

SECOND REGULAR SESSION

# HOUSE BILL NO. 2434

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WHITE.

6381H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 538.205 and 538.210, RSMo, and to enact in lieu thereof two new sections relating to punitive damages against health care providers.

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

- Section A. Sections 538.205 and 538.210, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 538.205 and 538.210, to read as follows:
- 538.205. As used in sections 538.205 to 538.230, the following terms shall mean:
- (1) “Catastrophic personal injury”, a physical injury resulting in:
    - (a) Quadriplegia defined as the permanent loss of functional use of all four limbs;
    - (b) Paraplegia defined as the permanent loss of functional use of two limbs;
    - (c) Loss of two or more limbs;
    - (d) An injury to the brain that results in permanent cognitive impairment resulting in the permanent inability to make independent decisions or engage in one or more of the following activities of daily living: eating, dressing, bathing, toileting, transferring, and walking;
    - (e) An injury that causes irreversible failure of one or more major organ systems; or
    - (f) Vision loss such that the patient’s central visual acuity is no more than twenty/two-hundred in the better eye with the best correction or whose field of vision in the better eye is restricted to a degree that its widest diameter subtends an angle no greater than twenty degrees;
  - (2) “Economic damages”, damages arising from pecuniary harm including, without limitation, medical damages, and those damages arising from lost wages and lost earning capacity;

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.

17 (3) "Employee", any individual who is directly compensated by a health care provider  
18 for health care services rendered by such individual and other nonphysician individuals who are  
19 supplied to a health care provider by an entity that provides staffing;

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

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

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

30 (7) "Health care services", any services that a health care provider renders to a patient  
31 in the ordinary course of the health care provider's profession or, if the health care provider is  
32 an institution, in the ordinary course of furthering the purposes for which the institution is  
33 organized. Professional services shall include, but are not limited to, transfer to a patient of  
34 goods or services incidental or pursuant to the practice of the health care provider's profession  
35 or in furtherance of the purposes for which an institutional health care provider is organized;

36 (8) "Medical damages", damages arising from reasonable expenses for necessary drugs,  
37 therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and  
38 rehabilitative services;

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

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

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

47 (12) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any  
48 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 at 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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