

SECOND REGULAR SESSION

HOUSE BILL NO. 1346

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JETTON (Sponsor), CROWELL, SELF, CRAWFORD, HOBBS, SANDER, HUNTER, RUESTMAN, EMERY, LEMBKE, SUTHERLAND, JACKSON, ANGST, CUNNINGHAM (145), WASSON, QUINN AND KELLY (144) (Co-sponsors).

Read 1st time January 29, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4323L.011

AN ACT

To repeal sections 105.711, 258.100, 307.178, 508.010, 508.040, 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-seven new sections relating to claims for damages for injuries to the person, with penalty provisions.

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

Section A. Sections 105.711, 258.100, 307.178, 508.010, 508.040, 508.120, 510.263, 2 512.080, 514.060, 516.105, 516.170, 537.067, 538.205, 538.210 and 538.225, RSMo, are 3 repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 105.711, 4 258.100, 307.178, 508.010, 508.040, 508.120, 510.263, 512.023, 512.080, 514.035, 514.060, 5 516.105, 516.170, 537.067, 537.327, 537.530, 537.767, 537.768, 537.770, 538.205, 538.210, 6 538.213, 538.225, 538.226, 538.301, 1, and 2, to read as follows:

105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist 2 of moneys appropriated to the fund by the general assembly and moneys otherwise credited to 3 such fund pursuant to section 105.716.

4 2. Moneys in the state legal expense fund shall be available for the payment of any claim 5 or any amount required by any final judgment rendered by a court of competent jurisdiction 6 against:

7 (1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 8 536.087, RSMo, or section 537.600, RSMo;

9 (2) Any officer or employee of the state of Missouri or any agency of the state, including,

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 proposed language.

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

15 (3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse or other health
16 care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335,
17 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state,
18 under formal contract to conduct disability reviews on behalf of the department of elementary
19 and secondary education or provide services to patients or inmates of state correctional facilities
20 on a part-time basis;

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

30 (c) Any physician licensed to practice medicine in Missouri under the provisions of
31 chapter 334, RSMo, who is employed by or under contract with a federally funded community
32 health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42
33 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery
34 and child care, if such medical services are provided by the physician pursuant to the contract
35 or employment agreement without compensation or the physician is paid from no other source
36 than a governmental agency or such a federally funded community health center except for
37 patient co-payments required by federal or state law or local ordinance. In the case of any claim
38 or judgment that arises under this paragraph, the aggregate of payments from the state legal
39 expense fund shall be limited to a maximum of [one million] **five hundred thousand** dollars
40 for all claims arising out of and judgments based upon the same act or acts alleged in a single
41 cause against any such physician, and shall not exceed [one million] **five hundred thousand**
42 dollars for any one claimant;

43 (d) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or
44 registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who
45 provides medical, dental or nursing treatment within the scope of his license or registration at

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

59 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or
60 registered to practice medicine, nursing or dentistry or to act as a physician assistant or dental
61 hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter
62 335, RSMo, who provides medical, nursing or dental treatment within the scope of his license
63 or registration to students of a school whether a public, private or parochial elementary or
64 secondary school, if such physician's treatment is restricted to primary care and preventive health
65 services and if such medical, dental or nursing services are provided by the physician, dentist,
66 physician assistant, dental hygienist, or nurse without compensation. In the case of any claim
67 or judgment that arises under this paragraph, the aggregate of payments from the state legal
68 expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims
69 arising out of and judgments based upon the same act or acts alleged in a single cause and shall
70 not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased
71 pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars;
72 or

73 (4) Staff employed by the juvenile division of any judicial circuit; or

74 **(5) Any attorney licensed to practice law in the state of Missouri who practices law**
75 **at or through a nonprofit community social services center qualified as exempt from**
76 **federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,**
77 **or through a legal clinic operated by or through any public or private school of law located**
78 **in this state or through any agency of any federal, state, or local government, if such legal**
79 **practice is provided by the attorney without compensation. In the case of any claim or**
80 **judgment that arises under this subdivision, the aggregate of payments from the state legal**
81 **expense fund shall be limited to a maximum of five hundred thousand dollars for all claims**

82 **arising out of and judgments based upon the same act or acts alleged in a single cause and**
83 **shall not exceed five hundred thousand dollars for any one claimant, and insurance policies**
84 **purchased pursuant to the provisions of section 105.721 shall be limited to five hundred**
85 **thousand dollars.**

86 3. The department of health and senior services shall promulgate rules regarding contract
87 procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of
88 subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal
89 expense fund or any policy of insurance procured pursuant to the provisions of section 105.721,
90 provided in subsection [5] 6 of this section, shall not apply to any claim or judgment arising
91 under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. Any
92 claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection
93 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured
94 pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to
95 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any
96 physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or
97 her private practice and assets shall not be considered available under subsection [5] 6 of this
98 section to pay that portion of a judgment or claim for which the state legal expense fund is liable
99 under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section.
100 However, a physician, nurse, dentist, physician assistant, or dental hygienist may purchase
101 liability or malpractice insurance for coverage of liability claims or judgments based upon care
102 rendered under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section
103 which exceed the amount of liability coverage provided by the state legal expense fund under
104 those paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of
105 this section is repealed or modified, the state legal expense fund shall be available for damages
106 which occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection
107 2 of this section is in effect.

108 4. **The attorney general shall promulgate rules regarding contract procedures and**
109 **the documentation of legal practice provided under subdivision (5) of subsection 2 of this**
110 **section. The limitation on payments from the state legal expense fund or any policy of**
111 **insurance procured pursuant to section 105.721 as provided in subsection 6 of this section**
112 **shall not apply to any claim or judgment arising under subdivision (5) of subsection 2 of**
113 **this section. Any claim or judgment arising under subdivision (5) of subsection 2 of this**
114 **section shall be paid by the state legal expense fund or any policy of insurance procured**
115 **pursuant to section 105.721 to the extent damages are allowed under sections 538.205 to**
116 **538.235, RSMo. Liability or malpractice insurance otherwise obtained and maintained in**
117 **force shall not be considered available under subsection 6 of this section to pay that portion**

118 **of a judgment or claim for which the state legal expense fund is liable under subdivision**
119 **(5) of subsection 2 of this section. However, an attorney may obtain liability or malpractice**
120 **insurance for coverage of liability claims or judgments based upon legal practice rendered**
121 **under subdivision (5) of subsection 2 of this section which exceed the amount of liability**
122 **coverage provided by the state legal expense fund under subdivision (5) of subsection 2 of**
123 **this section. Even if subdivision (5) of subsection 2 of this section is repealed or amended,**
124 **the state legal expense fund shall be available for damages which occur while the pertinent**
125 **subdivision (5) of subsection 2 of this section is in effect.**

126 **5.** All payments shall be made from the state legal expense fund by the commissioner
127 of administration with the approval of the attorney general. Payment from the state legal expense
128 fund of a claim or final judgment award against a physician, dentist, physician assistant, dental
129 hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection
130 2 of this section **or against an attorney in subdivision (5) of subsection 2 of this section** shall
131 only be made for services rendered in accordance with the conditions of such paragraphs.

132 **[5.] 6.** Except as provided in subsection 3 of this section, in the case of any claim or
133 judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri,
134 or an agency of the state, the aggregate of payments from the state legal expense fund and from
135 any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed
136 the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be
137 made from the state legal expense fund or any policy of insurance procured with state funds
138 pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other
139 policy of liability insurance have been exhausted. **In no event shall the state legal expense**
140 **fund pay more than five hundred thousand dollars to any one claimant. For purposes of**
141 **this section, all individuals and entities asserting a claim for a wrongful death pursuant to**
142 **section 537.080, RSMo, shall be considered to be one claimant. Payment from the state**
143 **legal expense fund resulting from a claim against an individual precludes execution of a**
144 **judgment against such individual or the individual's estate for tort actions committed by**
145 **such individual.**

146 **[6.] 7.** The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining
147 to the credit of the state legal expense fund at the end of an appropriation period shall not be
148 transferred to general revenue.

149 **[7.] 8.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
150 that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become
151 effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo.
152 Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or
153 adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo.

154 This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the
155 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to
156 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking
157 authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

258.100. 1. As used in this section, the word "trail" means any land [previously used as
2 a railroad right-of-way] which was acquired by the state for use as a public hiking, biking or
3 recreational trail or any land or interest therein acquired hereafter by a [municipality or county]
4 **political subdivision** for use as a public hiking, biking or recreational trail[, located in any
5 county of the first classification which contains a city with a population of one hundred thousand
6 or more inhabitants which adjoins no other county of the first classification, or in a county of the
7 first classification with a population of over nine hundred thousand]. However, a trail not
8 acquired by the state must be designated by the governing body of the [municipality or county]
9 **political subdivision** as a greenway system of trails **or part of a dedicated system of trails**, the
10 acquisition [deed] **conveyance whether by deed, easement agreement, grant assignment, or**
11 **reservation of rights** to the [city or county] **political subdivision** must state the interest in the
12 land is being granted for such purposes, the greenway system **or dedicated system** of trails must
13 be designed exclusively for the purposes herein designated, and shall not include roads or streets,
14 nor sidewalks, walkways or paths which are intended to connect neighborhoods for pedestrian
15 traffic, such as common sidewalks or walkways.

16 2. Any person owning land adjoining the trail shall be immune from civil liability for
17 injuries to person or property of persons trespassing or entering on such person's land without
18 implied or expressed permission, invitation, or consent where:

19 (1) The person who was injured entered the land by way of the trail; and

20 (2) Such person was subsequently injured on lands adjoining the trail.

21 3. The immunity created by this section does not apply if the injuries were caused by:

22 (1) The intentional or unlawful act of the owner or possessor of such land; or

23 (2) The willful or wanton act of the owner or possessor of such land; **or**

24 (3) **The failure of the possessor of land to warn of an artificial condition which is**
25 **likely to cause death or serious injury created or maintained by the possessor of the land.**

307.178. 1. As used in this section, the term "passenger car" means every motor vehicle
2 designed for carrying ten persons or less and used for the transportation of persons; except that,
3 the term "passenger car" shall not include motorcycles, motorized bicycles, motor tricycles and
4 trucks with a licensed gross weight of twelve thousand pounds or more.

5 2. Each driver, except persons employed by the United States Postal Service while
6 performing duties for that federal agency which require the operator to service postal boxes from
7 their vehicles, or which require frequent entry into and exit from their vehicles, and front seat

8 passenger of a passenger car manufactured after January 1, 1968, operated on a street or highway
9 in this state, and persons less than eighteen years of age operating or riding in a truck, as defined
10 in section 301.010, RSMo, on a street or highway of this state shall wear a properly adjusted and
11 fastened safety belt that meets federal National Highway, Transportation and Safety Act
12 requirements; except that, a child less than four years of age shall be protected as required in
13 section 210.104, RSMo. No person shall be stopped, inspected, or detained solely to determine
14 compliance with this subsection. The provisions of this section shall not be applicable to persons
15 who have a medical reason for failing to have a seat belt fastened about their body, nor shall the
16 provisions of this section be applicable to persons while operating or riding a motor vehicle
17 being used in agricultural work-related activities. Noncompliance with this subsection shall not
18 constitute probable cause for violation of any other provision of law.

19 3. Each driver of a motor vehicle transporting a child four years of age or more, but less
20 than sixteen years of age, shall secure the child in a properly adjusted and fastened safety belt.

21 4. In any action to recover damages arising out of the ownership, common maintenance
22 or operation of a motor vehicle, failure to wear a safety belt in violation of this section shall not
23 be considered evidence of comparative negligence. Failure to wear a safety belt in violation of
24 this section may be admitted to mitigate damages, but only under the following circumstances:

25 (1) Parties seeking to introduce evidence of the failure to wear a safety belt in violation
26 of this section must first introduce expert evidence proving that a failure to wear a safety belt
27 contributed to the injuries claimed by plaintiff;

28 (2) If the evidence supports such a finding, the trier of fact may find that the plaintiff's
29 failure to wear a safety belt in violation of this section contributed to the plaintiff's claimed
30 injuries, and may reduce the amount of the plaintiff's recovery by an amount not to exceed [one]
31 **ten** percent of the damages awarded after any reductions for comparative negligence.

32 5. Each driver who violates the provisions of subsection 2 or 3 of this section is guilty
33 of an infraction for which a fine not to exceed ten dollars may be imposed. All other provisions
34 of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any
35 person due to a violation of this section. In no case shall points be assessed against any person,
36 pursuant to section 302.302, RSMo, for a violation of this section.

37 6. The department of public safety shall initiate and develop a program of public
38 information to develop understanding of, and ensure compliance with, the provisions of this
39 section. The department of public safety shall evaluate the effectiveness of this section and shall
40 include a report of its findings in the annual evaluation report on its highway safety plan that it
41 submits to NHTSA and FHWA pursuant to 23 U.S.C. 402.

42 7. If there are more persons than there are seat belts in the enclosed area of a motor
43 vehicle, then the driver and passengers are not in violation of this section.

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

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

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

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

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

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

15 (6) In all tort actions, **including tort actions based upon improper health care, except**
16 **as provided in section 508.070**, the suit may **only** be brought in the county where the cause of
17 action accrued regardless of the residence of the parties, and process therein shall be issued by
18 the court of such county and may be served in any county within the state; provided, however,
19 that in any action for defamation or for invasion of privacy the cause of action shall be deemed
20 to have accrued in the county in which the defamation or invasion was first published.

21 (7) **The residence of a corporation for venue purpose shall be in the county where**
22 **the office of its registered agent as reported pursuant to chapter 351, RSMo, is located. If**
23 **the corporation has not reported or maintained a registered agent, then the residence of**
24 **the corporation shall be Cole County.**

25 508.040. Suits against corporations shall be commenced either in the county where the
26 cause of action accrued **or in the county where the corporation resides. Notwithstanding any**
27 **other statute to the contrary, the residence of a foreign or domestic corporation for all**
28 **purposes of this chapter shall be deemed the county where the office of its registered agent**
29 **as reported pursuant to chapter 351, RSMo, is located. If the corporation has not reported**
30 **or maintained a registered agent, then the residence of the corporation shall be Cole**
31 **County**[, or in case the corporation defendant is a railroad company owning, controlling or
32 operating a railroad running into or through two or more counties in this state, then in either of
33 such counties, or in any county where such corporations shall have or usually keep an office or
34 agent for the transaction of their usual and customary business].

508.120. 1. No defendant shall be allowed a change of venue and no application by a
2 defendant to disqualify a judge shall be granted unless the application therefor is made before

3 the filing of his **or her** answer to the merits, except when the cause for the change of venue or
4 disqualification arises, or information or knowledge of the existence thereof first comes to [him]
5 **the defendant**, after the filing of his **or her** answer in which case the application shall state the
6 time when the cause arose or when applicant acquired information and knowledge thereof, and
7 the application must be made within [five] **thirty** days thereafter.

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

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

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

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

14 4. Within the time for filing a motion for new trial, a defendant may file a post-trial
15 motion requesting the amount awarded by the jury as punitive damages be credited by the court
16 with amounts previously paid by the defendant for punitive damages arising out of the same
17 conduct on which the imposition of punitive damages is based. At any hearing, the burden on
18 all issues relating to such a credit shall be on the defendant and either party may introduce
19 relevant evidence on such motion. Such a motion shall be determined by the trial court within
20 the time and according to procedures applicable to motions for new trial. If the trial court
21 sustains such a motion the trial court shall credit the jury award of punitive damages by the
22 amount found by the trial court to have been previously paid by the defendant arising out of the
23 same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to
24 a credit under the provisions of this section, or the trial court finds from the evidence that the
25 defendant's conduct out of which the prior punitive damages award arose was not the same
26 conduct on which the imposition of punitive damages is based in the pending action, or the trial

27 court finds the defendant unreasonably continued the conduct after acquiring actual knowledge
28 of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial
29 court finds that the laws regarding punitive damages in the state in which the prior award of
30 punitive damages was entered substantially and materially deviate from the law of the state of
31 Missouri and that the nature of such deviation provides good cause for disallowance of the credit
32 based on the public policy of Missouri, then the trial court may disallow all or any part of the
33 credit provided by this section.

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

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

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

41 **8. Discovery as to a defendant's assets shall be allowed only after a finding by the**
42 **trial court that it is more likely than not that the plaintiff will be able to present a**
43 **submissible case to the trier of fact on the plaintiff's claim of punitive damages.**

44 **9. No award of punitive damages against any defendant shall exceed the greater of:**

45 **(1) Five hundred thousand dollars; or**

46 **(2) Five times the net amount of the judgment awarded to the plaintiff against the**
47 **defendant.**

48

49 **Such limitations shall not apply if the state of Missouri is the plaintiff requesting the award**
50 **of punitive damages, or the defendant pleads guilty to or is convicted of a felony arising out**
51 **of the acts or omissions pled by the plaintiff and found by the civil court or jury on behalf**
52 **of the plaintiff and against the defendant.**

512.023. Any order certifying a class in a class action law suit pursuant to section
2 **507.070, RSMo, shall be a final and appealable judgment.**

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

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

5 (2) When the appellant, at or prior to the time of filing notice of appeal, presents to the
6 court for its approval a supersedeas bond which shall have such surety or sureties as the court
7 requires. The court may also at or prior to the time of filing notice of appeal, by order of record,
8 fix the amount of the supersedeas bond and allow appellant reasonable time, not exceeding

9 twenty days, from the date of the order to file the same subject to the approval of the court or
10 clerk, and such appeal bond, approved by the court or clerk and filed within the time specified
11 in such order, shall have the effect to stay the execution thereafter. If any execution shall have
12 been taken prior to the filing of the bond as so approved by the court or clerk, the same shall be
13 released.

14 2. The bond shall be conditioned for the satisfaction of the judgment in full together with
15 costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment
16 is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and
17 damages as the appellate court may adjudge and award. When the judgment is for the recovery
18 of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover
19 the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and
20 damages for delay, unless the court after notice and hearing and for good cause shown fixes a
21 different amount or orders security other than the bond. When the judgment determines the
22 disposition of the property in controversy as in real actions, replevin, and actions to foreclose
23 mortgages, or when such property is in the custody of the sheriff, or when the proceeds of such
24 property or a bond for its value is in the custody or control of the court, the amount of the
25 supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use
26 and detention of the property, the costs of the action, costs on appeal, interest, and damages for
27 delay. The bond shall indicate the addresses of the sureties.

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

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

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

4 **2. In all tort actions, including tort actions based upon improper health care, in**
5 **which all claims for damages exceed twenty-five thousand dollars, except for those cases**
6 **in which the court makes a written finding that mediation would have no chance of success,**

7 the court shall establish a discovery period after which the action or proceeding shall be
8 referred to mediation, which shall be conducted by a trained mediator selected from a list
9 approved by the circuit court. The cost of mediation shall be shared equally by all parties.
10 If mediation is not successful, the mediator shall prepare a sealed report to be submitted
11 to the court to be opened upon the completion of the trial. If the plaintiff's net recovery
12 is greater than the plaintiff's last position at mediation, then the plaintiff shall be deemed
13 to be the prevailing party and the defendant shall pay all of the costs of the plaintiff. If the
14 plaintiff's net recovery is less than the defendant's last position at mediation, the defendant
15 shall be deemed to be the prevailing party and the plaintiff shall pay all of the defendant's
16 costs, except in those cases where the defendant is a governmental entity and the trial court
17 makes a written finding that the plaintiff filed the petition in good faith, in which case
18 neither party shall pay the other party's costs. If the plaintiff's net recovery is between the
19 amount of the plaintiff's last position at mediation and the defendant's last position at
20 mediation, then neither party shall pay the other party's costs.

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

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

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

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

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

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

21

22 In no event shall any action for damages for malpractice, error, or mistake be commenced after
23 the expiration of ten years from the date of the act of neglect complained of [or for ten years from
24 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
2 in sections 516.100 to [516.370] **516.371** specified, at the time the cause of action accrued be
3 either within the age of twenty-one years, or mentally incapacitated, such person shall be at
4 liberty to bring such actions within the respective times in sections 516.100 to [516.370] **516.371**
5 limited after such disability is removed; **provided, however, that in no event may the**
6 **extension of time to file the cause of action granted pursuant to this section be greater than**
7 **seven years for any cause of action that accrued after August 28, 2000.**

537.067. [1. In all tort actions for damages, in which fault is not assessed to the plaintiff,
2 the defendants shall be jointly and severally liable for the amount of the judgment rendered
3 against such defendants.

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

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

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

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

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

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

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

23 (7) Proceedings on a motion for reallocation shall not operate to extend the time

24 otherwise provided for post-trial motion or appeal on other issues.

25

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

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

537.327. 1. As used in this section, unless the context provides otherwise, the
2 **following terms shall mean:**

3 (1) **"Canoe", a watercraft which has an open top and is designed to hold one or**
4 **more participants;**

5 (2) **"Canoeing, rafting, kayaking, or tubing", riding in or on, training in or on,**
6 **using, paddling, or being a passenger in or on a canoe, kayak, raft, or tube including a**
7 **person assisting a participant;**

8 (3) **"Equipment", any accessory to a watercraft which is used for propulsion,**
9 **safety, comfort, or convenience including but not limited to paddles, oars, and personal**
10 **floatation devices;**

11 (4) **"Inherent risks of paddlesport activities", those dangers, hazards, or conditions**
12 **which are an integral part of paddlesport activities in Missouri's free-flowing streams or**
13 **rivers, including but not limited to:**

14 (a) **Risks typically associated with watercraft including change in water flow or**
15 **current, submerged, semi-submerged, and overhanging objects, capsizing, swamping, or**
16 **sinking of watercraft and resultant injury, hypothermia, or drowning;**

17 (b) **Cold weather or heat-related injuries and illnesses including hypothermia,**
18 **frostbite, heat exhaustion, heat stroke, and dehydration;**

19 (c) **An "act of nature" which may include rock fall, inclement weather, thunder and**
20 **lightning, severe or varied temperature, weather conditions, and winds including**
21 **tornadoes;**

22 (d) **Equipment failure or operator error;**

23 (e) **Attack or bite by animals;**

24 (f) **The aggravation of injuries or illnesses because they occurred in remote places**
25 **where there are no available medical facilities;**

26 (5) **"Kayak", a watercraft similar to a canoe with a covered top which may have**

27 more than one circular opening to hold participants, or designed to permit a participant
28 to sit on top of an enclosed formed seat;

29 (6) "Outfitter", any individual, group, club, partnership, corporation, or business
30 entity, whether or not operating for profit or not-for-profit, or any employee or agent,
31 which sponsors, organizes, rents, or provides to the general public, the opportunity to use
32 any watercraft by a participant on Missouri's free-flowing streams or rivers;

33 (7) "Paddlesport activity", canoeing, rafting, or kayaking in or on a watercraft as
34 follows:

35 (a) A competition, exercise, or undertaking that involves a watercraft;

36 (b) Training or teaching activities;

37 (c) A ride, trip, tour, or other activity, however informal or impromptu, whether
38 or not a fee is paid, that is sponsored by an outfitter;

39 (d) A guided trip, tour or other activity, whether or not a fee is paid, that is
40 sponsored by an outfitter;

41 (8) "Participant", any person, whether amateur or professional, whether or not a
42 fee is paid, which rents, leases, or uses watercraft or is a passenger on a rented, leased, or
43 used watercraft participating in a paddlesport activity;

44 (9) "Personal floatation device", a life jacket, floatable cushion, or other device
45 approved by the United States Coast Guard;

46 (10) "Raft", an inflatable watercraft which has an open top and is designed to hold
47 one or more participants;

48 (11) "Tube", an inflatable tire inner tube or similar inflatable watercraft which has
49 an open top capable of holding one or more participants;

50 (12) "Watercraft", any canoe, kayak, raft, or tube propelled by the use of paddles,
51 oars, hands, poles, or other nonmechanical, nonmotorized means of propulsion.

52 2. Except as provided in subsection 4 of this section, an outfitter shall not be liable
53 for any injury to or the death of a participant resulting from the inherent risks of
54 paddlesport activities and, except as provided in subsection 4 of this section, no participant
55 or a participant's representative shall make any claim against, maintain any action against,
56 or recover from an outfitter for injury, loss, damage, or death of the participant resulting
57 from any of the inherent risks of paddlesport activities.

58 3. This section shall not apply to any employer-employee relationship governed by
59 the provisions of chapter 287, RSMo.

60 4. The provisions of subsection 2 of this section shall not prevent or limit the
61 liability of an outfitter that:

62 (1) Intentionally injures the participant;

63 (2) Commits an act or omission that constitutes negligence for the safety of a
64 participant in a paddlesport activity and that negligence is the proximate cause of the
65 injury or death of a participant;

66 (3) Provides unsafe equipment or watercraft to a participant and knew or should
67 have known that the equipment or watercraft was unsafe to the extent that it did cause the
68 injury;

69 (4) Fails to provide a participant a United States Coast Guard approved personal
70 floatation device; or

71 (5) Fails to use that degree of care that an ordinarily careful and prudent person
72 would use under the same or similar circumstances.

73 5. Every outfitter shall post and maintain signs which contain the warning notice
74 specified in this subsection. Such signs shall be placed in a clearly visible location on or
75 near areas where the outfitter conducts paddlesport activities. The warning notice
76 specified in this subsection shall appear on the sign in black letters on a white background
77 with each letter to be a minimum of one inch in height. Every written contract entered into
78 by an outfitter for the providing of watercraft to a participant shall contain the warning
79 notice specified in this subsection. The signs and contracts described in this subsection
80 shall contain the following warning notice:

81 **"WARNING**

82 **Under Missouri law, an outfitter is not liable for an injury to or the death of a participant**
83 **in paddlesport activities resulting from the inherent risks of paddlesport activities**
84 **pursuant to the Revised Statutes of Missouri."**

85 6. This section shall not be construed to limit or modify any defense or immunity
86 already existing in statute or common law or to affect any claim occurring prior to August
87 28, 2003.

537.530. 1. In any action for damages in excess of three thousand dollars against
2 an individual or entity licensed to practice a profession by this state, or any agency or court
3 thereof, on account of the rendering of or failure to render professional services, the
4 plaintiff or his or her attorney shall file an affidavit with the court stating that he or she
5 has obtained the written opinion of a similarly licensed professional which states that the
6 defendant failed to use such care as a reasonably prudent and careful professional would
7 have under similar circumstances and that such failure to use such reasonable care directly
8 caused or directly contributed to cause the damages claimed in the petition.

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

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

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

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

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

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

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

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

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

7 **(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
2 **a class in a class action lawsuit relating in any way to a tort action shall contract for,**
3 **charge or collect an amount for attorney fees representing more than ten percent of value**
4 **of any judgment or settlement actually collected by the members of the class. The term**
5 **"actually collected" means the actual receipt by the class members of the following:**

6 **(1) Cash or cash equivalent;**

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

9 **(3) If payment is in the form of a discount or price reduction or rate reduction, the**
10 **difference between the price paid by class members and the price paid by nonclass**
11 **members for the same product during the redemption period, multiplied by the number**
12 **of members of the class who actually redeem their discount.**

537.770. The attorney general or any state agency shall not enter into any
2 **contingency fee agreement in an amount in excess of one million dollars or any agreement**
3 **providing any incentive bonus in an amount in excess of one million dollars with any**
4 **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:

2 **(1) "Economic damages", damages arising from pecuniary harm including, without**

3 limitation, medical damages, and those damages arising from lost wages and lost earning
4 capacity;

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

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

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

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

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

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

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

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

32 (10) "Punitive damages", damages intended to punish or deter willful, wanton or
33 malicious misconduct, **including exemplary damages and damages for aggravating**
34 **circumstances**;

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

538.210. 1. In any action against a health care provider for damages for personal injury
2 or death arising out of the rendering of or the failure to render health care services, no plaintiff

3 shall recover more than three hundred fifty thousand dollars [per occurrence] for noneconomic
4 damages from any one defendant as defendant is defined in subsection 2 of this section.

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

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

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

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

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

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

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

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

39 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
2 licensed pursuant to chapter 332, RSMo, or hospital, or employee of a hospital as defined
3 in section 197.020, RSMo, or other health care provider as defined in section 538.205,
4 RSMo, who renders any care or assistance in a hospital shall not be held liable for more
5 than one hundred fifty thousand dollars in civil damages, exclusive of interest computed
6 from the date of judgment, to or for the benefit of any claimant arising out of any act or
7 omission in rendering that care or assistance when:

8 (1) The care or assistance is rendered in a hospital emergency room;

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

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

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

16 (1) Occurs after the patient is stabilized and is capable of receiving medical
17 treatment as a nonemergency patient; or

18 (2) Is unrelated to the original traumatic injury.

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

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

25 (2) A medical condition arises during the course of the follow-up care that is
26 directly related to the original traumatic injury for which care or assistance was rendered
27 pursuant to subsection 1 of this section; and

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

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

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

- 36 **(a) The extent or serious nature of the prevailing circumstances;**
 37 **(b) The lack of time or ability to obtain appropriate consultation;**
 38 **(c) The lack of a prior medical relationship with the patient;**
 39 **(d) The inability to obtain an appropriate medical history of the patient; and**
 40 **(e) The time constraints imposed by coexisting emergencies;**
 41 **(2) "Traumatic injury", any acute injury which, according to standardized criteria**
 42 **for triage in the field, involves a significant risk of death or the precipitation of**
 43 **complications or disabilities.**

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

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

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

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

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

17 **6. As used in this section, the term "legally qualified health care provider" means**
 18 **a health care provider licensed in this state or any other state in substantially the same**
 19 **profession and specialty, including certifications, as the defendant.**

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

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

538.301. The records, written proceedings or documents of a quality assessment
 2 and assurance committee formed pursuant to federal law 42 U.S.C. Section 1395i-

3 **3(b)(1)(B) or 42 U.S.C. Section 1396r(b)(1)(B) shall be confidential and absolutely**
4 **privileged and shall not be subject to discovery, subpoena, or other means of legal**
5 **compulsion for their release to any person nor are they admissible in any criminal, civil,**
6 **or administrative proceeding. No person shall be civilly liable as a result of his or her acts,**
7 **omissions or decisions done in good faith as a member of a quality assessment and**
8 **assurance committee in connection with such person's duties therefor. No person who**
9 **reviews or creates documents, records or reports of a quality assessment and assurance**
10 **committee or participates in any proceeding that reviews or creates such documents,**
11 **records or reports may be required to testify in any criminal, civil or administrative**
12 **proceeding with respect to such documents, records or reports or with respect to any**
13 **finding, proceeding, recommendation, evaluation, opinion or action taken by such person**
14 **or such committee in connection with such documents, records or reports.**

Section 1. 1. Any person may file a miscellaneous case for purpose of securing
2 copies of their health care records or the health care records of any other person for whom
3 he or she is the guardian or attorney-in-fact or is a potential claimant for a wrongful death.

4 2. A miscellaneous case shall be filed in the circuit in which any of the health care
5 records sought to be obtained are located.

6 3. (1) The petition shall contain the following:

7 (a) The name of the individual who received the health care services or medical
8 treatment;

9 (b) A brief summary of the health care services or medical treatment received;

10 (c) A brief summary of the outcome of the health care services or medical
11 treatment; and

12 (d) The names of the health care providers from whom health care records are
13 being sought.

14 (2) The petition shall not contain:

15 (a) Allegations of negligence; or

16 (b) Demands, other than a general demand for access to health care records.

17 4. Within five days of filing the miscellaneous case, the petitioner shall mail a copy
18 of the petition by regular and certified mail to each health care provider listed in the
19 petition. The petitioner shall certify to the court that the petition has been mailed as
20 required.

21 5. After filing a miscellaneous case, the petitioner may request the health care
22 records described in subsection 1 of this section by subpoena and, if necessary, subpoena
23 the health care records custodian for a deposition for the sole purpose of securing copies
24 of the health care records and verifying their authenticity. Refusal to provide the

25 requested records may be the basis for the court to impose sanctions or orders of contempt.

26 **6. Filing of a miscellaneous case petition shall toll the applicable statute of**
27 **limitations for one hundred twenty days on any claim for injuries or death caused by**
28 **professional negligence of a health care provider, but in no event shall the applicable**
29 **statute of limitations be tolled pursuant to this section for more than one hundred twenty**
30 **days.**

31 **7. The naming or listing of a health care provider as a person from whom records**
32 **are requested shall not be considered for any reporting purposes as a claim made against**
33 **the health care provider.**

34 **8. A health care provider, or any person or entity acting on behalf of a health care**
35 **provider shall not charge more than is allowable pursuant to section 197.227, RSMo, for**
36 **providing copies of health care records.**

Section 2. If any provision of this act is found by a court of competent jurisdiction
2 **to be invalid or unconstitutional it is the stated intent of the legislature that the legislature**
3 **would have approved the remaining portions of the act, and the remaining portions of the**
4 **act shall remain in full force and effect.**