

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1339**  
**94TH GENERAL ASSEMBLY**

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Reported from the Committee on Judiciary April 3, 2008 with recommendation that House Committee Substitute for House Bill No. 1339 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

3246L.02C

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**AN ACT**

To repeal section 538.205, RSMo, and to enact in lieu thereof two new sections relating to medical malpractice limits on abortion providers.

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Section A. Section 538.205, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 538.205 and 538.240, to read as follows: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

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.

15 person or entity that provides health care services under the authority of a license or certificate;  
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, except for medical emergencies, as the terms abortion, abortion**  
19 **facility, and medical emergency are defined in 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, except for a medical emergency, as those terms are defined in section 188.015,**  
28 **RSMo;**

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

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

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

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

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

43 (11) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any  
44 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,**  
6 **except in the case of a medical emergency as the term is defined in section 188.015, RSMo.**