

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1304
92ND GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 1, 2004, with recommendation that the Senate Committee Substitute do pass.

3380S.09C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 355.176, 408.040, 508.010, 508.040, 508.070, 508.120, 510.263, 537.035, 537.067, 538.205, 538.210, and 538.225, RSMo, and to enact in lieu thereof twelve new sections relating to claims for damages and the payment thereof.

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

Section A. Sections 355.176, 408.040, 508.010, 508.040, 508.070, 508.120, 510.263, 2 537.035, 537.067, 538.205, 538.210, and 538.225, RSMo, are repealed and twelve new 3 sections enacted in lieu thereof, to be known as sections 355.176, 408.040, 508.010, 4 510.263, 537.035, 537.067, 538.205, 538.210, 538.225, 538.226, 1, and 2, to read as 5 follows:

355.176. 1. A corporation's registered agent is the corporation's agent 2 for service of process, notice, or demand required or permitted by law to be 3 served on the corporation.

4 2. If a corporation has no registered agent, or the agent cannot with 5 reasonable diligence be served, the corporation may be served by registered 6 or certified mail, return receipt requested, addressed to the secretary of the 7 corporation at its principal office shown in the most recent annual report 8 filed pursuant to section 355.856. Service is perfected under this subsection 9 on the earliest of:

10 (1) The date the corporation receives the mail;

11 (2) The date shown on the return receipt, if signed on behalf of the 12 corporation; or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 **(3) Five days after its deposit in the United States mail, if mailed and**
14 **correctly addressed with first class postage affixed.**

15 **3. This section does not prescribe the only means, or necessarily the**
16 **required means, of serving a corporation.**

 408.040. 1. Interest shall be allowed on all money due upon any judgment or
2 order of any court from the day of rendering the same until satisfaction be made by
3 payment, accord or sale of property; all such judgments and orders for money upon
4 contracts bearing more than nine percent interest shall bear the same interest borne by
5 such contracts, and, **except as provided by subsection 3 of this section**, all other
6 judgments and orders for money shall bear nine percent per annum until satisfaction
7 made as aforesaid.

8 2. In tort actions, if a claimant has made a demand for payment of a claim or an
9 offer of settlement of a claim, to the party, parties or their representatives, **and to such**
10 **party's liability insurer if known to the claimant**, and the amount of the judgment
11 or order exceeds the demand for payment or offer of settlement, **then** prejudgment
12 interest, [at the rate specified in subsection 1 of this section, shall] **may be awarded**,
13 calculated from a date sixty days after the demand or offer was [made] **received, as**
14 **shown by the certified mail return receipt**, or from the date the demand or offer
15 was rejected without counter offer, whichever is earlier. [Any such demand or offer shall
16 be made in writing and sent by certified mail and shall be left open for sixty days unless
17 rejected earlier.] **In order to qualify as a demand or offer pursuant to this**
18 **section, such demand must:**

19 **(1) Be in writing and sent by certified mail return receipt requested;**
20 **and**

21 **(2) Be accompanied by an affidavit of the claimant describing the**
22 **nature of the claim and theory of liability, the nature of any injuries claimed**
23 **and a computation of any category of damages sought by the claimant with**
24 **supporting documentation; and**

25 **(3) For personal injury and bodily injury claims, be accompanied by a**
26 **list of the names and addresses of medical providers who have provided**
27 **treatment to the claimant for such injuries, copies of all medical bills, a list**
28 **of employers if the claimant is seeking damages for loss of wages or earnings,**
29 **and written authorizations sufficient to allow the party, its representatives,**
30 **and liability insurer if known to the claimant to obtain records from all**
31 **employers and medical care providers; and**

32 **(4) Reference this section and be left open for sixty days.**

33 **If the claimant is a minor or incompetent or deceased, the affidavit may be**
34 **signed by any person who reasonably appears to be qualified to act as next**
35 **friend or conservator or personal representative. If the claim is one for**
36 **wrongful death, the affidavit may be signed by any person qualified pursuant**
37 **to section 537.080, RSMo, to make claim for the death. The trial court, in its**
38 **discretion, shall determine whether prejudgment interest is awarded.** Nothing
39 contained herein shall limit the right of a claimant, in actions other than tort actions,
40 to recover prejudgment interest as otherwise provided by law or contract.

41 **3. Notwithstanding the provisions of subsection 1 of this section, in tort**
42 **actions, a judgment for prejudgment interest awarded pursuant to subsection**
43 **2 of this section should bear interest at a per annum interest rate equal to the**
44 **Federal Funds Rate, as established by the Federal Reserve Board, plus five**
45 **percent. A judgment awarded for post judgment interest should bear interest**
46 **at a per annum interest rate equal to the Federal Funds Rate, as established**
47 **by the Federal Reserve Board, plus seven percent. The judgment shall state**
48 **the applicable interest rate.**

508.010. [Suits instituted by summons shall, except as otherwise provided by
2 law, be brought] 1. **As used in this section "principal place of residence", shall**
3 **mean the county which is the main place where an individual resides in the**
4 **state of Missouri. There shall be a rebuttable presumption that the county of**
5 **voter registration is the principal place of residence. There shall be only one**
6 **principal place of residence.**

7 **2. In all actions in which there is no count alleging a tort, venue shall**
8 **be determined as follows:**

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

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

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

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

19 (5) Any action, local or transitory, in which any county shall be plaintiff, may be
20 commenced and prosecuted to final judgment in the county in which the defendant or

21 defendants reside, or in the county suing and where the defendants, or one of them, may
22 be found;

23 (6) In all tort actions the suit may be brought in the county where the cause of
24 action accrued regardless of the residence of the parties, and process therein shall be
25 issued by the court of such county and may be served in any county within the state;
26 provided, however, that in any action for defamation or for invasion of privacy the cause
27 of action shall be deemed to have accrued in the county in which the defamation or
28 invasion was first published].

29 **3. Tort actions shall include claims based upon improper health care.**

30 **4. Notwithstanding any other provision of law in all actions in which**
31 **there is any count alleging a tort, and in which the cause of action accrued**
32 **in the state of Missouri venue shall be in the county where the cause of action**
33 **accrued. As used in this section, "the county where the cause of action**
34 **accrued" shall mean the county where the plaintiff, or, in the case of a**
35 **wrongful death action, the decedent, was first injured by the wrongful acts**
36 **or negligent conduct alleged in the action.**

37 **5. Notwithstanding any other provision of law, in all actions in which**
38 **there is any count alleging a tort and in which the cause of action accrued**
39 **outside the state of Missouri venue shall be determined as follows:**

40 **(1) If the defendant is a corporation then venue may be in the county**
41 **where a corporate defendant's registered agent is located or in the county in**
42 **which the corporation had the largest number of employees in the two years**
43 **prior to the date the cause of action accrued;**

44 **(2) If the defendant is an individual then venue may be in the county**
45 **of the individual's principal place of residence in the state of Missouri.**

46 **6. Any action, local or transitory, in which any county shall be plaintiff,**
47 **may be commenced and prosecuted to final judgment in the county in which**
48 **the defendant or defendants reside, or in the county suing and where the**
49 **defendants, or one of them, may be found.**

50 **7. In all actions process therein shall be issued by the court of such**
51 **county and may be served in any county within the state.**

52 **8. In any action for defamation or for invasion of privacy the cause of**
53 **action shall be deemed to have accrued in the county in which the defamation**
54 **or invasion was first published.**

55 **9. In all actions venue shall be determined as of the date the cause of**
56 **action accrued.**

57 **10. All motions to dismiss or to transfer based upon a claim of improper**

58 **venue shall be deemed granted if not denied within ninety days of filing of**
59 **the motion unless such time period is waived in writing by all parties.**

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

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

10 3. If during the first stage of a bifurcated trial the jury determines that a
11 defendant is liable for punitive damages, that jury shall determine, in a second stage of
12 trial, the amount of punitive damages to be awarded against such defendant. Evidence
13 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
15 post-trial motion requesting the amount awarded by the jury as punitive damages be
16 credited by the court with amounts previously paid by the defendant for punitive
17 damages arising out of the same conduct on which the imposition of punitive damages
18 is based. At any hearing, the burden on all issues relating to such a credit shall be on
19 the defendant and either party may introduce relevant evidence on such motion. Such
20 a motion shall be determined by the trial court within the time and according to
21 procedures applicable to motions for new trial. If the trial court sustains such a motion
22 the trial court shall credit the jury award of punitive damages by the amount found by
23 the trial court to have been previously paid by the defendant arising out of the same
24 conduct and enter judgment accordingly. If the defendant fails to establish entitlement
25 to a credit under the provisions of this section, or the trial court finds from the evidence
26 that the defendant's conduct out of which the prior punitive damages award arose was
27 not the same conduct on which the imposition of punitive damages is based in the
28 pending action, or the trial court finds the defendant unreasonably continued the conduct
29 after acquiring actual knowledge of the dangerous nature of such conduct, the trial court
30 shall disallow such credit, or, if the trial court finds that the laws regarding punitive
31 damages in the state in which the prior award of punitive damages was entered
32 substantially and materially deviate from the law of the state of Missouri and that the
33 nature of such deviation provides good cause for disallowance of the credit based on the
34 public policy of Missouri, then the trial court may disallow all or any part of the credit

35 provided by this section.

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

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

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

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

 537.035. 1. As used in this section, unless the context clearly indicates
2 otherwise, the following words and terms shall have the meanings indicated:

3 (1) "Health care professional", a physician or surgeon licensed under the
4 provisions of chapter 334, RSMo, or a dentist licensed under the provisions of chapter
5 332, RSMo, or a podiatrist licensed under the provisions of chapter 330, RSMo, or an
6 optometrist licensed under the provisions of chapter 336, RSMo, or a pharmacist licensed
7 under the provisions of chapter 338, RSMo, or a chiropractor licensed under the
8 provisions of chapter 331, RSMo, or a psychologist licensed under the provisions of
9 chapter 337, RSMo, or a nurse licensed under the provisions of chapter 335, RSMo, or
10 a social worker licensed under the provisions of chapter 337, RSMo, or a professional
11 counselor licensed under the provisions of chapter 337, RSMo, or a mental health
12 professional as defined in section 632.005, RSMo, while acting within their scope of
13 practice;

14 (2) "Peer review committee", a committee of health care professionals with the
15 responsibility to evaluate, maintain, or monitor the quality and utilization of health care
16 services or to exercise any combination of such responsibilities.

17 2. A peer review committee may be constituted as follows:

18 (1) Comprised of, and appointed by, a state, county or local society of health care
19 professionals;

20 (2) Comprised of, and appointed by, the partners, shareholders, or employed
21 health care professionals of a partnership or professional corporation of health care
22 professionals;

23 (3) Appointed by the board of trustees, chief executive officer, or the organized

24 medical staff of a licensed hospital, or other health facility operating under constitutional
25 or statutory authority, **including long-term care facilities licensed under chapter**
26 **198, RSMo**, or an administrative entity of the department of mental health recognized
27 pursuant to the provisions of subdivision (3) of subsection 1 of section 630.407, RSMo;

28 (4) Any other organization formed pursuant to state or federal law authorized to
29 exercise the responsibilities of a peer review committee and acting within the scope of
30 such authorization;

31 (5) Appointed by the board of directors, chief executive officer or the medical
32 director of the licensed health maintenance organization.

33 3. Each member of a peer review committee and each person, hospital governing
34 board, health maintenance organization board of directors, and chief executive officer of
35 a licensed hospital or other hospital operating under constitutional or statutory
36 authority, chief executive officer or medical director of a licensed health maintenance
37 organization who testifies before, or provides information to, acts upon the
38 recommendation of, or otherwise participates in the operation of, such a committee shall
39 be immune from civil liability for such acts so long as the acts are performed in good
40 faith, without malice and are reasonably related to the scope of inquiry of the peer
41 review committee.

42 4. Except as otherwise provided in this section, the proceedings, findings,
43 deliberations, reports, and minutes of peer review committees concerning the health care
44 provided any patient are privileged and shall not be subject to discovery, subpoena, or
45 other means of legal compulsion for their release to any person or entity or be admissible
46 into evidence in any judicial or administrative action for failure to provide appropriate
47 care. Except as otherwise provided in this section, no person who was in attendance at
48 any peer review committee proceeding shall be permitted or required to disclose any
49 information acquired in connection with or in the course of such proceeding, or to
50 disclose any opinion, recommendation, or evaluation of the committee or board, or any
51 member thereof; provided, however, that information otherwise discoverable or
52 admissible from original sources is not to be construed as immune from discovery or use
53 in any proceeding merely because it was presented during proceedings before a peer
54 review committee nor is a member, employee, or agent of such committee, or other person
55 appearing before it, to be prevented from testifying as to matters within his personal
56 knowledge and in accordance with the other provisions of this section, but such witness
57 cannot be questioned about testimony or other proceedings before any health care review
58 committee or board or about opinions formed as a result of such committee hearings.

59 5. The provisions of subsection 4 of this section limiting discovery and

60 admissibility of testimony as well as the proceedings, findings, records, and minutes of
61 peer review committees do not apply in any judicial or administrative action brought by
62 a peer review committee or the legal entity which formed or within which such
63 committee operates to deny, restrict, or revoke the hospital staff privileges or license to
64 practice of a physician or other health care providers; or when a member, employee, or
65 agent of the peer review committee or the legal entity which formed such committee or
66 within which such committee operates is sued for actions taken by such committee which
67 operate to deny, restrict or revoke the hospital staff privileges or license to practice of
68 a physician or other health care provider.

69 6. Nothing in this section shall limit authority otherwise provided by law of a
70 health care licensing board of the state of Missouri to obtain information by subpoena
71 or other authorized process from peer review committees or to require disclosure of
72 otherwise confidential information relating to matters and investigations within the
73 jurisdiction of such health care licensing boards.

 537.067. [1.] In all tort actions for damages, [in which fault is not assessed to
2 the plaintiff the defendants] **except where there is a finding of liability for an**
3 **intentional tort, a defendant** shall be jointly and severally liable for the amount of
4 [the judgment] **the compensatory damages and noneconomic damages portion**
5 **of the judgment** rendered against [such] defendants **only if such defendant is**
6 **found to bear ten percent or more of fault. In an action for damages where**
7 **there is a finding of liability for an intentional tort, the defendants shall be**
8 **jointly and severally liable for the amount of the compensatory and**
9 **noneconomic damages portion of the judgment rendered against such**
10 **defendants. In all tort actions for damages, a defendant may not be jointly**
11 **and severally liable for more than the percentage of compensatory and**
12 **noneconomic damages for which fault is attributed to such defendant by the**
13 **trier of fact if the plaintiff is found to bear fifty-one percent or more of fault.**
14 **A defendant may not be jointly or severally liable for more than the**
15 **percentage of punitive damages for which fault is attributed to such**
16 **defendant by the trier of fact.**

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

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

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

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

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

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

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

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

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

42 3. This section shall not be construed to expand or restrict the doctrine of joint
43 and several liability except for reallocation as provided in subsection 2.]

2 538.205. As used in sections 538.205 to 538.230, the following terms shall mean:

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

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

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

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

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

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

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

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

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

36 (10) "Punitive damages", damages intended to punish or deter willful, wanton or
37 malicious misconduct;

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

538.210. 1. In any action against a health care provider for damages for personal
2 injury or death arising out of the rendering of or the failure to render health care
3 services, no plaintiff shall recover more than three hundred fifty thousand dollars [per
4 occurrence] for noneconomic damages [from any one defendant as defendant is defined
5 in subsection 2 of this section] **irrespective of the number of defendants.**

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

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

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

13 (3) Any other health care provider having the legal capacity to sue and be sued

14 and who is not included in subdivisions (1) and (2) of this subsection, including
15 employees of any health care providers who are insured under the health care provider's
16 professional liability insurance policy or self-insurance maintained for professional
17 liability purposes.] **Such limitation shall also apply to any other individual or**
18 **entity that is a defendant in a lawsuit brought against a health care provider**
19 **pursuant to this chapter, or that is a defendant in any lawsuit that arises out**
20 **of the rendering of or the failure to render health care services.**

21 **3. No hospital or other health care provider shall be liable to any**
22 **plaintiff based solely on the actions or omissions of any other entity or person**
23 **who is not an employee of that hospital or other health care provider.**

24 [3.] 4. In any action against a health care provider for damages for personal
25 injury or death arising out of the rendering of or the failure to render health care
26 services, where the trier of fact is a jury, such jury shall not be instructed by the court
27 with respect to the limitation on an award of noneconomic damages, nor shall counsel
28 for any party or any person providing testimony during such proceeding in any way
29 inform the jury or potential jurors of such limitation.

30 [4.] 5. **Beginning on August 28, 2004**, the limitation on awards for
31 noneconomic damages provided for in this section shall be increased or decreased on an
32 annual basis effective January first of each year in accordance with the Implicit Price
33 Deflator for Personal Consumption Expenditures as published by the Bureau of Economic
34 Analysis of the United States Department of Commerce. The current value of the
35 limitation shall be calculated by the director of the department of insurance, who shall
36 furnish that value to the secretary of state, who shall publish such value in the Missouri
37 Register as soon after each January first as practicable, but it shall otherwise be exempt
38 from the provisions of section 536.021, RSMo.

39 **6. For purposes of sections 538.205 to 538.230, any spouse claiming**
40 **damages for loss of consortium of their spouse shall be considered to be the**
41 **same plaintiff as their spouse.**

42 [5.] 7. Any provision of law or court rule to the contrary notwithstanding, an
43 award of punitive damages against a health care provider governed by the provisions of
44 sections 538.205 to 538.230 shall be made only upon a showing by a plaintiff that the
45 health care provider demonstrated willful, wanton or malicious misconduct with respect
46 to his actions which are found to have injured or caused or contributed to cause the
47 damages claimed in the petition.

48 **8. For purposes of sections 538.205 to 538.230, all individuals and**
49 **entities asserting a claim for a wrongful death pursuant to section 537.080,**

50 **RSMo, shall be considered to be one plaintiff.**

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

12 2. The affidavit shall state the qualifications of such health care providers to
13 offer such opinion.

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

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

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

21 6. As used in this section, the term "legally qualified health care
22 **provider"** means a health care provider licensed in this state or any other
23 state in substantially the same profession and certified in substantially the
24 **same specialty as the defendant.**

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

8 2. For the purposes of this section:

9 (1) "Benevolent gestures", actions which convey a sense of compassion
10 or commiseration emanating from humane impulses;

11 (2) "Family", the spouse, parent, grandparent, stepmother, stepfather,

12 **child, grandchild, brother, sister, half brother, half sister, adopted children**
13 **of a parent, or spouse's parents of an injured party.**

Section 1. If any provision of this act is found by a court of competent
2 **jurisdiction to be invalid or unconstitutional it is the stated intent of the**
3 **legislature that the legislature would have approved the remaining portions**
4 **of the act, and the remaining portions of the act shall remain in full force and**
5 **effect.**

Section 2. The provisions of this act shall only apply to causes of action
2 **filed after August 28, 2004.**

[355.176. 1. A corporation's registered agent is the corporation's
2 agent for service of process, notice, or demand required or permitted by
3 law to be served on the corporation.

4 2. If a corporation has no registered agent, or the agent cannot
5 with reasonable diligence be served, the corporation may be served by
6 registered or certified mail, return receipt requested, addressed to the
7 secretary of the corporation at its principal office shown in the most recent
8 annual report filed pursuant to section 355.856. Service is perfected under
9 this subsection on the earliest of:

10 (1) The date the corporation receives the mail;

11 (2) The date shown on the return receipt, if signed on behalf of the
12 corporation; or

13 (3) Five days after its deposit in the United States mail, if mailed
14 and correctly addressed with first class postage affixed.

15 3. This section does not prescribe the only means, or necessarily
16 the required means, of serving a corporation.]

[508.040. Suits against corporations shall be commenced either in
2 the county where the cause of action accrued, or in case the corporation
3 defendant is a railroad company owning, controlling or operating a
4 railroad running into or through two or more counties in this state, then
5 in either of such counties, or in any county where such corporations shall
6 have or usually keep an office
7 or agent for the transaction of their usual and customary business.]

[508.070. 1. Suit may be brought against any motor carrier which
2 is subject to regulation pursuant to chapter 390, RSMo, in any county
3 where the cause of action may arise, in any town or county where the
4 motor carrier operates, or judicial circuit where the cause of action

5 accrued, or where the defendant maintains an office or agent, and service
6 may be had upon the motor carrier whether an individual person, firm,
7 company, association, or corporation, by serving process upon the director,
8 division of motor carrier and railroad safety.

9 2. When a summons and petition are served upon the director,
10 division of motor carrier and railroad safety, naming any motor carrier,
11 either a resident or nonresident of this state, as a defendant in any action,
12 the director shall immediately mail the summons and petition by
13 registered United States mail to the motor carrier at the business address
14 of the motor carrier as it appears upon the records of the commission. The
15 director shall request from the postmaster a return receipt from the motor
16 carrier to whom the registered letter enclosing copy of summons and
17 petition is mailed. The director shall inform the clerk of the court out of
18 which the summons was issued that the summons and petition were
19 mailed to the motor carrier, as herein described, and the director shall
20 forward to the clerk the return receipt showing delivery of the registered
21 letter.

22 3. Each motor carrier not a resident of this state and not
23 maintaining an office or agent in this state shall, in writing, designate the
24 director as its authorized agent upon whom legal service may be had in all
25 actions arising in this state from any operation of the motor vehicle
26 pursuant to authority of any certificate or permit, and service shall be had
27 upon the nonresident motor carrier as herein provided.

28 4. There shall be kept in the office of the director, division of motor
29 carrier and railroad safety a permanent record showing all process served,
30 the name of the plaintiff and defendant, the court from which the
31 summons issued, the name and title of the officer serving the same, the
32 day and the hour of service, the day and date on which petition and
33 summons were forwarded to the defendant or defendants by registered
34 letter, the date on which return receipt is received by the director, and the
35 date on which the return receipt was forwarded to the clerk of the court
36 out of which the summons was issued.]

2 [508.120. No defendant shall be allowed a change of venue and no
3 application by a defendant to disqualify a judge shall be granted unless
4 the application therefor is made before the filing of his answer to the
merits, except when the cause for the change of venue or disqualification

5 arises, or information or knowledge of the existence thereof first comes to
6 him, after the filing of his answer in which case the application shall state
7 the time when the cause arose or when applicant acquired information and
8 knowledge thereof, and the application must be made within five days
9 thereafter.]

✓