

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 393

93RD GENERAL ASSEMBLY

1188L.14T

2005

AN ACT

To repeal sections 355.176, 408.040, 490.715, 508.010, 508.040, 508.070, 508.120, 510.263, 510.340, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225, 538.230, and 538.300, RSMo, and to enact in lieu thereof twenty-three 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, 490.715, 508.010, 508.040, 508.070, 508.120,
2 510.263, 510.340, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225,
3 538.230, and 538.300, RSMo, are repealed and twenty-three new sections enacted in lieu thereof,
4 to be known as sections 355.176, 408.040, 490.715, 508.010, 508.011, 510.263, 510.265,
5 512.099, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225, 538.228,
6 538.229, 538.232, 538.300, 1, 2, and 3, to read as follows:

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

**3 2. If a corporation has no registered agent, or the agent cannot with reasonable
4 diligence be served, the corporation may be served by registered or certified mail, return
5 receipt requested, addressed to the secretary of the corporation at its principal office**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

6 shown in the most recent annual report filed under section 355.856. Service is perfected
7 under this subsection on the earliest of:

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

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

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

12 3. This section does not prescribe the only means, or necessarily the required
13 means, of serving a corporation.

408.040. 1. In all nontort actions, interest shall be allowed on all money due upon any
2 judgment or order of any court from the [day of rendering the same] **date judgment is entered**
3 **by the trial court** until satisfaction be made by payment, accord or sale of property; all such
4 judgments and orders for money upon contracts bearing more than nine percent interest shall
5 bear the same interest borne by such contracts, and all other judgments and orders for money
6 shall bear nine percent per annum until satisfaction made as aforesaid.

7 2. Notwithstanding the provisions of subsection 1 of this section, in tort actions,
8 interest shall be allowed on all money due upon any judgment or order of any court from
9 the date of judgment is entered by the trial court until full satisfaction. All such judgments
10 and orders for money shall bear a per annum interest rate equal to the intended Federal
11 Funds Rate, as established by the Federal Reserve Board, plus five percent, until full
12 satisfaction is made. The judgment shall state the applicable interest rate, which shall not
13 vary once entered. In tort actions, if a claimant has made a demand for payment of a claim or
14 an offer of settlement of a claim, to the party, parties or their representatives, and to such
15 party's liability insurer if known to the claimant, and the amount of the judgment or order
16 exceeds the demand for payment or offer of settlement, then prejudgment interest, [at the rate
17 specified in subsection 1 of this section,] shall be awarded, calculated from a date [sixty] ninety
18 days after the demand or offer was [made] received, as shown by the certified mail return
19 receipt, or from the date the demand or offer was rejected without counter offer, whichever is
20 earlier. [Any such demand or offer shall be made in writing and sent by certified mail and shall
21 be left open for sixty days unless rejected earlier.] In order to qualify as a demand or offer
22 pursuant to this section, such demand must:

23 (1) Be in writing and sent by certified mail return receipt requested; and

24 (2) Be accompanied by an affidavit of the claimant describing the nature of the
25 claim, the nature of any injuries claimed and a general computation of any category of
26 damages sought by the claimant with supporting documentation, if any is reasonably
27 available; and

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

35 **(4) Reference this section and be left open for ninety days.**

36

37 **Unless the parties agree in writing to a longer period of time, if the claimant fails to file a**
38 **cause of action in circuit court prior to a date one hundred twenty days after the demand**
39 **or offer was received, then the court shall not award prejudgment interest to the claimant.**
40 **If the claimant is a minor or incompetent or deceased, the affidavit may be signed by any**
41 **person who reasonably appears to be qualified to act as next friend or conservator or**
42 **personal representative. If the claim is one for wrongful death, the affidavit may be signed**
43 **by any person qualified pursuant to section 537.080, RSMo, to make claim for the death.**
44 Nothing contained herein shall limit the right of a claimant, in actions other than tort actions, to
45 recover prejudgment interest as otherwise provided by law or contract.

46 **3. In tort actions, a judgment for prejudgment interest awarded pursuant to this**
47 **subsection should bear interest at a per annum interest rate equal to the intended Federal**
48 **Funds Rate, as established by the Federal Reserve Board, plus three percent. The**
49 **judgment shall state the applicable interest rate, which shall not vary once entered.**

490.715. 1. No evidence of collateral sources shall be admissible other than such
2 evidence provided for in this section.

3 2. If prior to trial a defendant or his **or her** insurer or authorized representative, or any
4 combination of them, pays all or any part of a plaintiff's special damages, the defendant may
5 introduce evidence that some other person other than the plaintiff has paid those amounts. The
6 evidence shall not identify any person having made such payments.

7 3. If a defendant introduces evidence described in subsection 2 of this section, such
8 introduction shall constitute a waiver of any right to a credit against a judgment pursuant to
9 section 490.710.

10 4. This section does not require the exclusion of evidence admissible for another proper
11 purpose.

12 **5. (1) Parties may introduce evidence of the value of the medical treatment**
13 **rendered to a party that was reasonable, necessary, and a proximate result of the**
14 **negligence of any party.**

15 **(2) In determining the value of the medical treatment rendered, there shall be a**
16 **rebuttable presumption that the dollar amount necessary to satisfy the financial obligation**
17 **to the health care provider represents the value of the medical treatment rendered. Upon**
18 **motion of any party, the court may determine, outside the hearing of the jury, the value of**
19 **the medical treatment rendered based upon additional evidence, including but not limited**
20 **to:**

21 **(a) The medical bills incurred by a party;**

22 **(b) The amount actually paid for medical treatment rendered to a party;**

23 **(c) The amount or estimate of the amount of medical bills not paid which such**
24 **party is obligated to pay to any entity in the event of a recovery.**

25

26 **Notwithstanding the foregoing, no evidence of collateral sources shall be made known to**
27 **the jury in presenting the evidence of the value of the medical treatment rendered.**

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

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

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

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

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

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

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

20 (6) In all tort actions the suit may be brought in the county where the cause of action
21 accrued regardless of the residence of the parties, and process therein shall be issued by the court
22 of such county and may be served in any county within the state; provided, however, that in any

23 action for defamation or for invasion of privacy the cause of action shall be deemed to have
24 accrued in the county in which the defamation or invasion was first published].

25 **3. The term "tort" shall include claims based upon improper health care, under the**
26 **provisions of chapter 538, RSMo.**

27 **4. Notwithstanding any other provision of law, in all actions in which there is any**
28 **count alleging a tort and in which the plaintiff was first injured in the state of Missouri,**
29 **venue shall be in the county where the plaintiff was first injured by the wrongful acts or**
30 **negligent conduct alleged in the action.**

31 **5. Notwithstanding any other provision of law, in all actions in which there is any**
32 **count alleging a tort and in which the plaintiff was first injured outside the state of**
33 **Missouri, venue shall be determined as follows:**

34 **(1) If the defendant is a corporation, then venue shall be in any county where a**
35 **defendant corporation's registered agent is located or, if the plaintiff's principal place of**
36 **residence was in the state of Missouri on the date the plaintiff was first injured, then venue**
37 **may be in the county of the plaintiff's principal place of residence on the date the plaintiff**
38 **was first injured;**

39 **(2) If the defendant is an individual, then venue shall be in any county of the**
40 **individual defendant's principal place of residence in the state of Missouri or, if the**
41 **plaintiff's principal place of residence was in the state of Missouri on the date the plaintiff**
42 **was first injured, then venue may be in the county containing the plaintiff's principal place**
43 **of residence on the date the plaintiff was first injured.**

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

47 **7. In all actions, process shall be issued by the court in which the action is filed and**
48 **process may be served in any county within the state.**

49 **8. In any action for defamation or for invasion of privacy, the plaintiff shall be**
50 **considered first injured in the county in which the defamation or invasion was first**
51 **published.**

52 **9. In all actions, venue shall be determined as of the date the plaintiff was first**
53 **injured.**

54 **10. All motions to dismiss or to transfer based upon a claim of improper venue shall**
55 **be deemed granted if not denied within ninety days of filing of the motion unless such time**
56 **period is waived in writing by all parties.**

57 **11. In a wrongful death action, the plaintiff shall be considered first injured where**
58 **the decedent was first injured by the wrongful acts or negligent conduct alleged in the**

59 **action. In any spouse's claim for loss of consortium, the plaintiff claiming consortium shall**
60 **be considered first injured where the other spouse was first injured by the wrongful acts**
61 **or negligent conduct alleged in the action.**

62 **12. The provisions of this section shall apply irrespective of whether the defendant**
63 **is a for-profit or a not-for-profit entity.**

64 **13. In any civil action, if all parties agree in writing to a change of venue, the court**
65 **shall transfer venue to the county within the state unanimously chosen by the parties. If**
66 **any parties are added to the cause of action after the date of said transfer who do not**
67 **consent to said transfer then the cause of action shall be transferred to such county in**
68 **which venue is appropriate under this section, based upon the amended pleadings.**

69 **14. A plaintiff is considered first injured where the trauma or exposure occurred**
70 **rather than where symptoms are first manifested.**

508.011. To the extent that rule 51.03 of the Missouri rules of civil procedure
2 **contradicts any provision of this chapter, the provisions of this chapter shall prevail**
3 **regarding any tort claim.**

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 that a defendant is
10 liable for punitive damages, that jury shall determine, in a second stage of trial, the amount of
11 punitive damages to be awarded against such defendant. Evidence of such defendant's net worth
12 shall be admissible during the second stage of such trial.

13 4. Within the time for filing a motion for new trial, a defendant may file a post-trial
14 motion requesting the amount awarded by the jury as punitive damages be credited by the court
15 with amounts previously paid by the defendant for punitive damages arising out of the same
16 conduct on which the imposition of punitive damages is based. At any hearing, the burden on
17 all issues relating to such a credit shall be on the defendant and either party may introduce
18 relevant evidence on such motion. Such a motion shall be determined by the trial court within
19 the time and according to procedures applicable to motions for new trial. If the trial court
20 sustains such a motion the trial court shall credit the jury award of punitive damages by the
21 amount found by the trial court to have been previously paid by the defendant arising out of the

22 same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to
23 a credit under the provisions of this section, or the trial court finds from the evidence that the
24 defendant's conduct out of which the prior punitive damages award arose was not the same
25 conduct on which the imposition of punitive damages is based in the pending action, or the trial
26 court finds the defendant unreasonably continued the conduct after acquiring actual knowledge
27 of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial
28 court finds that the laws regarding punitive damages in the state in which the prior award of
29 punitive damages was entered substantially and materially deviate from the law of the state of
30 Missouri and that the nature of such deviation provides good cause for disallowance of the credit
31 based on the public policy of Missouri, then the trial court may disallow all or any part of the
32 credit provided by this section.

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

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

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

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

510.265. 1. No award of punitive damages against any defendant shall exceed the
2 **greater of:**

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

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

6

7 **Such limitations shall not apply if the state of Missouri is the plaintiff requesting the award**
8 **of punitive damages, or the defendant pleads guilty to or is convicted of a felony arising out**
9 **of the acts or omissions pled by the plaintiff.**

10 **2. The provisions of this section shall not apply to civil actions brought under**
11 **section 213.111, RSMo, that allege a violation of section 213.040, 213.045, 213.050, or**
12 **213.070, RSMo, to the extent that the alleged violation of section 213.070, RSMo, relates**
13 **to or involves a violation of section 213.040, 213.045, or 213.050, RSMo, or subdivision (3)**
14 **of section 213.070, RSMo, as it relates to housing.**

2 **512.099. 1. In all cases in which there is a count alleging a tort, the amount of the**
3 **required undertaking or bond or equivalent surety to be furnished during the pendency**
4 **of an appeal or any discretionary appellate review of any judgment granting legal,**
5 **equitable, or any other form of relief in order to stay the execution thereon during the**
6 **entire course of appellate review shall be set in accordance with applicable laws or court**
7 **rules; except, that the total appeal bond or equivalent surety that is required of all**
8 **appellants collectively shall not exceed fifty million dollars, regardless of the value of the**
9 **judgment. Nothing in this section or any other provision of law shall be construed to**
10 **eliminate the discretion of the court, for good cause shown, to set the undertaking or bond**

11 **2. If the respondent proves by a preponderance of the evidence that a party**
12 **bringing an appeal or seeking a stay, for whom the undertaking has been limited, is**
13 **purposefully dissipating or diverting assets outside of the ordinary course of its business**
14 **for the purpose of avoiding ultimate payment of the judgment, the limitation granted**
15 **under subsection 1 of this section may be rescinded and the court may enter such orders**
16 **as are necessary to prevent dissipation or diversion of the assets. An appellant whose bond**
17 **has been reduced under subsection 1 of this section shall:**

18 **(1) Provide to the court and respondent the most recent statement of assets and**
19 **liabilities of the appellant that is filed with any federal, state, or foreign regulatory agency;**

20 **(2) Provide to the court and respondent on a quarterly basis any subsequent**
21 **updated statement of assets and liabilities that is filed with any federal, state, or foreign**
22 **regulatory agency; and**

23 **(3) Agree in writing or in court on the record that it will not dissipate or divert**
24 **assets outside the ordinary course of its business for the purpose of avoiding ultimate**
25 **payment of the judgment.**

26 **3. The provisions of this section shall apply to all judgments entered on or after**
27 **August 28, 2005.**

 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. **For purposes of this subdivision, the act of neglect based
19 on the negligent failure to inform the patient of the results of medical tests shall not include
20 the act of informing the patient of the results of negligently performed medical tests or the
21 act of informing the patient of erroneous test results;** and

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

24

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

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

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

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

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

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

19 (2) Comprised of, and appointed by, the partners, shareholders, or employed health care
20 professionals of a partnership or professional corporation of health care professionals, **or**
21 **employed health care professionals of a university or an entity affiliated with a university**
22 **operating under chapter 172, 174, 352, or 355, RSMo;**

23 (3) Appointed by the board of trustees, chief executive officer, or the organized medical
24 staff of a licensed hospital, or other health facility operating under constitutional or statutory
25 authority, **including long-term care facilities licensed under chapter 198, RSMo**, or an
26 administrative entity of the department of mental health recognized pursuant to the provisions
27 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 exercise
29 the responsibilities of a peer review committee and acting within the scope of such authorization;

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

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

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

55 health care review committee or board or about opinions formed as a result of such committee
56 hearings. **The disclosure of any interview, memoranda, proceedings, findings,**
57 **deliberations, reports, or minutes to any person or entity, including but not limited to**
58 **governmental agencies, professional accrediting agencies, or other health care providers,**
59 **whether proper or improper, shall not waive or have any effect upon its confidentiality,**
60 **nondiscoverability, or nonadmissibility.**

61 5. The provisions of subsection 4 of this section limiting discovery and admissibility of
62 testimony as well as the proceedings, findings, records, and minutes of peer review committees
63 do not apply in any judicial or administrative action brought by a peer review committee or the
64 legal entity which formed or within which such committee operates to deny, restrict, or revoke
65 the hospital staff privileges or license to practice of a physician or other health care providers;
66 or when a member, employee, or agent of the peer review committee or the legal entity which
67 formed such committee or within which such committee operates is sued for actions taken by
68 such committee which operate to deny, restrict or revoke the hospital staff privileges or license
69 to practice of a physician or other health care provider.

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

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.] **if a defendant is found to**
31 **bear fifty-one percent or more of fault, then such defendant shall be jointly and severally**
32 **liable for the amount of the judgment rendered against the defendants. If a defendant is**
33 **found to bear less than fifty-one percent of fault, then the defendant shall only be**
34 **responsible for the percentage of the judgment for which the defendant is determined to**
35 **be responsible by the trier of fact; except that, a party is responsible for the fault of**
36 **another defendant or for payment of the proportionate share of another defendant if any**
37 **of the following applies:**

38 (1) **The other defendant was acting as an employee of the party;**

39 (2) **The party's liability for the fault of another person arises out of a duty created**
40 **by the federal Employers' Liability Act, 45 U.S.C. Section 51.**

41 2. **The defendants shall only be severally liable for the percentage of punitive**
42 **damages for which fault is attributed to such defendant by the trier of fact.**

43 3. **In all tort actions, no party may disclose to the trier of fact the impact of this**
44 **section.**

537.090. In every action brought under section 537.080, the trier of the facts may give
2 to the party or parties entitled thereto such damages as the trier of the facts may deem fair and
3 just for the death and loss thus occasioned, having regard to the pecuniary losses suffered by
4 reason of the death, funeral expenses, and the reasonable value of the services, consortium,
5 companionship, comfort, instruction, guidance, counsel, training, and support of which those on
6 whose behalf suit may be brought have been deprived by reason of such death and without
7 limiting such damages to those which would be sustained prior to attaining the age of majority

8 by the deceased or by the person suffering any such loss. In addition, the trier of the facts may
9 award such damages as the deceased may have suffered between the time of injury and the time
10 of death and for the recovery of which the deceased might have maintained an action had death
11 not ensued. The mitigating or aggravating circumstances attending the death may be considered
12 by the trier of the facts, but damages for grief and bereavement by reason of the death shall not
13 be recoverable. **If the deceased was not employed full time and was at least fifty percent**
14 **responsible for the care of one or more minors or disabled persons, or persons over sixty-**
15 **five years of age, there shall be a rebuttable presumption that the value of the care**
16 **provided, regardless of the number of persons cared for, is equal to one hundred and ten**
17 **percent of the state average weekly wage, as computed under section 287.250, RSMo. If**
18 **the deceased is under the age of eighteen, there shall be a rebuttable presumption that the**
19 **annual pecuniary losses suffered by reason of the death shall be calculated based on the**
20 **annual income of the deceased's parents, provided that if the deceased has only one parent**
21 **earning income, then the calculation shall be based on such income, but if the deceased had**
22 **two parents earning income, then the calculation shall be based on the average of the two**
23 **incomes.**

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 **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 or the
9 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 maintained for
12 professional liability purposes;

13 (3) Any other health care provider having the legal capacity to sue and be sued and who
14 is not included in subdivisions (1) and (2) of this subsection, including employees of any health
15 care providers who are insured under the health care provider's professional liability insurance
16 policy or self-insurance maintained for professional liability purposes.] **(1) Such limitation**
17 **shall also apply to any individual or entity, or their employees or agents that provide, refer,**
18 **coordinate, consult upon, or arrange for the delivery of health care services to the plaintiff;**
19 **and**

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

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

27

28 **Such limitation shall apply to all claims for contribution.**

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

34 4. [The limitation on awards for noneconomic damages provided for in this section shall
35 be increased or decreased on an annual basis effective January first of each year in accordance
36 with the Implicit Price Deflator for Personal Consumption Expenditures as published by the
37 Bureau of Economic Analysis of the United States Department of Commerce. The current value
38 of the limitation shall be calculated by the director of the department of insurance, who shall
39 furnish that value to the secretary of state, who shall publish such value in the Missouri Register
40 as soon after each January first as practicable, but it shall otherwise be exempt from the
41 provisions of section 536.021, RSMo.] **For purposes of sections 538.205 to 538.230, any**
42 **spouse claiming damages for loss of consortium of their spouse shall be considered to be**
43 **the same plaintiff as their spouse.**

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

49 **6. For purposes of sections 538.205 to 538.230, all individuals and entities asserting**
50 **a claim for a wrongful death under section 537.080, RSMo, shall be considered to be one**
51 **plaintiff.**

538.220. 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, past damages
3 shall be payable in a lump sum.

4 2. At the request of any party to such action made prior to the entry of judgment, the
5 court shall include in the judgment a requirement that future damages be paid in whole or in part
6 in periodic or installment payments if the total award of damages in the action exceeds one
7 hundred thousand dollars. Any judgment ordering such periodic or installment payments shall
8 specify **a future medical periodic payment schedule, which shall include** the recipient, the
9 amount of each payment, the interval between payments, and the number of payments. **The**
10 **duration of the future medical payment schedule shall be for a period of time equal to the**
11 **life expectancy of the person to whom such services were rendered, as determined by the**
12 **court, based solely on the evidence of such life expectancy presented by the plaintiff at trial.**
13 **The amount of each of the future medical periodic payments shall be determined by**
14 **dividing the total amount of future medical damages by the number of future medical**
15 **periodic payments. The court shall apply interest on such future periodic payments at a**
16 **per annum interest rate no greater than the coupon issue yield equivalent, as determined**
17 **by the Federal Reserve Board, of the average accepted auction price for the last auction of**
18 **fifty-two week United States Treasury bills settled immediately prior to the date of the**
19 **judgment. The judgment shall state the applicable interest rate.** The parties shall be
20 afforded the opportunity to agree on the manner of payment of future damages, including the rate
21 of interest, if any, to be applied, subject to court approval. However, in the event the parties
22 cannot agree, the unresolved issues shall be submitted to the court for resolution, either with or
23 without a post-trial evidentiary hearing which may be called at the request of any party or the
24 court. If a defendant makes the request for payment pursuant to this section, such request shall
25 be binding only as to such defendant and shall not apply to or bind any other defendant.

26 3. As a condition to authorizing periodic payments of future damages, the court may
27 require a judgment debtor who is not adequately insured to post security or purchase an annuity
28 adequate to assure full payment of such damages awarded by the judgment. Upon termination
29 of periodic payments of future damages, the court shall order the return of this security or so
30 much as remains to the judgment debtor.

31 4. If a plaintiff and his attorney have agreed that attorney's fees shall be paid from the
32 award, as part of a contingent fee arrangement, it shall be presumed that the fee will be paid at
33 the time the judgment becomes final. If the attorney elects to receive part or all of such fees in
34 periodic or installment payments from future damages, the method of payment and all incidents
35 thereto shall be a matter between such attorney and the plaintiff and not subject to the terms of
36 the payment of future damages, whether agreed to by the parties or determined by the court.

37 5. Upon the death of a judgment creditor, the right to receive payments of future
38 damages, other than future medical damages, being paid by installments or periodic payments
39 will pass in accordance with the Missouri probate code unless otherwise transferred or alienated

40 prior to death. Payment of future medical damages will continue to the estate of the judgment
41 creditor only for as long as necessary to enable the estate to satisfy medical expenses of the
42 judgment creditor that were due and owing at the time of death, which resulted directly from the
43 injury for which damages were awarded, and do not exceed the dollar amount of the total
44 payments for such future medical damages outstanding at the time of death.

45 **6. Nothing in this section shall prevent the parties from contracting and agreeing**
46 **to settle and resolve the claim for future damages. If such an agreement is reached by the**
47 **parties, the future periodic payment schedule shall not apply.**

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. As used in this section, the term "legally qualified health care provider" shall**
10 **mean a health care provider licensed in this state or any other state in the same profession**
11 **as the defendant and either actively practicing or within five years of retirement from**
12 **actively practicing substantially the same specialty as the defendant.**

13 **3. The affidavit shall state the name, address, and qualifications of such health care**
14 **providers to offer such opinion.**

15 [3.] **4. A separate affidavit shall be filed for each defendant named in the petition.**

16 [4.] **5. Such affidavit shall be filed no later than ninety days after the filing of the petition**
17 **unless the court, for good cause shown, orders that such time be extended for a period of time**
18 **not to exceed an additional ninety days.**

19 [5.] **6. If the plaintiff or his attorney fails to file such affidavit the court [may] shall, upon**
20 **motion of any party, dismiss the action against such moving party without prejudice.**

21 **7. Within one hundred eighty days after the filing of the petition, any defendant**
22 **may file a motion to have the court examine in camera the aforesaid opinion and if the**
23 **court determines that the opinion fails to meet the requirements of this section, then the**
24 **court shall conduct a hearing within thirty days to determine whether there is probable**
25 **cause to believe that one or more qualified and competent health care providers will testify**
26 **that the plaintiff was injured due to medical negligence by a defendant. If the court finds**
27 **that there is no such probable cause, the court shall dismiss the petition and hold the**
28 **plaintiff responsible for the payment of the defendant's reasonable attorney fees and costs.**

538.228. Any physician licensed under chapter 334, RSMo, who provides medical treatment to a patient at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, a combined city-county health department, or a nonprofit community health center or other nonprofit entity that solely provides free health care services and is qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall not be liable for any civil damages for acts or omissions unless the damages were occasioned by gross negligence or by willful or wanton acts or omissions by such physician in rendering such treatment or unless the physician maintained, at the time of treatment, liability insurance for such treatment, provided that such treatment:

- (1) Shall not include the performance of an abortion; and
- (2) Is certified in advance of the treatment as being rendered free of charge to the patient, with no compensation from any party or third-party provider, or any attempt to obtain compensation from any third-party provider.

For purposes of this section, a physician covered under the state legal expense fund under section 105.711, RSMo, shall not be construed as maintaining liability insurance coverage under this section.

538.229. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action. However, nothing in this section shall prohibit admission of a statement of fault.

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

- (1) "Benevolent gestures", actions which convey a sense of compassion or commiseration emanating from humane impulses;
- (2) "Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of a parent, or spouse's parents of an injured party.

538.232. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, for purposes of determining venue under section 508.010, RSMo, the plaintiff shall be considered injured by the health care provider only in the county where the plaintiff first received treatment by a defendant for a medical condition at issue in the case.

538.300. The provisions of sections 260.552, RSMo, [490.715, RSMo, 509.050, RSMo, 510.263, RSMo, 537.067,] sections 537.068[,] and 537.117, [537.675,] and 537.760 to 537.765,

3 RSMo, and [subsection 2] **subsections 2 and 3** of section 408.040, RSMo, shall not apply to
4 actions under sections 538.205 to 538.230.

**Section 1. 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.**

**Section 2. The provisions of this act, except for section 512.099, RSMo, shall apply
2 to all causes of action filed after August 28, 2005.**

**Section 3. At any time prior to the commencement of a trial, if a plaintiff or
2 defendant, including a third-party plaintiff or defendant, is either added or removed from
3 a petition filed in any court in the state of Missouri which would have, if originally added
4 or removed to the initial petition, altered the determination of venue under section 508.010,
5 RSMo, then the judge shall upon application of any party transfer the case to a proper
6 forum under section 476.410, RSMo.**

[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 or
6 certified mail, return receipt requested, addressed to the secretary of the
7 corporation at its principal office shown in the most recent annual report filed
8 pursuant to section 355.856. Service is perfected under this subsection on the
9 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 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.

17 4. Suits against a nonprofit corporation shall be commenced only in one
18 of the following locations:

- 19 (1) the county in which the nonprofit corporation maintains its principal
20 place of business;
 - 21 (2) the county where the cause of action accrued;
 - 22 (3) the county in which the office of the registered agent for the nonprofit
23 corporation is maintained.]
- 24

[508.040. Suits against corporations shall be commenced either in the
2 county where the cause of action accrued, or in case the corporation defendant is
3 a railroad company owning, controlling or operating a railroad running into or

4 through two or more counties in this state, then in either of such counties, or in
5 any county where such corporations shall have or usually keep an office or agent
6 for the transaction of their usual and customary business.]
7

2 [508.070. 1. Suit may be brought against any motor carrier which is
3 subject to regulation pursuant to chapter 390, RSMo, in any county where the
4 cause of action may arise, in any town or county where the motor carrier operates,
5 or judicial circuit where the cause of action accrued, or where the defendant
6 maintains an office or agent, and service may be had upon the motor carrier
7 whether an individual person, firm, company, association, or corporation, by
8 serving process upon the director, division of motor carrier and railroad safety.

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

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

26 4. There shall be kept in the office of the director, division of motor
27 carrier and railroad safety a permanent record showing all process served, the
28 name of the plaintiff and defendant, the court from which the summons issued,
29 the name and title of the officer serving the same, the day and the hour of service,
30 the day and date on which petition and summons were forwarded to the defendant
31 or defendants by registered letter, the date on which return receipt is received by
32 the director, and the date on which the return receipt was forwarded to the clerk
33 of the court 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 the
4 application therefor is made before the filing of his answer to the merits, except
5 when the cause for the change of venue or disqualification arises, or information
6 or knowledge of the existence thereof first comes to him, after the filing of his
answer in which case the application shall state the time when the cause arose or

7 when applicant acquired information and knowledge thereof, and the application
8 must be made within five days thereafter.]
9

2 [510.340. A motion for a new trial shall be filed not later than ten days
3 after the entry of the judgment. The judgment shall be entered as of the day of
4 the verdict. If a timely motion is filed the judgment is not final until disposition
5 of the motion.]

2 [538.230. 1. In any action against a health care provider for damages for
3 personal injury or death on account of the rendering of or failure to render health
4 care services where fault is apportioned among the parties and persons released
5 pursuant to subsection 3 of this section, the court, unless otherwise agreed by all
6 the parties, shall instruct the jury to apportion fault among such persons and
7 parties, or the court, if there is no jury, shall make findings, indicating the
8 percentage of total fault of all the parties to each claim that is allocated to each
9 party and person who has been released from liability under subsection 3 of this
10 section.

11 2. The court shall determine the award of damages to each plaintiff in
12 accordance with the findings, subject to any reduction under subsection 3 of this
13 section and enter judgment against each party liable on the basis of the rules of
14 joint and several liability. However, notwithstanding the provisions of this
15 subsection, any defendant against whom an award of damages is made shall be
16 jointly liable only with those defendants whose apportioned percentage of fault
17 is equal to or less than such defendant.

18 3. Any release, covenant not to sue, or similar agreement entered into by
19 a claimant and a person or entity against which a claim is asserted arising out of
20 the alleged transaction which is the basis for plaintiff's cause of action, whether
21 actually made a party to the action or not, discharges that person or entity from
22 all liability for contribution or indemnity but it does not discharge other persons
23 or entities liable upon such claim unless it so provides. However, the claim of
24 the releasing person against other persons or entities is reduced by the amount of
25 the released persons' or entities' equitable share of the total obligation imposed
26 by the court pursuant to a full apportionment of fault under this section as though
27 there had been no release.]