

SECOND REGULAR SESSION

HOUSE BILL NO. 1339

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MUSCHANY.

Pre-filed December 3, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3246L.01I

AN ACT

To repeal section 538.205, RSMo, and to enact in lieu thereof two new sections relating to the definition of health care providers for purposes of medical malpractice.

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

Section A. Section 538.205, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 538.205 and 538.240, to read as follows:

538.205. As used in sections 538.205 to [538.230] **538.305**, the following terms shall mean:

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

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

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

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

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

16 **except that, health care provider does not include a person, hospital, or abortion facility**
17 **if the act that is the subject of the claim for damages involved the performance or**
18 **inducement of an abortion, as the terms abortion and abortion facility are defined in**
19 **section 188.015, RSMo;**

20 (5) "Health care services", any services that a health care provider renders to a patient
21 in the ordinary course of the health care provider's profession or, if the health care provider is an
22 institution, in the ordinary course of furthering the purposes for which the institution is
23 organized. Professional services shall include, but are not limited to, transfer to a patient of
24 goods or services incidental or pursuant to the practice of the health care provider's profession
25 or in furtherance of the purposes for which an institutional health care provider is organized;
26 **except that, health care services does not include the performance or inducement of an**
27 **abortion, as defined in section 188.015, RSMo;**

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

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

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

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

39 (10) "Punitive damages", damages intended to punish or deter willful, wanton or
40 malicious misconduct, including exemplary damages and damages for aggravating
41 circumstances;

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

538.240. Under the policy and laws of the state of Missouri favoring childbirth over
2 **abortion and to regulate abortion to the greatest extent allowed by law, the general**
3 **assembly declares that the protections from certain liabilities afforded health care**
4 **providers under sections 538.205 to 538.305 shall not apply to persons, hospitals, and**
5 **abortion facilities if and when engaged in the performance or inducement of abortion.**

✓