**or for ten years from a minor's twentieth birthday, whichever is later**]**.

516.170. Except as provided in section 516.105, if any person entitled to bring an action in sections 516.100 to **[**516.370**] 516.371** specified, at the time the cause of action accrued be either within the age of twenty-one years, or mentally incapacitated, such person shall be at liberty to bring such actions within the respective times in sections 516.100 to **[**516.370**] 516.371** limited after such disability is removed**; provided, however, that in no event may the extension of time to file the cause of action granted pursuant to this section be greater than five years**.

537.067. **[**1. In all tort actions for damages, in which fault is not assessed to the plaintiff,

the defendants shall be jointly and severally liable for the amount of the judgment rendered against such defendants.

2. In all tort actions for damages in which fault is assessed to plaintiff the defendants shall be jointly and severally liable for the amount of the judgment rendered against such defendants except as follows:

(1) In all such actions in which the trier of fact assesses a percentage of fault to the plaintiff, any party, including the plaintiff, may within thirty days of the date the verdict is rendered move for reallocation of any uncollectible amounts;

(2) If such a motion is filed the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault;

(3) The party whose uncollectible amount is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment;

(4) No amount shall be reallocated to any party whose assessed percentage of fault is less than the plaintiff's so as to increase that party's liability by more than a factor of two;

(5) If such a motion is filed, the parties may conduct discovery on the issue of collectibility prior to a hearing on such motion;

(6) Any order of reallocation pursuant to this section shall be entered within one hundred twenty days after the date of filing such a motion for reallocation. If no such order is entered within that time, such motion shall be deemed to be overruled;

(7) Proceedings on a motion for reallocation shall not operate to extend the time otherwise provided for post-trial motion or appeal on other issues.

Any appeal on an order or denial of reallocation shall be taken within the time provided under applicable rules of civil procedure and shall be consolidated with any other appeal on other issues in the case.

3. This section shall not be construed to expand or restrict the doctrine of joint and several liability except for reallocation as provided in subsection 2.**] In all tort actions for damages, unless a principal-agent relationship exists between the defendants, a defendant shall not be jointly or severally liable for more than the percentage of the judgment for which fault is attributed to such defendant by the trier of fact.**

537.530. 1. In any action for damages in excess of three thousand dollars against an individual or entity licensed to practice a profession by this state, or any agency or court thereof, on account of the rendering of or failure to render professional services, the plaintiff or his or her attorney shall file an affidavit with the court stating that he or she

has obtained the written opinion of a similarly licensed professional which states that the defendant failed to use such care as a reasonably prudent and careful professional would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.

2. The affidavit shall state the name, address, and qualifications of all similarly licensed professionals offering such opinion.

3. A separate affidavit shall be filed for each defendant named in the petition.

4. Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended for a period of time not to exceed an additional ninety days.

5. If the plaintiff or his or her attorney fails to file such affidavit the court shall, upon motion of any party, dismiss the action against such moving party without prejudice.

6. "License" for purposes of this section shall not include a license to operate a vehicle.

7. "Similarly licensed professional" for purposes of this section shall mean an individual licensed in this state, or any other state, who possesses the education, training, and experience to be licensed in the same or substantially the same profession as the defendant.

537.767. In all tort actions, including tort actions based upon improper health care, no attorney shall, without approval of the court, contract for, charge or collect a contingent fee in excess of the following amounts:

(1) Thirty-three percent of the first five hundred thousand dollars of damages recovered;

(2) Twenty-eight percent of the next five hundred thousand dollars recovered;

(3) Fifteen percent of all damages recovered in excess of one million dollars.

537.768. Notwithstanding any other law to the contrary, no attorney representing a class in a class action lawsuit relating in any way to a tort action shall contract for, charge or collect an amount for attorney fees representing more than ten percent of value of any judgment or settlement actually collected by the members of the class. The term "actually collected" means the actual receipt by the class members of the following:

(1) Cash or cash equivalent;

(2) If payment is in the form of a coupon for a free item, the current retail value of the number of coupons actually redeemed by the class members;

(3) If payment is in the form of a discount or price reduction or rate reduction, the difference between the price paid by class members and the price paid by nonclass members for the same product during the redemption period, multiplied by the number

of members of the class who actually redeem their discount.

537.770. The attorney general or any state agency shall not enter into any contingency fee agreement or any agreement providing any incentive bonus with any attorney regarding any claim relating in any manner to a tort action.

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

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

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

(3) "Future damages", damages that the trier of fact finds will accrue after the damages findings are made;

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

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

(6) "Medical damages", damages arising from reasonable expenses for necessary drugs, therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and rehabilitative services;

(7) "Noneconomic damages", damages arising from nonpecuniary harm including, without limitation, pain, suffering, mental anguish, inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life, and loss of consortium but shall not include punitive damages;

(8) "Past damages", damages that have accrued when the damages findings are made;

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

(10) "Punitive damages", damages intended to punish or deter willful, wanton or

malicious misconduct**, including exemplary damages and damages for aggravating circumstances**;

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

538.210. 1. 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, no plaintiff shall recover more than three hundred fifty thousand dollars **[**per occurrence**]** for noneconomic damages from any one defendant as defendant is defined in subsection 2 of this section.

2. "Defendant" for purposes of sections 538.205 to 538.230 shall be defined as:

(1) A hospital as defined in chapter 197, RSMo, and its employees and physician employees who are insured under the hospital's professional liability insurance policy or the hospital's self-insurance maintained for professional liability purposes;

(2) A physician, including his nonphysician employees who are insured under the physician's professional liability insurance or under the physician's self-insurance maintained for professional liability purposes;

(3) Any other health care provider**, including but not limited to a facility licensed under chapter 198, RSMo,** having the legal capacity to sue and be sued and who is not included in subdivisions (1) and (2) of this subsection, including employees of any health care providers who are insured under the health care provider's professional liability insurance policy or self-insurance maintained for professional liability purposes**;**

(4) All individuals or entities whose liability is based solely upon an act or omission of an agent, servant, or employee shall, for purposes of subsection 1 of this section, be considered the same defendant as the agent, servant, or employee.

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

4. **[**The limitation on awards for noneconomic damages provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.

5. Any provision of law or court rule to the contrary notwithstanding, an award of punitive damages against a health care provider governed by the provisions of sections 538.205 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider demonstrated willful, wanton or malicious misconduct with respect to his actions which are found to have injured or caused or contributed to cause the damages claimed in the petition.**] For purposes of sections 538.205 to 538.230, all individuals and entities asserting a claim for a wrongful death pursuant to section 537.080, RSMo, shall be considered to be one plaintiff.**

538.213. 1. Any physician licensed pursuant to chapter 334, RSMo, or dentist licensed pursuant to chapter 332, RSMo, or hospital, or employee of a hospital as defined in section 197.020, RSMo, who renders any care or assistance in a hospital shall not be held liable for more than one hundred fifty thousand dollars in civil damages, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant arising out of any act or omission in rendering that care or assistance when:

(1) The care or assistance is rendered in a hospital that has been designated as a trauma center pursuant to section 190.241, RSMo;

(2) The care or assistance rendered is necessitated by a traumatic injury demanding immediate medical attention for which the patient enters the hospital through its emergency room or trauma center; and

(3) The care or assistance is rendered in good faith and in a manner not amounting to gross negligence or reckless, willful, or wanton conduct.

2. The limitation on liability provided pursuant to this section does not apply to any act or omission in rendering care or assistance which:

(1) Occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation on liability provided by subsection 1 of this section applies to any act or omission in rendering care or assistance which occurs before the stabilization of the patient following the surgery; or

(2) Is unrelated to the original traumatic injury.

3. A rebuttable presumption that the medical condition was the result of the original traumatic injury and that the limitation on liability provided by subsection 1 of this section shall apply with respect to the medical condition that arises during the course of the follow-up care, if:

(1) A physician or dentist provides a follow-up care to a patient to whom he or she rendered care or assistance pursuant to subsection 1 of this section;

(2) A medical condition arises during the course of the follow-up care that is

directly related to the original traumatic injury for which care or assistance was rendered pursuant to subsection 1 of this section; and

(3) The patient files an action for damages based on the medical condition that arises during the course of the follow-up care.

4. For the purposes of this section, the following terms mean:

(1) "Reckless, willful, or wanton conduct", as it applies to a person to whom subsection 1 of this section applies, is deemed to be that conduct which the person knew or should have known at the time he or she rendered the care or assistance would be likely to result in injury so as to affect the life or health of another person, taking into consideration to the extent applicable:

(a) The extent or serious nature of the prevailing circumstances;

(b) The lack of time or ability to obtain appropriate consultation;

(c) The lack of a prior medical relationship with the patient;

(d) The inability to obtain an appropriate medical history of the patient; and

(e) The time constraints imposed by coexisting emergencies;

(2) "Traumatic injury", any acute injury which, according to standardized criteria for triage in the field, involves a significant risk of death or the precipitation of complications or disabilities.

538.225. 1. In any action against a health care provider for damages for personal injury or death on account of the rendering of or failure to render health care services, the plaintiff or **[**his**]** **the plaintiff's** attorney shall file an affidavit with the court stating that he **or she** has obtained the written opinion of a legally qualified health care provider which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.

2. The affidavit shall state **the name and address of all health care providers offering such opinion and** the qualifications of such health care providers to offer such opinion.

3. A separate affidavit shall be filed for each defendant named in the petition.

4. Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended **for a period of time not to exceed an additional ninety days**.

5. If the plaintiff or his attorney fails to file such affidavit the court **[**may**]** **shall**, upon motion of any party, dismiss the action against such moving party without prejudice.

6. As used in this section, the term "legally qualified health care provider" means a health care provider licensed in this state or any other state in substantially the same

profession and specialty, including certifications, as the defendant.

538.226. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person shall be inadmissible as evidence of an admission of liability in a civil action. A statement of fault, however, which is a part of, or in addition to, any of the above shall not be inadmissible pursuant to this section.

2. As used in this section "benevolent gestures" means actions which convey a sense of compassion or commiseration emanating from humane impulses.

538.301. 1. The records, written proceedings or documents of a quality assessment and assurance committee formed pursuant to federal law 42 U.S.C. Section 1395i-3(b)(1)(B) or 42 U.S.C. Section 1396r(b)(1)(B) shall be confidential and absolutely privileged and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person nor are they admissible in any criminal, civil, or administrative proceeding. No person shall be civilly liable as a result of his or her acts, omissions or decisions done in good faith as a member of a quality assessment and assurance committee in connection with such person's duties therefor. No person who reviews or creates documents, records or reports of a quality assessment and assurance committee or participates in any proceeding that reviews or creates such documents, records or reports may be required to testify in any criminal, civil or administrative proceeding with respect to such documents, records or reports or with respect to any finding, proceeding, recommendation, evaluation, opinion or action taken by such person or such committee in connection with such documents, records or reports.

2. No documents produced by or through the activities of any state or federal agency inspecting or surveying a facility licensed under the provisions of sections 198.003 to 198.186, RSMo, including but not limited to those prepared in connection with the proceeding described in section 198.026, 198.029 or 198.032, RSMo, and including but not limited to statements of deficiencies, whether prepared on federal forms 2567L, notice of isolated deficiencies or state inspection forms used by the Missouri department of health and senior services, or any documents or other information in whatever form related to the reporting of resident assessment data for inclusion in the minimum data set required under 42 U.S.C. Section 1395i-3(b)(3) or 42 U.S.C. Section 1396r(b)(3), as amended, and 42 C.F.R. Section 483.20 or 19 CSR 30-85.042(99), as amended, shall be admissible for any purpose in a civil judicial proceeding unless that proceeding is an appeal of an action by the department of health and senior services against a facility or by a facility against the department of health and senior services under chapter 198, RSMo, or chapter 208, RSMo. No person may testify nor be required to testify about the contents of any document

heretofore described in this section; provided however, that such person is free to testify from his or her own personal knowledge about any events which occurred in a nursing facility of which they have direct personal knowledge.

Section B. Because immediate action is necessary to ensure the financial stability of the health care industry the repeal and reenactment of section 538.210 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 538.210 of section A of this act shall be in full force and effect upon its passage and approval.