

SECOND REGULAR SESSION

HOUSE BILL NO. 2704

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALSH MOORE.

5476H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 538.205, RSMo, and to enact in lieu thereof one new section relating to tort actions based on improper health care.

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

Section A. Section 538.205, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 538.205, to read as follows: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~~ **one** 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.

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

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

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

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

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

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

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

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

47 (11) "Punitive damages", damages intended to punish or deter malicious misconduct
48 or conduct that intentionally caused damage to the plaintiff, including exemplary damages
49 and damages for aggravating circumstances;

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