

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2119
99TH GENERAL ASSEMBLY

5712H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 510.263, 538.205, and 538.210, RSMo, and to enact in lieu thereof four new sections relating to punitive damages.

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

Section A. Sections 510.263, 538.205, and 538.210, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 510.259, 510.263, 538.205, and
3 538.210, to read as follows:

510.259. 1. Except as otherwise provided by statute, punitive damages shall not be
2 **awarded unless the claimant proves by clear and convincing evidence that the defendant**
3 **intentionally harmed the plaintiff without just cause or acted with a conscious disregard**
4 **for the safety of others.**

5 **2. Punitive damages may only be recovered if the trier of fact awards more than**
6 **nominal damages.**

7 **3. Punitive damages shall not be awarded against an employer or a principal**
8 **because of the act or conduct of an employee or agent unless the claimant can satisfy the**
9 **standard of proof in subsection 1 of this section and:**

10 **(1) Prior to the act or conduct, the employer or principal expressly authorized the**
11 **doing and manner of the act or conduct;**

12 **(2) During or after the act or conduct, the employer or principal, with full**
13 **knowledge of the doing and manner of the act or conduct, expressly ratified the act or**
14 **conduct; or**

15 **(3) The employee or agent was unfit to perform acts or duties of the kind for which**
16 **a punitive damage award is sought, and the employer or principal expressly authorized the**
17 **employee or agent to perform acts or duties of that kind.**

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.

18 **4. For purposes of this section, with respect to an employer or principal that is a**
19 **legal entity or partnership, only the act, conduct, authorization, ratification, or intention**
20 **of or by:**

- 21 **(1) The president, chair, or chief executive officer;**
22 **(2) The members of the governing body of the legal entity or partnership, when**
23 **acting as such; or**
24 **(3) Any other officer, employee, or agent with policy-making authority**

25
26 **shall be deemed to be the act, conduct, authorization, ratification, or intention of the**
27 **employer or principal.**

28 **5. No initial pleading in a civil action shall contain a claim for a punitive damage**
29 **award. Any later pleading containing a claim for a punitive damage award may be filed**
30 **only with leave of the court. A trial court may grant leave to file such a pleading only on**
31 **written motion by the claimant, filed no later than one hundred twenty days prior to the**
32 **final pretrial conference in the case or, if there is no scheduled pretrial conference, one**
33 **hundred twenty days prior to the date set for trial, that is supported by affidavits, exhibits,**
34 **or discovery materials establishing a reasonable basis for recovery of punitive damages.**
35 **Any party opposing leave may file affidavits, exhibits, or discovery materials**
36 **demonstrating that the standards for a punitive damages award under this section have**
37 **not been established. If the trial court concludes, following its review of all materials**
38 **submitted in connection with the motion, that based on the evidence to be admitted at trial**
39 **a reasonable trier of fact is likely to conclude, based on clear and convincing evidence, that**
40 **the standards for a punitive damages award contained in this section have been met, the**
41 **court shall grant leave to file the pleading seeking a punitive damages award. The court**
42 **shall rule on a motion for leave to file a pleading seeking punitive damages no later than**
43 **forty-five days after a hearing on the motion or, if no hearing is held on the motion, after**
44 **the party opposing the motion has filed its response to the motion.**

45 **6. Punitive damages shall not be based, in whole or in part, on harm to nonparties.**

46 **7. As used in this section, the term "punitive damage award" means an award for**
47 **punitive or exemplary damages or an award for aggravating circumstances.**

48 **8. No judgment that includes a punitive damage award shall be entered in any civil**
49 **action in any court of this state, or in any court in which claims are asserted based on the**
50 **constitution, statutes, or common law of this state, unless the requirements and procedures**
51 **for a punitive damage award contained in this section and sections 510.263 and 537.675 are**
52 **met.**

53 **9. Except to the extent that they are expressly inconsistent with this section, all**
54 **common law limitations on punitive damages, including the doctrine of remittitur, and all**
55 **limitations on the recovery of punitive damages contained in other sections of the laws of**
56 **this state remain in full force and effect.**

57 **10. The provisions of this section shall apply to:**

58 **(1) Any civil action pending on August 28, 2018, in which a claim for a punitive**
59 **damage award has been asserted in any pleading, unless in that action a verdict or**
60 **judgment containing a punitive damage award has been returned or entered prior to such**
61 **date;**

62 **(2) Any civil action pending on August 28, 2018, in which a party seeks, on or after**
63 **such date, to assert a claim for a punitive damage award; and**

64 **(3) Any civil action filed on or after August 28, 2018.**

510.263. 1. All actions tried before a jury involving punitive damages~~[-including tort~~
2 ~~actions based upon improper health care,]~~ shall be conducted in a bifurcated trial before the same
3 jury if requested by any party.

4 2. In the first stage of a bifurcated trial, ~~[in which the issue of punitive damages is~~
5 ~~submissible,]~~ the jury shall determine ~~[liability for]~~ **whether** compensatory damages~~[-the~~
6 ~~amount of compensatory damages, including nominal damages, and the liability of a defendant~~
7 ~~for]~~ **are to be awarded and in what amount, but shall not determine whether** punitive
8 **damages are to be awarded.** Evidence of defendant's financial condition shall ~~[not]~~ be
9 ~~[admissible]~~ **inadmissible** in the first stage of such trial unless ~~[admissible]~~ **offered** for a proper
10 purpose ~~[other than the amount of]~~ **unrelated to** punitive damages.

11 3. ~~[If during the first stage of a bifurcated trial the jury determines that a defendant is~~
12 ~~liable for punitive damages, that]~~ **If an award of compensatory damages above nominal**
13 **damages has been made against a defendant, the court shall promptly commence a hearing**
14 **to determine whether punitive damages may be considered by the same jury. The court**
15 **shall determine whether the issue of punitive damages may be submitted to the jury and,**
16 **if so, the jury shall determine**~~[-in a second stage of trial, the amount of]~~ **whether to award**
17 **punitive damages** ~~[to be awarded against such defendant]~~ **and in what amount.** Evidence of
18 such defendant's net worth shall be admissible during the second stage of such trial.

19 4. Within the time for filing a motion for new trial, a defendant may file a post-trial
20 motion requesting the amount awarded by the jury as punitive damages be credited by the court
21 with amounts previously paid **in any state or federal court** by the defendant for punitive
22 damages arising out of the same conduct on which the imposition of punitive damages is based.
23 At any hearing, the burden on all issues relating to such a credit shall be on the defendant and
24 either party may introduce relevant evidence on such motion. Such a motion shall be determined

25 by the trial court within the time and according to procedures applicable to motions for new trial.
26 If the trial court sustains such a motion the trial court shall credit the jury award of punitive
27 damages by the amount found by the trial court to have been previously paid by the defendant
28 arising out of the same conduct and enter judgment accordingly. If the defendant fails to
29 establish entitlement to a credit under the provisions of this section, or the trial court finds from
30 the evidence that the defendant's conduct out of which the prior punitive damages award arose
31 was not the same conduct on which the imposition of punitive damages is based in the pending
32 action, or the trial court finds the defendant unreasonably continued the conduct after acquiring
33 actual knowledge of the dangerous nature of such conduct, the trial court shall disallow such
34 credit, or, if the trial court finds that the laws regarding punitive damages in the state **or federal**
35 **court** in which the prior award of punitive damages was entered substantially and materially
36 deviate from the law of the state of Missouri, **except with respect to section 537.675**, and that
37 the nature of such deviation provides good cause for disallowance of the credit based on the
38 public policy of Missouri, then the trial court may disallow all or any part of the credit provided
39 by this section.

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

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

45 ~~———7.]~~ As used in this section, "punitive damage award" means an award for punitive or
46 exemplary damages or an award for aggravating circumstances.

47 ~~[8.]~~ 7. Discovery as to a defendant's assets shall be allowed only after ~~[a finding by the~~
48 ~~trial court that it is more likely than not that the plaintiff will be able to present a submissible~~
49 ~~case to the trier of fact on the plaintiff's claim of punitive damages]~~ **a trial court has granted**
50 **leave to file a pleading seeking punitive damages in accordance with subsection 5 of section**
51 **510.259.**

52 8. The provisions of this section shall apply to:

53 (1) Any civil action pending on August 28, 2018, in which a claim for a punitive
54 damage award has been asserted in any pleading, unless in that action a verdict or
55 judgment containing a punitive damage award has been returned or entered prior to such
56 date;

57 (2) Any civil action pending on August 28, 2018, in which a party seeks, on or after
58 such date, to assert a claim for a punitive damage award; and

59 (3) Any civil action filed on or after August 28, 2018.

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

- 2 (1) “Catastrophic personal injury”, a physical injury resulting in:
- 3 (a) Quadriplegia defined as the permanent loss of functional use of all four limbs;
- 4 (b) Paraplegia defined as the permanent loss of functional use of two limbs;
- 5 (c) Loss of two or more limbs;
- 6 (d) An injury to the brain that results in permanent cognitive impairment resulting in the
- 7 permanent inability to make independent decisions or engage in one or more of the following
- 8 activities of daily living: eating, dressing, bathing, toileting, transferring, and walking;
- 9 (e) An injury that causes irreversible failure of one or more major organ systems; or
- 10 (f) Vision loss such that the patient’s central visual acuity is no more than twenty-two-
- 11 hundred in the better eye with the best correction or whose field of vision in the better eye is
- 12 restricted to a degree that its widest diameter subtends an angle no greater than twenty degrees;
- 13 (2) “Economic damages”, damages arising from pecuniary harm including, without
- 14 limitation, medical damages, and those damages arising from lost wages and lost earning
- 15 capacity;
- 16 (3) “Employee”, any individual who is directly compensated by a health care provider
- 17 for health care services rendered by such individual and other nonphysician individuals who are
- 18 supplied to a health care provider by an entity that provides staffing;
- 19 (4) “Equitable share”, the share of a person or entity in an obligation that is the same
- 20 percentage of the total obligation as the person’s or entity’s allocated share of the total fault, as
- 21 found by the trier of fact;
- 22 (5) “Future damages”, damages that the trier of fact finds will accrue after the damages
- 23 findings are made;
- 24 (6) “Health care provider”, any physician, hospital, health maintenance organization,
- 25 ambulatory surgical center, long-term care facility including those licensed under chapter 198,
- 26 dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor,
- 27 professional physical therapist, psychologist, physician-in-training, and any other person or entity
- 28 that provides health care services under the authority of a license or certificate;
- 29 (7) “Health care services”, any services that a health care provider renders to a patient
- 30 in the ordinary course of the health care provider’s profession or, if the health care provider is
- 31 an institution, in the ordinary course of furthering the purposes for which the institution is
- 32 organized. Professional services shall include, but are not limited to, transfer to a patient of
- 33 goods or services incidental or pursuant to the practice of the health care provider’s profession
- 34 or in furtherance of the purposes for which an institutional health care provider is organized;
- 35 (8) “Medical damages”, damages arising from reasonable expenses for necessary drugs,
- 36 therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and
- 37 rehabilitative services;

38 (9) "Noneconomic damages", damages arising from nonpecuniary harm including,
39 without limitation, pain, suffering, mental anguish, inconvenience, physical impairment,
40 disfigurement, loss of capacity to enjoy life, and loss of consortium but shall not include punitive
41 damages;

42 (10) "Past damages", damages that have accrued when the damages findings are made;

43 (11) "Punitive damages", damages intended to punish or deter ~~[willful, wanton or~~
44 ~~malicious misconduct]~~ **malicious misconduct or conduct that intentionally caused damage**
45 **to the plaintiff**, including exemplary damages and damages for aggravating circumstances;

46 (12) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any
47 kind.

538.210. 1. A statutory cause of action for damages against a health care provider for
2 personal injury or death arising out of the rendering of or failure to render health care services
3 is hereby created, replacing any such common law cause of action. The elements of such cause
4 of action are that the health care provider failed to use that degree of skill and learning ordinarily
5 used under the same or similar circumstances by members of the defendant's profession and that
6 such failure directly caused or contributed to cause the plaintiff's injury or death.

7 2. (1) In any action against a health care provider for damages for personal injury arising
8 out of the rendering of or the failure to render health care services, no plaintiff shall recover more
9 than four hundred thousand dollars for noneconomic damages irrespective of the number of
10 defendants.

11 (2) Notwithstanding the provisions of subdivision (1) of this subsection, in any action
12 against a health care provider for damages for a catastrophic personal injury arising out of the
13 rendering or failure to render health care services, no plaintiff shall recover more than seven
14 hundred thousand dollars for noneconomic damages irrespective of the number of defendants.

15 (3) In any action against a health care provider for damages for death arising out of the
16 rendering of or the failure to render health care services, no plaintiff shall recover more than
17 seven hundred thousand dollars for noneconomic damages irrespective of the number of
18 defendants.

19 3. (1) This section shall also apply to any individual or entity, or their employees or
20 agents, that provide, refer, coordinate, consult upon, or arrange for the delivery of health care
21 services to the plaintiff; and

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

25 4. No health care provider whose liability is limited by the provisions of this chapter
26 shall be liable to any plaintiff based on the actions or omissions of any other entity or individual

27 who is not an employee of such health care provider, unless the individual is an employee of a
28 subsidiary in which the health care provider has a controlling interest and the subsidiary does not
29 carry a professional liability insurance policy or self-insurance covering said individual of at least
30 one million dollars per occurrence and a professional liability insurance policy or self-insurance
31 covering said subsidiary of least one million dollars per occurrence.

32 5. The limitations on liability as provided for in this section shall apply to all claims for
33 contribution.

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

39 7. For purposes of sections 538.205 to 538.230, any spouse claiming damages for loss
40 of consortium of their spouse shall be considered to be the same plaintiff as their spouse.

41 8. Any provision of law or court rule to the contrary notwithstanding, an award of
42 punitive damages against a health care provider governed by the provisions of sections 538.205
43 to 538.230 shall be made only upon a ~~[showing by a plaintiff]~~ **finding by the jury that the**
44 **evidence clearly and convincingly demonstrated** that the health care provider ~~[demonstrated~~
45 ~~willful, wanton or malicious misconduct with respect to his actions which are found to have~~
46 ~~injured or caused or contributed to cause the damages claimed in the petition]~~ **intentionally**
47 **caused damage to the plaintiff or demonstrated malicious misconduct. Neither indifference**
48 **to nor conscious disregard for the safety of others shall constitute a basis for an award of**
49 **punitive damages against a health care provider.**

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

52 10. The limitations on awards for noneconomic damages provided for in this section
53 shall be increased by one and seven-tenths percent on an annual basis effective January first of
54 each year. The current value of the limitation shall be calculated by the director of the
55 department of insurance, financial institutions and professional registration, who shall furnish
56 that value to the secretary of state, who shall publish such value in the Missouri Register on the
57 first business day following January first, but the value shall otherwise be exempt from the
58 provisions of section 536.021.

59 11. In any claim for damages under this chapter, and upon ~~[post-trial]~~ **posttrial** motion
60 following a jury verdict with noneconomic damages exceeding four hundred thousand dollars,
61 the trial court shall determine whether the limitation in subsection 2 of this section shall apply
62 based on the severity of the most severe injuries.

63 12. If a court of competent jurisdiction enters a final judgment on the merits that is not
64 subject to appeal and that declares any provision or part of either section 1.010 or this section
65 to be unconstitutional or unenforceable, then section 1.010 and this section, as amended by this
66 act and in their entirety, are invalid and shall have no legal effect as of the date of such judgment,
67 and this act, including its repealing clause, shall likewise be invalid and of no legal effect. In
68 such event, the versions of sections 1.010 and this section that were in effect prior to the
69 enactment of this act shall remain in force.

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