

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 65

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.

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

1 Section A. Sections 510.263, 510.265, 538.205, and 538.210,  
2 RSMo, are repealed and five new sections enacted in lieu thereof,  
3 to be known as sections 510.259, 510.263, 510.265, 538.205, and  
4 538.210, to read as follows:

5 510.259. 1. Except as otherwise provided by statute,  
6 punitive damages shall not be awarded unless the claimant proves  
7 by clear and convincing evidence that the defendant intentionally  
8 harmed the plaintiff without just cause or acted with a  
9 deliberate and flagrant disregard for the safety of others.

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

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

19 (1) Prior to the act or conduct, the employer or principal

1 expressly authorized the doing and manner of the act or conduct;

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

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

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

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

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

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

20  
21 shall be deemed to be the act, conduct, authorization,  
22 ratification, or intention of the employer or principal.

23 5. No initial pleading in a civil action shall contain a  
24 claim for a punitive damage award. Any later pleading containing  
25 a claim for a punitive damage award may be filed only with leave  
26 of the court. A trial court may grant leave to file such a  
27 pleading only on written motion by the claimant, filed no later  
28 than one hundred twenty days prior to the final pretrial

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

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

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

24 8. No judgment that includes a punitive damage award shall  
25 be entered in any civil action in any court of this state, or in  
26 any court in which claims are asserted based on the constitution,  
27 statutes, or common law of this state, unless the requirements  
28 and procedures for a punitive damage award contained in this

1 section and sections 510.263 and 537.675 are met.

2 9. Except to the extent that they are expressly  
3 inconsistent with this section, all common law limitations on  
4 punitive damages and all limitations on the recovery of punitive  
5 damages contained in other sections of the laws of this state  
6 remain in full force and effect.

7 510.263. 1. All actions tried before a jury involving  
8 punitive damages[, including tort actions based upon improper  
9 health care,] shall be conducted in a bifurcated trial before the  
10 same jury if requested by any party.

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

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

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

6 4. Within the time for filing a motion for new trial, a  
7 defendant may file a post-trial motion requesting the amount  
8 awarded by the jury as punitive damages be credited by the court  
9 with amounts previously paid in any state or federal court by the  
10 defendant for punitive damages arising out of the same conduct on  
11 which the imposition of punitive damages is based. At any  
12 hearing, the burden on all issues relating to such a credit shall  
13 be on the defendant and either party may introduce relevant  
14 evidence on such motion. Such a motion shall be determined by  
15 the trial court within the time and according to procedures  
16 applicable to motions for new trial. If the trial court sustains  
17 such a motion the trial court shall credit the jury award of  
18 punitive damages by the amount found by the trial court to have  
19 been previously paid by the defendant arising out of the same  
20 conduct and enter judgment accordingly. If the defendant fails  
21 to establish entitlement to a credit under the provisions of this  
22 section, or the trial court finds from the evidence that the  
23 defendant's conduct out of which the prior punitive damages award  
24 arose was not the same conduct on which the imposition of  
25 punitive damages is based in the pending action, or the trial  
26 court finds the defendant unreasonably continued the conduct  
27 after acquiring actual knowledge of the dangerous nature of such  
28 conduct, the trial court shall disallow such credit, or, if the

1 trial court finds that the laws regarding punitive damages in the  
2 state or federal court in which the prior award of punitive  
3 damages was entered substantially and materially deviate from the  
4 law of the state of Missouri, except with respect to section  
5 537.675, and that the nature of such deviation provides good  
6 cause for disallowance of the credit based on the public policy  
7 of Missouri, then the trial court may disallow all or any part of  
8 the credit provided by this section.

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

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

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

19 8. Discovery as to a defendant's assets shall be allowed  
20 only after [a finding by the trial court that it is more likely  
21 than not that the plaintiff will be able to present a submissible  
22 case to the trier of fact on the plaintiff's claim of punitive  
23 damages] a trial court has granted leave to file a pleading  
24 seeking punitive damages in accordance with subsection 5 of  
25 section 510.259.

26 510.265. 1. No award of punitive damages against any  
27 defendant shall exceed the greater of:

28 (1) Five hundred thousand dollars; or

1           (2) Five times the net amount of the judgment awarded to  
2 the plaintiff against the defendant.

3  
4 Such limitations shall not apply if the state of Missouri is the  
5 plaintiff requesting the award of punitive damages, or the  
6 defendant pleads guilty to or is convicted of a felony arising  
7 out of the acts or omissions pled by the plaintiff.

8           2. The provisions of this section shall not apply to civil  
9 actions brought under section 213.111 that allege a violation of  
10 section 213.040, 213.045, 213.050, or 213.070, to the extent that  
11 the alleged violation of section 213.070 relates to or involves a  
12 violation of section 213.040, 213.045, or 213.050, or subdivision  
13 (3) of subsection 1 of section 213.070 as it relates to housing.

14           3. The provisions of sections 510.259 and 510.263, and  
15 subsection 4 of section 213.111 shall not apply to civil actions  
16 that allege a violation of section 213.040, 213.045, 213.050, or  
17 213.070, to the extent that the alleged violation of section  
18 213.070 relates to or involves a violation of section 213.040,  
19 213.045, or 213.050, or subdivision (3) of subsection 1 of  
20 section 213.070 as it relates to housing.

21           538.205. As used in sections 538.205 to 538.230, the  
22 following terms shall mean:

23           (1) "Catastrophic personal injury", a physical injury  
24 resulting in:

25           (a) Quadriplegia defined as the permanent loss of  
26 functional use of all four limbs;

27           (b) Paraplegia defined as the permanent loss of functional  
28 use of two limbs;

1 (c) Loss of two or more limbs;

2 (d) An injury to the brain that results in permanent  
3 cognitive impairment resulting in the permanent inability to make  
4 independent decisions or engage in one or more of the following  
5 activities of daily living: eating, dressing, bathing, toileting,  
6 transferring, and walking;

7 (e) An injury that causes irreversible failure of one or  
8 more major organ systems; or

9 (f) Vision loss such that the patient's central visual  
10 acuity is no more than twenty/two-hundred in the better eye with  
11 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  
13 no greater than twenty degrees;

14 (2) "Economic damages", damages arising from pecuniary harm  
15 including, without limitation, medical damages, and those damages  
16 arising from lost wages and lost earning capacity;

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

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

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

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



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

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

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

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

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

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

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

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

18           2. (1) In any action against a health care provider for  
19 damages for personal injury arising out of the rendering of or  
20 the failure to render health care services, no plaintiff shall  
21 recover more than four hundred thousand dollars for noneconomic  
22 damages irrespective of the number of defendants.

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

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

6           3. [(1)] This section shall also apply to any individual  
7 or entity, or their employees or agents[, ]:

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

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

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

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

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

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

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

11 8. Any provision of law or court rule to the contrary  
12 notwithstanding, an award of punitive damages against a health  
13 care provider governed by the provisions of sections 538.205 to  
14 538.230 shall be made only upon a [showing by a plaintiff]  
15 finding by the jury that the evidence clearly and convincingly  
16 demonstrated that the health care provider [demonstrated willful,  
17 wanton or malicious misconduct with respect to his actions which  
18 are found to have injured or caused or contributed to cause the  
19 damages claimed in the petition] intentionally caused damage to  
20 the plaintiff or demonstrated malicious misconduct that caused  
21 damage to the plaintiff. Evidence of negligence, including, but  
22 not limited to, indifference to or conscious disregard for the  
23 safety of others shall not constitute a basis for an award of  
24 punitive damages against a health care provider.

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

28 10. The limitations on awards for noneconomic damages

1 provided for in this section shall be increased by one and  
2 seven-tenths percent on an annual basis effective January first  
3 of each year. The current value of the limitation shall be  
4 calculated by the director of the department of insurance,  
5 financial institutions and professional registration, who shall  
6 furnish that value to the secretary of state, who shall publish  
7 such value in the Missouri Register on the first business day  
8 following January first, but the value shall otherwise be exempt  
9 from the provisions of section 536.021.

10 11. In any claim for damages under this chapter, and upon  
11 ~~[post-trial]~~ posttrial motion following a jury verdict with  
12 noneconomic damages exceeding four hundred thousand dollars, the  
13 trial court shall determine whether the limitation in subsection  
14 2 of this section shall apply based on the severity of the most  
15 severe injuries.

16 12. If a court of competent jurisdiction enters a final  
17 judgment on the merits that is not subject to appeal and that  
18 declares any provision or part of either section 1.010 or this  
19 section to be unconstitutional or unenforceable, then section  
20 1.010 and this section, as amended by this act and in their  
21 entirety, are invalid and shall have no legal effect as of the  
22 date of such judgment, and this act, including its repealing  
23 clause, shall likewise be invalid and of no legal effect. In  
24 such event, the versions of sections 1.010 and this section that  
25 were in effect prior to the enactment of this act shall remain in  
26 force.