

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 393

AN ACT

To repeal sections 355.176, 408.040, 490.715, 508.010, 508.040, 508.070, 508.120, 510.263, 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-one 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:

1 Section A. Sections 355.176, 408.040, 490.715, 508.010,
2 508.040, 508.070, 508.120, 510.263, 516.105, 537.035, 537.067,
3 537.090, 538.205, 538.210, 538.220, 538.225, 538.230, and
4 538.300, RSMo, are repealed and twenty-one new sections enacted
5 in lieu thereof, to be known as sections 355.176, 408.040,
6 490.715, 508.010, 510.263, 512.099, 516.105, 537.035, 537.067,
7 537.090, 538.205, 538.210, 538.220, 538.225, 538.228, 538.229,
8 538.232, 538.300, 1, 2, and 3, to read as follows:

9 355.176. 1. A corporation's registered agent is the
10 corporation's agent for service of process, notice, or demand
11 required or permitted by law to be served on the corporation.

12 2. If a corporation has no registered agent, or the agent

1 cannot with reasonable diligence be served, the corporation may
2 be served by registered or certified mail, return receipt
3 requested, addressed to the secretary of the corporation at its
4 principal office shown in the most recent annual report filed
5 under section 355.856. Service is perfected under this
6 subsection on the earliest of:

7 _____ (1) The date the corporation receives the mail;

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

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

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

15 408.040. 1. Interest shall be allowed on all money due
16 upon any judgment or order of any court from the [day of
17 rendering the same] date judgment is entered by the trial court
18 until satisfaction be made by payment, accord or sale of
19 property; all such judgments and orders for money upon contracts
20 bearing more than nine percent interest shall bear the same
21 interest borne by such contracts, and all other judgments and
22 orders for money shall bear nine percent per annum until
23 satisfaction made as aforesaid.

24 2. In tort actions, interest shall be allowed on all money
25 due upon any judgment or order of any court from the date
26 judgment is entered by the trial court until full satisfaction.
27 All such judgments and orders for money shall bear a per annum
28 interest rate equal to the intended Federal Funds Rate, as

established by the Federal Reserve Board, plus five percent,
until full satisfaction is made. The judgment shall state the
applicable interest rate, which shall not vary once entered.

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

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

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

(3) Be left open for sixty days.

Unless the parties agree in writing to a longer period of time,
if the claimant fails to file a cause of action in circuit court

1 prior to a date one hundred twenty days after the demand or offer
2 was received, then the court shall not award prejudgment interest
3 to the claimant. If the claimant is a minor or incompetent or
4 deceased, the affidavit may be signed by any person who
5 reasonably appears to be qualified to act as next friend or
6 conservator or personal representative. If the claim is one for
7 wrongful death, the affidavit may be signed by any person
8 qualified pursuant to section 537.080, RSMo, to make claim for
9 the death. Nothing contained herein shall limit the right of a
10 claimant, in actions other than tort actions, to recover
11 prejudgment interest as otherwise provided by law or contract. A
12 judgment for prejudgment interest awarded should bear interest at
13 a per annum interest rate equal to the intended Federal Funds
14 Rate, as established by the Federal Reserve Board, plus four
15 percent. The judgment shall state the applicable interest rate,
16 which shall not vary once entered.

17 490.715. 1. No evidence of collateral sources shall be
18 admissible other than such evidence provided for in this section.
19

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

26 3. If a defendant introduces evidence described in
27 subsection 2 of this section, such introduction shall constitute
28 a waiver of any right to a credit against a judgment pursuant to

1 section 490.710.

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

4 5. (1) Parties may introduce evidence of the value of the
5 medical treatment rendered to a party that was reasonable,
6 necessary, and a proximate result of the negligence of any party.

7 (2) In determining the value of the medical treatment
8 rendered, there shall be a rebuttable presumption that the dollar
9 amount necessary to satisfy the financial obligation to the
10 health care provider represents the value of the medical
11 treatment rendered. Upon motion of any party, the court may
12 determine, outside the hearing of the jury, the value of the
13 medical treatment rendered based upon additional evidence,
14 including but not limited to:

15 (a) The medical bills incurred by a party;

16 (b) The amount actually paid for medical treatment rendered
17 to a party;

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

21
22 Notwithstanding the foregoing, no evidence of collateral sources
23 shall be made known to the jury in presenting the evidence of the
24 value of the medical treatment rendered.

25 508.010. [Suits instituted by summons shall, except as
26 otherwise provided by law, be brought:] 1. As used in this
27 section, "principal place of residence" shall mean the county
28 which is the main place where an individual resides in the state

1 of Missouri. There shall be a rebuttable presumption that the
2 county of voter registration at the time of injury is the
3 principal place of residence. There shall be only one principal
4 place of residence.

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

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

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

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

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

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

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

1 have accrued in the county in which the defamation or invasion
2 was first published].

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

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

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

14 (1) If the defendant is a corporation, then venue shall be
15 in any county where a defendant corporation's registered agent is
16 located or, if the plaintiff's principal place of residence was
17 in the state of Missouri on the date the plaintiff was first
18 injured, then venue may be in the county of the plaintiff's
19 principal place of residence on the date the plaintiff was first
20 injured;

21 (2) If the defendant is an individual, then venue shall be
22 in any county of the individual defendant's principal place of
23 residence in the state of Missouri or, if the plaintiff's
24 principal place of residence was in the state of Missouri on the
25 date the plaintiff was first injured, then venue may be in any
26 county containing the plaintiff's principal place of residence on
27 the date the plaintiff was first injured.

28 6. Any action in which any county shall be plaintiff may be

1 commenced and prosecuted to final judgment in the county in which
2 the defendant or defendants reside, or in the county suing and
3 where the defendants, or one of them, may be found.

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

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

10 9. A plaintiff is considered first injured where the trauma
11 or exposure occurred rather than where symptoms are first
12 manifested.

13 10. In all actions in which there is any count alleging a
14 tort, venue shall be determined as of the date the plaintiff was
15 first injured.

16 11. All motions based upon a claim of improper venue shall
17 be deemed granted if not denied within ninety days of filing of
18 the motion unless such time period is waived in writing by all
19 parties.

20 12. In a wrongful death action, the plaintiff shall be
21 considered first injured where the decedent was first injured by
22 the wrongful acts or negligent conduct alleged in the action. In
23 any spouse's claim for loss of consortium, the plaintiff claiming
24 consortium shall be considered first injured where the other
25 spouse was first injured by the wrongful acts or negligent
26 conduct alleged in the action.

27 13. The provisions of this section shall apply irrespective
28 of whether the defendant is a for-profit or a not-for-profit

1 entity.

2 14. In any civil action, if all parties agree in writing to
3 a change of venue, the court shall transfer venue to the county
4 within the state unanimously chosen by the parties. If any
5 parties are added to the cause of action after the date of said
6 transfer who do not consent to said transfer then the cause of
7 action shall be transferred to such county in which venue is
8 appropriate under this section, based upon the amended pleadings.

9 510.263. 1. All actions, including tort actions based upon
10 improper health care, tried before a jury involving punitive
11 damages shall be conducted in a bifurcated trial before the same
12 jury if requested by any party.

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

21 3. If during the first stage of a bifurcated trial the jury
22 determines that a defendant is liable for punitive damages, that
23 jury shall determine, in a second stage of trial, the amount of
24 punitive damages to be awarded against such defendant. Evidence
25 of such defendant's net worth shall be admissible during the
26 second stage of such trial.

27 4. Within the time for filing a motion for new trial, a
28 defendant may file a post-trial motion requesting the amount

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

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

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

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

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

16 512.099. 1. In all cases in which there is a count
17 alleging a tort, the amount of the required undertaking or bond
18 or equivalent surety to be furnished during the pendency of an
19 appeal or any discretionary appellate review of any judgment
20 granting legal, equitable, or any other form of relief in order
21 to stay the execution thereon during the entire course of
22 appellate review shall be set in accordance with applicable laws
23 or court rules; except, that the total appeal bond or equivalent
24 surety that is required of all appellants collectively shall not
25 exceed fifty million dollars, regardless of the value of the
26 judgment. Nothing in this section or any other provision of law
27 shall be construed to eliminate the discretion of the court, for
28 good cause shown, to set the undertaking or bond on appeal in an

1 amount lower than that otherwise established by law.

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

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

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

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

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

25 516.105. All actions against physicians, hospitals,
26 dentists, registered or licensed practical nurses, optometrists,
27 podiatrists, pharmacists, chiropractors, professional physical
28 therapists, and any other entity providing health care services

1 and all employees of any of the foregoing acting in the course
2 and scope of their employment, for damages for malpractice,
3 negligence, error or mistake related to health care shall be
4 brought within two years from the date of occurrence of the act
5 of neglect complained of, except that:

6 (1) In cases in which the act of neglect complained of is
7 introducing and negligently permitting any foreign object to
8 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
10 alleged negligence, or from the date on which the patient in the
11 exercise of ordinary care should have discovered such alleged
12 negligence, whichever date first occurs; and

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

28 (3) In cases in which the person bringing the action is a

1 minor less than eighteen years of age, such minor shall have
2 until his or her twentieth birthday to bring such action.

3
4 In no event shall any action for damages for malpractice, error,
5 or mistake be commenced after the expiration of ten years from
6 the date of the act of neglect complained of or for ~~[ten]~~ five
7 years from a minor's ~~[twentieth]~~ eighteenth birthday, whichever
8 is later.

9 537.035. 1. As used in this section, unless the context
10 clearly indicates otherwise, the following words and terms shall
11 have the meanings indicated:

12 (1) "Health care professional", a physician or surgeon
13 licensed under the provisions of chapter 334, RSMo, or a dentist
14 licensed under the provisions of chapter 332, RSMo, or a
15 podiatrist licensed under the provisions of chapter 330, RSMo, or
16 an optometrist licensed under the provisions of chapter 336,
17 RSMo, or a pharmacist licensed under the provisions of chapter
18 338, RSMo, or a chiropractor licensed under the provisions of
19 chapter 331, RSMo, or a psychologist licensed under the
20 provisions of chapter 337, RSMo, or a nurse licensed under the
21 provisions of chapter 335, RSMo, or a social worker licensed
22 under the provisions of chapter 337, RSMo, or a professional
23 counselor licensed under the provisions of chapter 337, RSMo, or
24 a mental health professional as defined in section 632.005, RSMo,
25 while acting within their scope of practice;

26 (2) "Peer review committee", a committee of health care
27 professionals with the responsibility to evaluate, maintain, or
28 monitor the quality and utilization of health care services or to

1 exercise any combination of such responsibilities.

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

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

5 (2) Comprised of, and appointed by, the partners,
6 shareholders, or employed health care professionals of a
7 partnership or professional corporation of health care
8 professionals, or employed health care professionals of a
9 university or an entity affiliated with a university operating
10 under chapter 172, 174, 352, or 355, RSMo;

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

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

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

25 3. Each member of a peer review committee and each person,
26 hospital governing board, health maintenance organization board
27 of directors, and chief executive officer of a licensed hospital
28 or other hospital operating under constitutional or statutory

1 authority, chief executive officer or medical director of a
2 licensed health maintenance organization who testifies before, or
3 provides information to, acts upon the recommendation of, or
4 otherwise participates in the operation of, such a committee
5 shall be immune from civil liability for such acts so long as the
6 acts are performed in good faith, without malice and are
7 reasonably related to the scope of inquiry of the peer review
8 committee.

9 4. Except as otherwise provided in this section, the
10 interviews, memoranda, proceedings, findings, deliberations,
11 reports, and minutes of peer review committees concerning the
12 health care provided any patient are privileged and shall not be
13 subject to discovery, subpoena, or other means of legal
14 compulsion for their release to any person or entity or be
15 admissible into evidence in any judicial or administrative action
16 [for failure to provide appropriate care]. Except as otherwise
17 provided in this section, no person who was in attendance at any
18 peer review committee proceeding shall be permitted or required
19 to disclose any information acquired in connection with or in the
20 course of such proceeding, or to disclose any opinion,
21 recommendation, or evaluation of the committee or board, or any
22 member thereof; provided, however, that information otherwise
23 discoverable or admissible from original sources is not to be
24 construed as immune from discovery or use in any proceeding
25 merely because it was presented during proceedings before a peer
26 review committee nor is a member, employee, or agent of such
27 committee, or other person appearing before it, to be prevented
28 from testifying as to matters within his personal knowledge and

1 in accordance with the other provisions of this section, but such
2 witness cannot be questioned about testimony or other proceedings
3 before any health care review committee or board or about
4 opinions formed as a result of such committee hearings. The
5 disclosure of any interview, memoranda, proceedings, findings,
6 deliberations, reports, or minutes to any person or entity,
7 including, but not limited to, governmental agencies,
8 professional accrediting agencies, or other health care
9 providers, whether proper or improper, shall not waive or have
10 any effect upon its confidentiality, nondiscoverability, or
11 nonadmissibility. The sharing of peer review information between
12 separate and distinct hospital governing boards, health
13 maintenance organizations' board of directors and chief executive
14 officers of licensed hospitals or other health facilities
15 operating under constitutional or statutory authority, or chief
16 executive officers or medical directors of licensed health
17 maintenance organizations for the purpose of improving overall
18 patient care at any hospital or health facility are privileged
19 and shall not be subject to discovery, subpoena, or other means
20 of legal compulsion for their release to any person or entity or
21 be admissible into evidence in any judicial or administrative
22 action.

23 5. The provisions of subsection 4 of this section limiting
24 discovery and admissibility of testimony as well as the
25 proceedings, findings, records, and minutes of peer review
26 committees do not apply in any judicial or administrative action
27 brought by a peer review committee or the legal entity which
28 formed or within which such committee operates to deny, restrict,

1 or revoke the hospital staff privileges or license to practice of
2 a physician or other health care providers; or when a member,
3 employee, or agent of the peer review committee or the legal
4 entity which formed such committee or within which such committee
5 operates is sued for actions taken by such committee which
6 operate to deny, restrict or revoke the hospital staff privileges
7 or license to practice of a physician or other health care
8 provider.

9 6. Nothing in this section shall limit authority otherwise
10 provided by law of a health care licensing board of the state of
11 Missouri to obtain information by subpoena or other authorized
12 process from peer review committees or to require disclosure of
13 otherwise confidential information relating to matters and
14 investigations within the jurisdiction of such health care
15 licensing boards.

16 537.067. 1. In all tort actions for damages, [in which
17 fault is not assessed to the plaintiff, the defendants shall be
18 jointly and severally liable for the amount of the judgment
19 rendered against such defendants.

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

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

28 (2) If such a motion is filed the court shall determine

1 whether all or part of a party's equitable share of the
2 obligation is uncollectible from that party, and shall reallocate
3 any uncollectible amount among the other parties, including a
4 claimant at fault, according to their respective percentages of
5 fault;

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

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

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

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

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

23
24 Any appeal on an order or denial of reallocation shall be taken
25 within the time provided under applicable rules of civil
26 procedure and shall be consolidated with any other appeal on
27 other issues in the case.

28 3. This section shall not be construed to expand or

1 restrict the doctrine of joint and several liability except for
2 reallocation as provided in subsection 2.] a defendant shall only
3 be responsible for the percentage of the judgment for which the
4 defendant is determined to be responsible by the trier of fact.

5 537.090. In every action brought under section 537.080, the
6 trier of the facts may give to the party or parties entitled
7 thereto such damages as the trier of the facts may deem fair and
8 just for the death and loss thus occasioned, having regard to the
9 pecuniary losses suffered by reason of the death, funeral
10 expenses, and the reasonable value of the services, consortium,
11 companionship, comfort, instruction, guidance, counsel, training,
12 and support of which those on whose behalf suit may be brought
13 have been deprived by reason of such death and without limiting
14 such damages to those which would be sustained prior to attaining
15 the age of majority by the deceased or by the person suffering
16 any such loss. In addition, the trier of the facts may award
17 such damages as the deceased may have suffered between the time
18 of injury and the time of death and for the recovery of which the
19 deceased might have maintained an action had death not ensued.
20 The mitigating or aggravating circumstances attending the death
21 may be considered by the trier of the facts, but damages for
22 grief and bereavement by reason of the death shall not be
23 recoverable. If the deceased was not employed full time and was
24 at least fifty percent responsible for the care of one or more
25 minors, disabled persons, or persons over sixty-five years of
26 age, there shall be a rebuttable presumption that the weekly
27 value of the care provided, regardless of the number of persons
28 cared for, shall be calculated based on one hundred and ten

1 percent of the state average weekly wage, as computed under
2 section 287.250, RSMo. If the deceased is under the age of
3 eighteen, there shall be a rebuttable presumption that the annual
4 pecuniary losses suffered by reason of the death shall be
5 calculated based on the annual income of the deceased's parents,
6 provided that if the deceased had only one parent earning income,
7 then the calculation shall be based on that income, but if the
8 deceased had two parents earning income, then the calculation
9 shall be based on the average of the two incomes.

10 538.205. As used in sections 538.205 to 538.230, the
11 following terms shall mean:

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

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

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

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

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

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

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

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

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

26 (10) "Punitive damages", damages intended to punish or
27 deter willful, wanton or malicious misconduct, including
28 exemplary damages and damages for aggravating circumstances;

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

3 538.210. 1. In any action against a health care provider
4 for damages for personal injury or death arising out of the
5 rendering of or the failure to render health care services, no
6 plaintiff shall recover more than ~~[three]~~ two hundred fifty
7 thousand dollars ~~[per occurrence]~~ for noneconomic damages ~~[from~~
8 any one defendant as defendant is defined in subsection 2 of this
9 section] irrespective of the number of defendants. Nothing in
10 this section shall limit the amount of noneconomic damages that
11 may be recovered from any defendant that is not a health care
12 provider. This section shall not apply upon a showing by a
13 plaintiff that the defendant demonstrated willful, wanton, or
14 malicious conduct with respect to the defendant's actions.

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

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

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

26 (3) Any other health care provider having the legal
27 capacity to sue and be sued and who is not included in
28 subdivisions (1) and (2) of this subsection, including employees

1 of any health care providers who are insured under the health
2 care provider's professional liability insurance policy or
3 self-insurance maintained for professional liability purposes.

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

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

24 3. For purposes of sections 538.205 to 538.230, any spouse
25 claiming damages for loss of consortium of their spouse shall be
26 considered to be the same plaintiff as their spouse.

27 [5.] 4. Any provision of law or court rule to the contrary
28 notwithstanding, an award of punitive damages against a health

1 care provider governed by the provisions of sections 538.205 to
2 538.230 shall be made only upon a showing by a plaintiff that the
3 health care provider demonstrated willful, wanton or malicious
4 misconduct with respect to his actions which are found to have
5 injured or caused or contributed to cause the damages claimed in
6 the petition.

7 538.220. 1. In any action against a health care provider
8 for damages for personal injury or death arising out of the
9 rendering of or the failure to render health care services, past
10 damages shall be payable in a lump sum.

11 2. At the request of any party to such action made prior to
12 the entry of judgment, the court shall include in the judgment a
13 requirement that future damages be paid in whole or in part in
14 periodic or installment payments if the total award of damages in
15 the action exceeds one hundred thousand dollars. Any judgment
16 ordering such periodic or installment payments shall specify a
17 future medical periodic payment schedule, which shall include the
18 recipient, the amount of each payment, the interval between
19 payments, and the number of payments. The duration of the future
20 medical payment schedule shall be for a period of time equal to
21 the life expectancy of the person to whom such services were
22 rendered, as determined by the court, based solely on the
23 evidence of such life expectancy presented by the plaintiff at
24 trial. The amount of each of the future medical periodic
25 payments shall be determined by dividing the total amount of
26 future medical damages by the number of future medical periodic
27 payments. The court shall apply interest on such future periodic
28 payments at a per annum interest rate no greater than the coupon

1 issue yield equivalent, as determined by the Federal Reserve
2 Board, of the average accepted auction price for the last auction
3 of fifty-two week United States Treasury bills settled
4 immediately prior to the date of the judgment. The judgment
5 shall state the applicable interest rate. The parties shall be
6 afforded the opportunity to agree on the manner of payment of
7 future damages, including the rate of interest, if any, to be
8 applied, subject to court approval. However, in the event the
9 parties cannot agree, the unresolved issues shall be submitted to
10 the court for resolution, either with or without a post-trial
11 evidentiary hearing which may be called at the request of any
12 party or the court. If a defendant makes the request for payment
13 pursuant to this section, such request shall be binding only as
14 to such defendant and shall not apply to or bind any other
15 defendant.

16 3. As a condition to authorizing periodic payments of
17 future damages, the court may require a judgment debtor who is
18 not adequately insured to post security or purchase an annuity
19 adequate to assure full payment of such damages awarded by the
20 judgment. Upon termination of periodic payments of future
21 damages, the court shall order the return of this security or so
22 much as remains to the judgment debtor.

23 4. If a plaintiff and his attorney have agreed that
24 attorney's fees shall be paid from the award, as part of a
25 contingent fee arrangement, it shall be presumed that the fee
26 will be paid at the time the judgment becomes final. If the
27 attorney elects to receive part or all of such fees in periodic
28 or installment payments from future damages, the method of

1 payment and all incidents thereto shall be a matter between such
2 attorney and the plaintiff and not subject to the terms of the
3 payment of future damages, whether agreed to by the parties or
4 determined by the court.

5 5. Upon the death of a judgment creditor, the right to
6 receive payments of future damages, other than future medical
7 damages, being paid by installments or periodic payments will
8 pass in accordance with the Missouri probate code unless
9 otherwise transferred or alienated prior to death. Payment of
10 future medical damages will continue to the estate of the
11 judgment creditor only for as long as necessary to enable the
12 estate to satisfy medical expenses of the judgment creditor that
13 were due and owing at the time of death, which resulted directly
14 from the injury for which damages were awarded, and do not exceed
15 the dollar amount of the total payments for such future medical
16 damages outstanding at the time of death.

17 6. Nothing in this section shall prevent the parties from
18 contracting and agreeing to settle and resolve the claim for
19 future damages. If such an agreement is reached by the parties,
20 the future periodic payment schedule will become moot.

21 538.225. 1. In any action against a health care provider
22 for damages for personal injury or death on account of the
23 rendering of or failure to render health care services, the
24 plaintiff or [his] the plaintiff's attorney shall file an
25 affidavit with the court stating that he or she has obtained the
26 written opinion of a legally qualified health care provider which
27 states that the defendant health care provider failed to use such
28 care as a reasonably prudent and careful health care provider

1 would have under similar circumstances and that such failure to
2 use such reasonable care directly caused or directly contributed
3 to cause the damages claimed in the petition.

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

10 3. The affidavit shall state the name, address, and
11 qualifications of such health care providers to offer such
12 opinion.

13 [3.] 4. A separate affidavit shall be filed for each
14 defendant named in the petition.

15 [4.] 5. Such affidavit shall be filed no later than ninety
16 days after the filing of the petition unless the court, for good
17 cause shown, orders that such time be extended for a period of
18 time not to exceed an additional ninety days.

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

22 538.228. Any physician licensed under chapter 334, RSMo,
23 who provides medical treatment at a city or county health
24 department organized under chapter 192, RSMo, or chapter 205,
25 RSMo, a city health department operating under a city charter, a
26 combined city-county health department, or a nonprofit community
27 health center or other nonprofit entity that provides free health
28 care services and is qualified as exempt from federal taxation

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

14 _____ (1) Shall not include the performance of an abortion; and

15 _____ (2) Is provided by the physician without compensation from
16 any party or third-party provider, or any attempt to obtain
17 compensation from any third-party provider.

18 538.229. 1. The portion of statements, writings, or
19 benevolent gestures expressing sympathy or a general sense of
20 benevolence relating to the pain, suffering, or death of a person
21 and made to that person or to the family of that person shall be
22 inadmissible as evidence of an admission of liability in a civil
23 action. However, nothing in this section shall bar admission of
24 a statement of fault.

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

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

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

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

12 538.300. The provisions of sections 260.552, RSMo,
13 [490.715, RSMo,] 509.050, RSMo, [510.263, RSMo, 537.067,]
14 537.068, 537.117, 537.675, and 537.760 to 537.765, RSMo, and
15 [subsection 2] subsections 2 and 3 of section 408.040, RSMo,
16 shall not apply to actions under sections 538.205 to 538.230.

17 Section 1. If any provision of this act is found by a court
18 of competent jurisdiction to be invalid or unconstitutional, it
19 is the stated intent of the legislature that the legislature
20 would have approved the remaining portions of the act, and the
21 remaining portions of the act shall remain in full force and
22 effect.

23 Section 2. The provisions of this act, except for section
24 512.099, RSMo, shall apply to all causes of action filed after
25 August 28, 2005.

26 Section 3. At any time prior to the commencement of a
27 trial, if a plaintiff or defendant, including a third-party
28 plaintiff or defendant, is either added or removed from a

1 petition filed in any court in the state of Missouri which would
2 have, if originally added or removed to the initial petition,
3 altered the determination of venue under section 508.010, RSMo,
4 then the judge shall upon application of any party transfer the
5 case to a proper forum under section 476.410, RSMo.

6 [355.176. 1. A corporation's registered agent is
7 the corporation's agent for service of process, notice,
8 or demand required or permitted by law to be served on
9 the corporation.

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

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

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

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

24 3. This section does not prescribe the only
25 means, or necessarily the required means, of serving a
26 corporation.

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

29 (1) the county in which the nonprofit corporation
30 maintains its principal place of business;

31 (2) the county where the cause of action accrued;

32 (3) the county in which the office of the
33 registered agent for the nonprofit corporation is
34 maintained.]

35
36 [508.040. Suits against corporations shall be
37 commenced either in the county where the cause of
38 action accrued, or in case the corporation defendant is
39 a railroad company owning, controlling or operating a
40 railroad running into or through two or more counties
41 in this state, then in either of such counties, or in
42 any county where such corporations shall have or
43 usually keep an office or agent for the transaction of
44 their usual and customary business.]

45
46 [508.070. 1. Suit may be brought against any
47 motor carrier which is subject to regulation pursuant

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

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

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

35 4. There shall be kept in the office of the
36 director, division of motor carrier and railroad safety
37 a permanent record showing all process served, the name
38 of the plaintiff and defendant, the court from which
39 the summons issued, the name and title of the officer
40 serving the same, the day and the hour of service, the
41 day and date on which petition and summons were
42 forwarded to the defendant or defendants by registered
43 letter, the date on which return receipt is received by
44 the director, and the date on which the return receipt
45 was forwarded to the clerk of the court out of which
46 the summons was issued.]

47
48 [508.120. No defendant shall be allowed a change
49 of venue and no application by a defendant to
50 disqualify a judge shall be granted unless the
51 application therefor is made before the filing of his

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

10 [538.230. 1. In any action against a health care
11 provider for damages for personal injury or death on
12 account of the rendering of or failure to render health
13 care services where fault is apportioned among the
14 parties and persons released pursuant to subsection 3
15 of this section, the court, unless otherwise agreed by
16 all the parties, shall instruct the jury to apportion
17 fault among such persons and parties, or the court, if
18 there is no jury, shall make findings, indicating the
19 percentage of total fault of all the parties to each
20 claim that is allocated to each party and person who
21 has been released from liability under subsection 3 of
22 this section.

23 2. The court shall determine the award of damages
24 to each plaintiff in accordance with the findings,
25 subject to any reduction under subsection 3 of this
26 section and enter judgment against each party liable on
27 the basis of the rules of joint and several liability.
28 However, notwithstanding the provisions of this
29 subsection, any defendant against whom an award of
30 damages is made shall be jointly liable only with those
31 defendants whose apportioned percentage of fault is
32 equal to or less than such defendant.

33 3. Any release, covenant not to sue, or similar
34 agreement entered into by a claimant and a person or
35 entity against which a claim is asserted arising out of
36 the alleged transaction which is the basis for
37 plaintiff's cause of action, whether actually made a
38 party to the action or not, discharges that person or
39 entity from all liability for contribution or indemnity
40 but it does not discharge other persons or entities
41 liable upon such claim unless it so provides. However,
42 the claim of the releasing person against other persons
43 or entities is reduced by the amount of the released
44 persons' or entities' equitable share of the total
45 obligation imposed by the court pursuant to a full
46 apportionment of fault under this section as though
47 there had been no release.]
48