

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 393
93RD GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 8, 2005, with recommendation that the Senate Committee Substitute do pass.

1188S.08C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 355.176, 408.040, 508.010, 508.040, 508.070, 508.120, 510.263, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, and 538.225, RSMo, and to enact in lieu thereof seventeen 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508.040, 508.070, 508.120, 510.263, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, and 538.225, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 355.176, 408.040, 508.010, 510.263, 512.099, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.225, 538.228, 538.229, 538.232, 1, and 2, to read as follows:

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

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

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the 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] **date judgment is entered by**
3 **the trial court** until satisfaction be made by payment, accord or sale of property; all
4 such judgments and orders for money upon contracts bearing more than nine percent
5 interest shall bear the same interest borne by such contracts, and all other judgments
6 and orders for money shall bear nine percent per annum until satisfaction made as
7 aforesaid.

8 **2. In tort actions, interest shall be allowed on all money due upon any**
9 **judgment or order of any court from the date judgment is entered by the trial**
10 **court until full satisfaction. All such judgments and orders for money shall**
11 **bear a per annum interest rate equal to the intended Federal Funds Rate, as**
12 **established by the Federal Reserve Board, plus five percent, until full**
13 **satisfaction is made. The judgment shall state the applicable interest rate,**
14 **which shall not vary once entered.**

15 **3. In tort actions, if a claimant has made a demand for payment of a claim or an**
16 **offer of settlement of a claim, to the party, parties or their representatives, and to such**
17 **party's liability insurer if known to the claimant, and the amount of the judgment**
18 **or order exceeds the demand for payment or offer of settlement, then** prejudgment
19 **interest, [at the rate specified in subsection 1 of this section,] shall be awarded,**
20 **calculated from a date [sixty] ninety days after the demand or offer was [made]**
21 **received, as shown by the certified mail return receipt, or from the date the**
22 **demand or offer was rejected without counter offer, whichever is earlier. [Any such**
23 **demand or offer shall be made in writing and sent by certified mail and shall be left open**
24 **for sixty days unless rejected earlier. Nothing contained herein shall limit the right of**
25 **a claimant, in actions other than tort actions, to recover prejudgment interest as**
26 **otherwise provided by law or contract.] In order to qualify as a demand or offer**
27 **pursuant to this section, such demand must:**

28 **(1) Be in writing and sent by certified mail, return receipt requested;**
29 **and**

30 **(2) Be accompanied by an affidavit of the claimant describing the**
31 **nature of the claim, the nature of any injuries claimed, and a general**
32 **computation of any category of damages sought by the claimant with**

33 **supporting documentation, if any is then available; and**

34 **(3) Be left open for sixty days.**

35 **Unless the parties agree in writing to a longer period of time, if the claimant**
36 **fails to file a cause of action in circuit court prior to a date one hundred**
37 **twenty days after the demand or offer was received, then the court shall not**
38 **award prejudgment interest to the claimant. If the claimant is a minor or**
39 **incompetent or deceased, the affidavit may be signed by any person who**
40 **reasonably appears to be qualified to act as next friend or conservator or**
41 **personal representative. If the claim is one for wrongful death, the affidavit**
42 **may be signed by any person qualified pursuant to section 537.080, RSMo, to**
43 **make claim for the death. A judgment for prejudgment interest awarded**
44 **should bear interest at a per annum interest rate equal to the intended**
45 **Federal Funds Rate, as established by the Federal Reserve Board, plus four**
46 **percent. The judgment shall state the applicable interest rate, which shall not**
47 **vary once entered.**

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 at the time of injury is the principal place of**
6 **residence. There shall be only one 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. The term "tort" shall include claims based upon improper health**
30 **care, under the provisions of chapter 538, RSMo.**

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

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

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

44 **(2) If the defendant is an individual, then venue shall be in any county**
45 **of the individual defendant's principal place of residence in the state of**
46 **Missouri or, if the plaintiff's principal place of residence was in the state of**
47 **Missouri on the date the plaintiff was first injured, then venue may be in any**
48 **county containing the plaintiff's principal place of residence on the date the**
49 **plaintiff was first injured.**

50 **6. Any action in which any county shall be plaintiff may be commenced**
51 **and prosecuted to final judgment in the county in which the defendant or**
52 **defendants reside, or in the county suing and where the defendants, or one**
53 **of them, may be found.**

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

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

59 **9. A plaintiff is considered first injured where the trauma or exposure**
60 **occurred rather than where symptoms are first manifested.**

61 **10. In all actions, venue shall be determined as of the date the plaintiff**
62 **was first injured.**

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

66 **12. In a wrongful death action, the plaintiff shall be considered first**
67 **injured where the decedent was first injured by the wrongful acts or**
68 **negligent conduct alleged in the action. In any spouse's claim for loss of**
69 **consortium, the plaintiff claiming consortium shall be considered first injured**
70 **where the other spouse was first injured by the wrongful acts or negligent**
71 **conduct alleged in the action.**

72 **13. The provisions of this section shall apply irrespective of whether**
73 **the defendant is a for-profit or a not-for-profit entity.**

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

 510.263. 1. All actions tried before a jury involving punitive damages shall be
2 conducted in a bifurcated trial before the same jury if requested by any party.

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

9 3. If during the first stage of a bifurcated trial the jury determines that a
10 defendant is liable for punitive damages, that jury shall determine, in a second stage of
11 trial, the amount of punitive damages to be awarded against such defendant. Evidence
12 of such defendant's net worth 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
14 post-trial motion requesting the amount awarded by the jury as punitive damages be
15 credited by the court with amounts previously paid by the defendant for punitive

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

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

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

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

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

512.099. 1. In all cases in which there is a count alleging a tort, the
2 **amount of the required undertaking or bond or equivalent surety to be**
3 **furnished during the pendency of an appeal or any discretionary appellate**
4 **review of any judgment granting legal, equitable, or any other form of relief**
5 **in order to stay the execution thereon during the entire course of appellate**
6 **review shall be set in accordance with applicable laws or court rules; except,**

7 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
9 value of the judgment. Nothing in this section or any other provision of law
10 shall be construed to eliminate the discretion of the court, for good cause
11 shown, to set the undertaking or bond on appeal in an amount lower than
12 that otherwise established by law.

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

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

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

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

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

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

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

13 (2) In cases in which the act of neglect complained of is the negligent failure to
14 inform the patient of the results of medical tests, the action for failure to inform shall
15 be brought within two years from the date of the discovery of such alleged negligent
16 failure to inform, or from the date on which the patient in the exercise of ordinary care
17 should have discovered such alleged negligent failure to inform, whichever date first
18 occurs; except that, no such action shall be brought for any negligent failure to inform
19 about the results of medical tests performed more than two years before August 28,
20 1999. **For the purposes of this subdivision, the act of neglect based on the**
21 **negligent failure to inform the patient of the results of medical tests shall not**
22 **include the act of informing the patient of the results of negligently**
23 **performed medical tests or the act of informing the patient of erroneous test**
24 **results; and**

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

28 In no event shall any action for damages for malpractice, error, or mistake be commenced
29 after the expiration of ten years from the date of the act of neglect complained of or for
30 **[ten] five** years from a minor's **[twentieth] eighteenth** birthday, whichever is later, **if**
31 **such act of neglect is reasonably discoverable.**

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, **or employed health care professionals of a university or an entity**
23 **affiliated with a university operating under chapter 172, 174, 352, or 355,**
24 **RSMo;**

25 (3) Appointed by the board of trustees, chief executive officer, or the organized
26 medical staff of a licensed hospital, or other health facility operating under constitutional
27 or statutory authority, **including long-term care facilities licensed under chapter**
28 **198, RSMo,** or an administrative entity of the department of mental health recognized
29 pursuant to the provisions of subdivision (3) of subsection 1 of section 630.407, RSMo;

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

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

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

44 4. Except as otherwise provided in this section, the **interviews, memoranda,**
45 **proceedings, findings, deliberations, reports, and minutes of peer review committees, or**
46 **the existence of the same, used in the course of internal quality control,**
47 concerning the health care provided any patient are privileged and shall not be subject
48 to discovery, subpoena, or other means of legal compulsion for their release to any person
49 or entity or be admissible into evidence in any judicial or administrative action for
50 failure to provide appropriate care. Except as otherwise provided in this section, no
51 person who was in attendance at any peer review committee proceeding shall be
52 permitted or required to disclose any information acquired in connection with or in the
53 course of such proceeding, or to disclose any opinion, recommendation, or evaluation of

54 the committee or board, or any member thereof; provided, however, that information
55 otherwise discoverable or admissible from original sources is not to be construed as
56 immune from discovery or use in any proceeding merely because it was presented during
57 proceedings before a peer review committee nor is a member, employee, or agent of such
58 committee, or other person appearing before it, to be prevented from testifying as to
59 matters within his personal knowledge and in accordance with the other provisions of
60 this section, but such witness cannot be questioned about testimony or other proceedings
61 before any health care review committee or board or about opinions formed as a result
62 of such committee hearings.

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

73 6. Nothing in this section shall limit authority otherwise provided by law of a
74 health care licensing board of the state of Missouri to obtain information by subpoena
75 or other authorized process from peer review committees or to require disclosure of
76 otherwise confidential information relating to matters and investigations within the
77 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] **a defendant** shall be jointly and severally liable for the
3 amount of the [judgment] **compensatory damages and noneconomic damages**
4 **portion of the judgment** rendered against [such] defendants **if such defendant is**
5 **found to bear fifteen percent or more of fault. A defendant may not be jointly**
6 **or severally liable for more than the percentage of punitive damages for**
7 **which fault is attributed to such defendant by the trier of fact.**

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

11 (1) In all such actions in which the trier of fact assesses a percentage of fault to
12 the plaintiff, any party, including the plaintiff, may within thirty days of the date the

13 verdict is rendered move for reallocation of any uncollectible amounts;

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

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

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

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

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

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

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

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

537.090. In every action brought under section 537.080, the trier of the facts may
2 give to the party or parties entitled thereto such damages as the trier of the facts may
3 deem fair and just for the death and loss thus occasioned, having regard to the pecuniary
4 losses suffered by reason of the death, funeral expenses, and the reasonable value of the
5 services, consortium, companionship, comfort, instruction, guidance, counsel, training,
6 and support of which those on whose behalf suit may be brought have been deprived by
7 reason of such death and without limiting such damages to those which would be
8 sustained prior to attaining the age of majority by the deceased or by the person
9 suffering any such loss. In addition, the trier of the facts may award such damages as
10 the deceased may have suffered between the time of injury and the time of death and for
11 the recovery of which the deceased might have maintained an action had death not
12 ensued. The mitigating or aggravating circumstances attending the death may be
13 considered by the trier of the facts, but damages for grief and bereavement by reason of
14 the death shall not be recoverable. **If the deceased was not employed full time and**

15 was at least fifty percent responsible for the care of one or more minors,
16 disabled persons, or persons over sixty-five years of age, there shall be a
17 rebuttable presumption that the value of the care provided, regardless of the
18 number of persons cared for, is equal to one hundred and ten percent of the
19 state average weekly wage, as computed under section 287.250, RSMo. If the
20 deceased is under the age of eighteen, there shall be a rebuttable presumption
21 that pecuniary losses suffered by reason of the death shall be calculated
22 based on the annual income of the deceased's parents, provided that if the
23 deceased had only one parent earning income, then the calculation shall be
24 based on that income, but if the deceased had two parents earning income,
25 then the calculation shall be based on the average of the two incomes.

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, **including exemplary damages and damages for**
38 **aggravating circumstances;**

39 (11) "Self-insurance", a formal or informal plan of self-insurance or no insurance
40 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. Nothing**
6 **in this section shall limit the amount of noneconomic damages that may be**
7 **recovered from any defendant that is not a health care provider. This section**
8 **shall not apply upon a showing by a plaintiff that the defendant demonstrated**
9 **willful, wanton, or malicious conduct with respect to the defendant's actions.**

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

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

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

17 (3) Any other health care provider having the legal capacity to sue and be sued
18 and who is not included in subdivisions (1) and (2) of this subsection, including
19 employees of any health care providers who are insured under the health care provider's
20 professional liability insurance policy or self-insurance maintained for professional
21 liability purposes.

22 **3.] The limitation on awards for noneconomic damages provided for in**

23 **this section shall be increased or decreased on an annual basis effective**
24 **January 1 of each year in accordance with the Implicit Price Deflator for**
25 **Personal Consumption Expenditures as published by the Bureau of Economic**
26 **Analysis of the United States Department of Commerce. The current value of**
27 **the limitation shall be calculated by the director of the department of**
28 **insurance, who shall furnish that value to the secretary of state, who shall**
29 **publish such value in the Missouri Register as soon after each January 1 as**
30 **practicable, but it shall otherwise be exempt from the provisions of section**
31 **536.021, RSMo.**

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

38 **[4.** The limitation on awards for noneconomic damages provided for in this
39 section shall be increased or decreased on an annual basis effective January first of each
40 year in accordance with the Implicit Price Deflator for Personal Consumption
41 Expenditures as published by the Bureau of Economic Analysis of the United States
42 Department of Commerce. The current value of the limitation shall be calculated by the
43 director of the department of insurance, who shall furnish that value to the secretary of
44 state, who shall publish such value in the Missouri Register as soon after each January
45 first as practicable, but it shall otherwise be exempt from the provisions of section
46 536.021, RSMo.]

47 **4. For purposes of sections 538.205 to 538.230, any spouse claiming**
48 **damages for loss of consortium of their spouse shall be considered to be the**
49 **same plaintiff as their spouse.**

50 **5.** Any provision of law or court rule to the contrary notwithstanding, an award
51 of punitive damages against a health care provider governed by the provisions of sections
52 538.205 to 538.230 shall be made only upon a showing by a plaintiff that the health care
53 provider demonstrated willful, wanton or malicious misconduct with respect to his
54 actions which are found to have injured or caused or contributed to cause the damages
55 claimed in the petition.

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.

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

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

16 **[3.] 4.** A separate affidavit shall be filed for each defendant named in the
17 petition.

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

21 **[5.] 6.** If the plaintiff or his attorney fails to file such affidavit the court [may]
22 **shall**, upon motion of any party, dismiss the action against such moving party without
23 prejudice.

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

12 **(1) Shall not include the performance of an abortion; and**

13 **(2) Is provided by the physician without compensation from any party**
14 **or third-party provider, or any attempt to obtain compensation from any**
15 **third-party provider.**

538.229. 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. However, nothing in this section shall bar admission of a**
6 **statement of fault.**

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

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

10 **(2) "Family", the spouse, parent, grandparent, stepmother, stepfather,**
11 **child, grandchild, brother, sister, half brother, half sister, adopted children**
12 **of a parent, or spouse's parents of an injured party.**

538.232. In any action against a health care provider for damages for
2 **personal injury or death arising out of the rendering of or the failure to**
3 **render health care services, for purposes of determining venue under section**
4 **508.010, RSMo, the plaintiff shall be considered injured by the health care**
5 **provider in the county where the plaintiff first received treatment by a**
6 **defendant for the medical condition at issue in the case.**

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

[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.

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

19 (1) the county in which the nonprofit corporation maintains its
20 principal 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
23 nonprofit corporation is maintained.]

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

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