

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR

# SENATE BILL NO. 239

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

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ADRIANE D. CROUSE, Secretary.

1309S.06P

## AN ACT

To repeal sections 1.010, 538.205, and 538.210, RSMo, and to enact in lieu thereof three new sections relating to a statutory cause of action against healthcare providers.

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

Section A. Sections 1.010, 538.205, and 538.210, RSMo, are repealed and  
2 three new sections enacted in lieu thereof, to be known as sections 1.010, 538.205,  
3 and 538.210, to read as follows:

1.010. **1.** The common law of England and all statutes and acts of  
2 parliament made prior to the fourth year of the reign of James the First, of a  
3 general nature, which are not local to that kingdom and not repugnant to or  
4 inconsistent with the Constitution of the United States, the constitution of this  
5 state, or the statute laws in force for the time being, are the rule of action and  
6 decision in this state, any custom or usage to the contrary notwithstanding, but  
7 no act of the general assembly or law of this state shall be held to be invalid, or  
8 limited in its scope or effect by the courts of this state, for the reason that it is  
9 in derogation of, or in conflict with, the common law, or with such statutes or acts  
10 of parliament; but all acts of the general assembly, or laws, shall be liberally  
11 construed, so as to effectuate the true intent and meaning thereof.

12 **2. The general assembly expressly excludes from this section the**  
13 **common law of England as it relates to claims arising out of the**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

14 **rendering of or failure to render health care services by a health care**  
15 **provider, it being the intent of the general assembly to replace those**  
16 **claims with statutory causes of action.**

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

3 (1) **"Catastrophic personal injury", a physical injury resulting in:**

4 (a) **Quadriplegia defined as the permanent loss of functional use**  
5 **of all four limbs;**

6 (b) **Paraplegia defined as the permanent loss of functional use of**  
7 **two limbs;**

8 (c) **Loss of two or more limbs;**

9 (d) **An injury to the brain that results in permanent cognitive**  
10 **impairment resulting in the permanent inability to make independent**  
11 **decisions or engage in one or more of the following activities of daily**  
12 **living: eating, dressing, bathing, toileting, transferring, and walking;**

13 (e) **An injury that causes irreversible failure of one or more**  
14 **major organ systems; or**

15 (f) **Vision loss such that the patient's central visual acuity is no**  
16 **more than twenty/two-hundred in the better eye with the best**  
17 **correction or whose field of vision in the better eye is restricted to a**  
18 **degree that its widest diameter subtends an angle no greater than**  
19 **twenty degrees;**

20 (2) **"Economic damages", damages arising from pecuniary harm including,**  
21 **without limitation, medical damages, and those damages arising from lost wages**  
22 **and lost earning capacity;**

23 [(2)] (3) **"Equitable share", the share of a person or entity in an**  
24 **obligation that is the same percentage of the total obligation as the person's or**  
25 **entity's allocated share of the total fault, as found by the trier of fact;**

26 [(3)] (4) **"Future damages", damages that the trier of fact finds will**  
27 **accrue after the damages findings are made;**

28 [(4)] (5) **"Health care provider", any physician, hospital, health**  
29 **maintenance organization, ambulatory surgical center, long-term care facility**  
30 **including those licensed under chapter 198, dentist, registered or licensed**  
31 **practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional**  
32 **physical therapist, psychologist, physician-in-training, and any other person or**  
33 **entity that provides health care services under the authority of a license or**

34 certificate;

35 [(5)] (6) "Health care services", any services that a health care provider  
36 renders to a patient in the ordinary course of the health care provider's profession  
37 or, if the health care provider is an institution, in the ordinary course of  
38 furthering the purposes for which the institution is organized. Professional  
39 services shall include, but are not limited to, transfer to a patient of goods or  
40 services incidental or pursuant to the practice of the health care provider's  
41 profession or in furtherance of the purposes for which an institutional health care  
42 provider is organized;

43 [(6)] (7) "Medical damages", damages arising from reasonable expenses  
44 for necessary drugs, therapy, and medical, surgical, nursing, x-ray, dental,  
45 custodial and other health and rehabilitative services;

46 [(7)] (8) "Noneconomic damages", damages arising from nonpecuniary  
47 harm including, without limitation, pain, suffering, mental anguish,  
48 inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life,  
49 and loss of consortium but shall not include punitive damages;

50 [(8)] (9) "Past damages", damages that have accrued when the damages  
51 findings are made;

52 [(9)] (10) "Physician employee", any person or entity who works for  
53 hospitals for a salary or under contract and who is covered by a policy of  
54 insurance or self-insurance by a hospital for acts performed at the direction or  
55 under control of the hospital;

56 [(10)] (11) "Punitive damages", damages intended to punish or deter  
57 willful, wanton or malicious misconduct, including exemplary damages and  
58 damages for aggravating circumstances;

59 [(11)] (12) "Self-insurance", a formal or informal plan of self-insurance  
60 or no insurance of any kind.

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

10           **2. (1)** In any action against a health care provider for damages for  
11 personal injury [or death] arising out of the rendering of or the failure to render  
12 health care services, no plaintiff shall recover more than [three] **four** hundred  
13 [fifty] thousand dollars for noneconomic damages irrespective of the number of  
14 defendants.

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

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

26           [2.] **3. (1)** Such limitation shall also apply to any individual or entity, or  
27 their employees or agents that provide, refer, coordinate, consult upon, or arrange  
28 for the delivery of health care services to the plaintiff; and

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

32           (3) No individual or entity whose liability is limited by the provisions of  
33 this chapter shall be liable to any plaintiff based on the actions or omissions of  
34 any other entity or person who is not an employee of such individual or entity  
35 whose liability is limited by the provisions of this chapter.  
36 Such limitation shall apply to all claims for contribution.

37           [3.] **4.** In any action against a health care provider for damages for  
38 personal injury or death arising out of the rendering of or the failure to render  
39 health care services, where the trier of fact is a jury, such jury shall not be  
40 instructed by the court with respect to the limitation on an award of noneconomic  
41 damages, nor shall counsel for any party or any person providing testimony  
42 during such proceeding in any way inform the jury or potential jurors of such  
43 limitation.

44           [4.] **5.** For purposes of sections 538.205 to 538.230, any spouse claiming  
45 damages for loss of consortium of their spouse shall be considered to be the same

46 plaintiff as their spouse.

47 [5.] 6. Any provision of law or court rule to the contrary notwithstanding,  
48 an award of punitive damages against a health care provider governed by the  
49 provisions of sections 538.205 to 538.230 shall be made only upon a showing by  
50 a plaintiff that the health care provider demonstrated willful, wanton or  
51 malicious misconduct with respect to his actions which are found to have injured  
52 or caused or contributed to cause the damages claimed in the petition.

53 [6.] 7. For purposes of sections 538.205 to 538.230, all individuals and  
54 entities asserting a claim for a wrongful death under section 537.080 shall be  
55 considered to be one plaintiff.

56 8. **The limitations on awards for noneconomic damages provided**  
57 **for in this section shall be increased by one and seven-tenths percent**  
58 **on an annual basis effective January first of each year. The current**  
59 **value of the limitation shall be calculated by the director of the**  
60 **department of insurance, who shall furnish that value to the secretary**  
61 **of state, who shall publish such value in the Missouri Register on the**  
62 **first business day following January first, but the value shall otherwise**  
63 **be exempt from the provisions of section 536.021.**

64 9. **In any claim for damages under this chapter, and upon post-**  
65 **trial motion following a jury verdict with noneconomic damages**  
66 **exceeding four hundred thousand dollars, the trial court shall**  
67 **determine whether the limitation in subsection 2 of this section shall**  
68 **apply based on the severity of the most severe injuries.**

69 10. **If a court of competent jurisdiction enters a final judgment**  
70 **on the merits that is not subject to appeal and that declares any**  
71 **provision or part of either section 1.010 or this section to be**  
72 **unconstitutional or unenforceable, then section 1.010 and this section,**  
73 **as amended by this act and in their entirety, are invalid and shall have**  
74 **no legal effect as of the date of such judgment, and this act, including**  
75 **its repealing clause, shall likewise be invalid and of no legal effect. In**  
76 **such event, the versions of sections 1.010 and this section that were in**  
77 **effect prior to the enactment of this act shall remain in force.**

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