

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 591

AN ACT

To repeal sections 510.263, 510.265, 538.205, and 538.210, RSMo, and to enact in lieu thereof five new sections relating to punitive damages.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 510.263, 510.265, 538.205, and 538.210, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 510.261, 510.263, 510.265, 538.205, and 538.210, to read as follows:

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

2. Punitive damages may only be recovered if the trier of fact awards more than nominal damages or if the claim or claims for which nominal damages are solely awarded invoke privacy rights, property rights, or rights protected by the Constitution of the United States or the Constitution of the state of Missouri.

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

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

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

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

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

(1) The president, chair, or chief executive officer;

(2) The members of the governing body of the legal entity or partnership, when acting as such; or

(3) Any other officer, employee, or agent with policy-making authority;

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

5. No initial pleading in a civil action shall contain a claim for a punitive damage award. Any later pleading containing a claim for a punitive damage award may be filed only with leave of the court. A trial court may grant leave to file such a pleading only on written motion by the claimant, filed no later

than one hundred twenty days prior to the final pretrial conference in the case or, if there is no scheduled pretrial conference, one hundred twenty days prior to the date set for trial, that is supported by affidavits, exhibits, or discovery materials establishing a reasonable basis for recovery of punitive damages. Any party opposing leave may file affidavits, exhibits, or discovery materials demonstrating that the standards for a punitive damage award pursuant to this section have not been established. If the trial court concludes, following its review of all materials submitted in connection with the motion, that based on the evidence to be admitted at trial a trier of fact could reasonably conclude, based on clear and convincing evidence, that the standards for a punitive damage award contained in this section have been met, the court shall grant leave to file the pleading seeking a punitive damage award. The court shall rule on a motion for leave to file a pleading seeking punitive damages no later than forty-five days after a hearing on the motion or, if no hearing is held on the motion, after the party opposing the motion has filed its response to the motion.

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

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

8. Except to the extent that they are expressly

inconsistent with this section, all common law limitations on punitive damages and all limitations on the recovery of punitive damages contained in other sections of the laws of this state remain in full force and effect.

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

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

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

3. [If during the first stage of a bifurcated trial the jury determines that a defendant is liable for punitive damages, that jury shall determine, in a second stage of trial, the amount of punitive damages to be awarded against such defendant.] If an award of compensatory damages above nominal damages has been made against a defendant, the court shall promptly commence a hearing to determine whether punitive damages may be considered by the

same jury. Upon such a determination, the second stage of the bifurcated trial shall be conducted and the jury shall determine whether a defendant is liable for punitive damages and, if so, the amount of punitive damages, subject to the provisions of section 510.265. Evidence of such defendant's net worth shall be admissible during the second stage of such trial.

4. Within the time for filing a motion for new trial, a defendant may file a post-trial motion requesting the amount awarded by the jury as punitive damages be credited by the court with amounts previously paid in any state or federal court by the defendant for punitive damages arising out of the same conduct on which the imposition of punitive damages is based. At any hearing, the burden on all issues relating to such a credit shall be on the defendant and either party may introduce relevant evidence on such motion. Such a motion shall be determined by the trial court within the time and according to procedures applicable to motions for new trial. If the trial court sustains such a motion the trial court shall credit the jury award of punitive damages by the amount found by the trial court to have been previously paid by the defendant arising out of the same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to a credit under the provisions of this section, or the trial court finds from the evidence that the defendant's conduct out of which the prior punitive [damages] damage award arose was not the same conduct on which the imposition of punitive damages is based in the pending action, or the trial court finds the defendant unreasonably continued the conduct after acquiring actual knowledge of the dangerous nature

of such conduct, the trial court shall disallow such credit, or, if the trial court finds that the laws regarding punitive damages in the state or federal court in which the prior award of punitive damages was entered substantially and materially deviate from the law of the state of Missouri, except with respect to section 537.675, and that the nature of such deviation provides good cause for disallowance of the credit based on the public policy of Missouri, then the trial court may disallow all or any part of the credit provided by this section.

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

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

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

8. Discovery as to a defendant's assets shall be allowed only after a [finding by the trial court that it is more likely than not that the plaintiff will be able to present a submissible case to the trier of fact on the plaintiff's claim of punitive damages] trial court has granted leave to file a pleading seeking punitive damages in accordance with subsection 5 of section 510.261.

510.265. 1. No award of punitive damages against any defendant shall exceed the greater of:

- (1) Five hundred thousand dollars; or
- (2) Five times the net amount of the judgment awarded to the plaintiff against the defendant.

Such limitations shall not apply if the state of Missouri is the plaintiff requesting the award of punitive damages, or the defendant pleads guilty to or is convicted of a felony arising out of the acts or omissions pled by the plaintiff.

2. In any action in which a punitive damages claim is brought by a plaintiff and the defendant is found not liable, the court shall award reasonable attorney's fees and costs incurred by the defendant in the defense against the punitive damages claim.

3. The provisions of this section and sections 510.261 and 510.263 shall not apply to civil actions brought under section 213.111 that allege a violation of section 213.040, 213.045, 213.050, or 213.070, to the extent that the alleged violation of section 213.070 relates to or involves a violation of section 213.040, 213.045, or 213.050, or subdivision (3) of subsection 1 of section 213.070 as it relates to housing.

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;

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

(4) "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;

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

(6) "Health care provider", any physician, hospital, health



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

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

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

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

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

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

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

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

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

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

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

3. [(1)] This section shall also apply to any individual or entity, or their employees or agents[, ]:

(1) That provide, refer, coordinate, consult upon, or arrange for the delivery of health care services to the plaintiff; and

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

4. No health care provider whose liability is limited by the provisions of this chapter shall be liable to any plaintiff based on the actions or omissions of any other entity or individual who is not an employee of such health care provider, unless the individual is an employee of a subsidiary in which the health care provider has a controlling interest and the subsidiary does not carry a professional liability insurance policy or self-insurance covering said individual of at least one million dollars per occurrence and a professional liability insurance policy or self-insurance covering said subsidiary of at least one million dollars per occurrence.

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

6. In any action against a health care provider for damages

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

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

8. Any provision of law or court rule to the contrary notwithstanding, an award of punitive damages against a health care provider governed by the provisions of sections 538.205 to 538.230 shall be made only upon a [showing by a plaintiff] finding by the jury that the evidence clearly and convincingly demonstrated that the health care provider [demonstrated willful, wanton or malicious misconduct with respect to his actions which are found to have injured or caused or contributed to cause the damages claimed in the petition] intentionally caused damage to the plaintiff or demonstrated malicious misconduct that caused damage to the plaintiff. Evidence of negligence, including, but not limited to, indifference to or conscious disregard for the safety of others shall not constitute a basis for an award of punitive damages against a health care provider.

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

10. The limitations on awards for noneconomic damages

provided for in this section shall be increased by one and seven-tenths percent on an annual basis effective January first of each year. The current value of the limitation shall be calculated by the director of the department of commerce and insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register on the first business day following January first, but the value shall otherwise be exempt from the provisions of section 536.021.

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

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