

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 591

AN ACT

To repeal sections 182.817, 191.656, 213.111, 260.210, 407.020, 407.025, 417.457, 435.415, 448.4-117, 510.263, 510.265, 537.065, 537.090, 538.205, 538.210, 542.418, and 544.195, RSMo, and to enact in lieu thereof eighteen new sections relating to civil actions, with existing penalty provisions.

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

1           Section A. Sections 182.817, 191.656, 213.111, 260.210,  
2           407.020, 407.025, 417.457, 435.415, 448.4-117, 510.263, 510.265,  
3           537.065, 537.090, 538.205, 538.210, 542.418, and 544.195, RSMo,  
4           are repealed and eighteen new sections enacted in lieu thereof,  
5           to be known as sections 182.817, 191.656, 213.111, 260.210,  
6           407.020, 407.025, 417.457, 435.415, 448.4-117, 510.261, 510.263,  
7           510.265, 537.065, 537.090, 538.205, 538.210, 542.418, and  
8           544.195, to read as follows:

9           182.817. 1. Notwithstanding the provisions of any other  
10          law to the contrary, no library, employee or agent of a library,  
11          or third party contracted by a library that receives, transmits,  
12          maintains, or stores library records shall release or disclose a  
13          library record or portion of a library record to any person or  
14          persons except:

15               (1) In response to a written request of the person

1 identified in that record, according to procedures and forms  
2 giving written consent as determined by the library; or

3 (2) In response to an order issued by a court of competent  
4 jurisdiction upon a finding that the disclosure of such record is  
5 necessary to protect the public safety or to prosecute a crime.

6 2. Any person whose privacy is compromised as a result of  
7 an alleged violation of this section may file a written complaint  
8 within one hundred eighty days of the alleged violation with the  
9 office of the attorney general describing the facts surrounding  
10 the alleged violation. Such person may additionally bring a  
11 private civil action in the circuit court of the county in which  
12 the library is located to recover damages. The court may, in its  
13 discretion, award punitive damages, except as provided in  
14 subsection 4 of this section, and may award to the prevailing  
15 party attorney's fees, based on the amount of time reasonably  
16 expended, and may provide such equitable relief as it deems  
17 necessary or proper. A prevailing respondent may be awarded  
18 attorney fees under this subsection only upon a showing that the  
19 case is without foundation.

20 3. Upon receipt of a complaint filed in accordance with  
21 subsection 2 of this section, the attorney general shall review  
22 each complaint and may initiate legal action if deemed  
23 appropriate.

24 4. In any cause of action brought pursuant to this section,  
25 punitive damages shall not be awarded against a library  
26 established by the state, a political subdivision of the state,  
27 or any combination thereof, any community college district, or  
28 any state college or university, or any employee or agent of such

1 library if such person was acting within the scope of his or her  
2 employment.

3 191.656. 1. (1) All information known to, and records  
4 containing any information held or maintained by, any person, or  
5 by any agency, department, or political subdivision of the state  
6 concerning an individual's HIV infection status or the results of  
7 any individual's HIV testing shall be strictly confidential and  
8 shall not be disclosed except to:

9 (a) Public employees within the agency, department, or  
10 political subdivision who need to know to perform their public  
11 duties;

12 (b) Public employees of other agencies, departments, or  
13 political subdivisions who need to know to perform their public  
14 duties;

15 (c) Peace officers, as defined in section 590.100, the  
16 attorney general or any assistant attorneys general acting on his  
17 or her behalf, as defined in chapter 27, and prosecuting  
18 attorneys or circuit attorneys as defined in chapter 56 and  
19 pursuant to section 191.657;

20 (d) Prosecuting attorneys or circuit attorneys as defined  
21 in chapter 56 to prosecute cases pursuant to section 191.677 or  
22 567.020. Prosecuting attorneys or circuit attorneys may obtain  
23 from the department of health and senior services the contact  
24 information and test results of individuals with whom the  
25 HIV-infected individual has had sexual intercourse or deviate  
26 sexual intercourse. Any prosecuting attorney or circuit attorney  
27 who receives information from the department of health and senior  
28 services pursuant to the provisions of this section shall use

1 such information only for investigative and prosecutorial  
2 purposes and such information shall be considered strictly  
3 confidential and shall only be released as authorized by this  
4 section;

5 (e) Persons other than public employees who are entrusted  
6 with the regular care of those under the care and custody of a  
7 state agency, including but not limited to operators of day care  
8 facilities, group homes, residential care facilities and adoptive  
9 or foster parents;

10 (f) As authorized by subsection 2 of this section;

11 (g) Victims of any sexual offense defined in chapter 566,  
12 which includes sexual intercourse or deviate sexual intercourse,  
13 as an element of the crime or to a victim of a section 545.940  
14 offense, in which the court, for good cause shown, orders the  
15 defendant to be tested for HIV, hepatitis B, hepatitis C,  
16 syphilis, gonorrhoea, or chlamydia, once the charge is filed.  
17 Prosecuting attorneys or circuit attorneys, or the department of  
18 health and senior services may release information to such  
19 victims;

20 (h) Any individual who has tested positive or false  
21 positive to HIV, hepatitis B, hepatitis C, syphilis, gonorrhoea,  
22 or chlamydia, may request copies of any and all test results  
23 relating to said infections.

24 (2) Further disclosure by public employees shall be  
25 governed by subsections 2 and 3 of this section;

26 (3) Disclosure by a public employee or any other person in  
27 violation of this section may be subject to civil actions brought  
28 under subsection 6 of this section, unless otherwise required by

1 chapter 330, 332, 334, or 335, pursuant to discipline taken by a  
2 state licensing board.

3 2. (1) Unless the person acted in bad faith or with  
4 conscious disregard, no person shall be liable for violating any  
5 duty or right of confidentiality established by law for  
6 disclosing the results of an individual's HIV testing:

7 (a) To the department of health and senior services;

8 (b) To health care personnel working directly with the  
9 infected individual who have a reasonable need to know the  
10 results for the purpose of providing direct patient health care;

11 (c) Pursuant to the written authorization of the subject of  
12 the test result or results;

13 (d) To the spouse of the subject of the test result or  
14 results;

15 (e) To the subject of the test result or results;

16 (f) To the parent or legal guardian or custodian of the  
17 subject of the testing, if he is an unemancipated minor;

18 (g) To the victim of any sexual offense defined in chapter  
19 566, which includes sexual intercourse or deviate sexual  
20 intercourse, as an element of the crime or to a victim of a  
21 section 545.940 offense, in which the court, for good cause  
22 shown, orders the defendant to be tested for HIV, B, hepatitis C,  
23 syphilis, gonorrhea, or chlamydia, once the charge is filed;

24 (h) To employees of a state licensing board in the  
25 execution of their duties under chapter 330, 332, 334, or 335  
26 pursuant to discipline taken by a state licensing board;

27  
28 The department of health and senior services and its employees

1 shall not be held liable for disclosing an HIV-infected person's  
2 HIV status to individuals with whom that person had sexual  
3 intercourse or deviate sexual intercourse;

4 (2) Paragraphs (b) and (d) of subdivision (1) of this  
5 subsection shall not be construed in any court to impose any duty  
6 on a person to disclose the results of an individual's HIV  
7 testing to a spouse or health care professional or other  
8 potentially exposed person, parent or guardian;

9 (3) No person to whom the results of an individual's HIV  
10 testing has been disclosed pursuant to paragraphs (b) and (c) of  
11 subdivision (1) of this subsection shall further disclose such  
12 results; except that prosecuting attorneys or circuit attorneys  
13 may disclose such information to defense attorneys defending  
14 actions pursuant to section 191.677 or 567.020 under the rules of  
15 discovery, or jurors or court personnel hearing cases pursuant to  
16 section 191.677 or 567.020. Such information shall not be used  
17 or disclosed for any other purpose;

18 (4) When the results of HIV testing, disclosed pursuant to  
19 paragraph (b) of subdivision (1) of this subsection, are included  
20 in the medical record of the patient who is subject to the test,  
21 the inclusion is not a disclosure for purposes of such paragraph  
22 so long as such medical record is afforded the same  
23 confidentiality protection afforded other medical records.

24 3. All communications between the subject of HIV testing  
25 and a physician, hospital, or other person authorized by the  
26 department of health and senior services who performs or conducts  
27 HIV sampling shall be privileged communications.

28 4. The identity of any individual participating in a

1 research project approved by an institutional review board shall  
2 not be reported to the department of health and senior services  
3 by the physician conducting the research project.

4 5. The subject of HIV testing who is found to have HIV  
5 infection and is aware of his or her HIV status shall disclose  
6 such information to any health care professional from whom such  
7 person receives health care services. Said notification shall be  
8 made prior to receiving services from such health care  
9 professional if the HIV-infected person is medically capable of  
10 conveying that information or as soon as he or she becomes  
11 capable of conveying that information.

12 6. Any individual aggrieved by a violation of this section  
13 or regulations promulgated by the department of health and senior  
14 services may bring a civil action for damages. If it is found in  
15 a civil action that:

16 (1) A person has negligently violated this section, the  
17 person is liable, for each violation, for:

18 (a) The greater of actual damages or liquidated damages of  
19 one thousand dollars; and

20 (b) Court costs and reasonable attorney's fees incurred by  
21 the person bringing the action; and

22 (c) Such other relief, including injunctive relief, as the  
23 court may deem appropriate; or

24 (2) A person has willfully or intentionally or recklessly  
25 violated this section, the person is liable, for each violation,  
26 for:

27 (a) The greater of actual damages or liquidated damages of  
28 five thousand dollars; and

1 (b) Exemplary damages, except such damages shall not be  
2 awarded if the person is a public body or an officer, director,  
3 agent, or employee of a public body if such person was acting  
4 within the scope of his or her employment; and

5 (c) Court costs and reasonable attorney's fees incurred by  
6 the person bringing the action; and

7 (d) Such other relief, including injunctive relief, as the  
8 court may deem appropriate.

9 7. No civil liability shall accrue to any health care  
10 provider as a result of making a good faith report to the  
11 department of health and senior services about a person  
12 reasonably believed to be infected with HIV, or cooperating in  
13 good faith with the department in an investigation determining  
14 whether a court order directing an individual to undergo HIV  
15 testing will be sought, or in participating in good faith in any  
16 judicial proceeding resulting from such a report or  
17 investigations; and any person making such a report, or  
18 cooperating with such an investigation or participating in such a  
19 judicial proceeding, shall be immune from civil liability as a  
20 result of such actions so long as taken in good faith.

21 213.111. 1. If, after one hundred eighty days from the  
22 filing of a complaint alleging an unlawful discriminatory  
23 practice pursuant to section 213.055, 213.065 or 213.070 to the  
24 extent that the alleged violation of section 213.070 relates to  
25 or involves a violation of section 213.055 or 213.065, or  
26 subdivision (3) of subsection 1 of section 213.070 as it relates  
27 to employment and public accommodations, the commission has not  
28 completed its administrative processing and the person aggrieved



1 so requests in writing, the commission shall issue to the person  
2 claiming to be aggrieved a letter indicating his or her right to  
3 bring a civil action within ninety days of such notice against  
4 the respondent named in the complaint. If, after the filing of a  
5 complaint pursuant to sections 213.040, 213.045, 213.050 and  
6 213.070, to the extent that the alleged violation of section  
7 213.070 relates to or involves a violation of sections 213.040,  
8 213.045 and 213.050, or subdivision (3) of subsection 1 of  
9 section 213.070 as it relates to housing, and the person  
10 aggrieved so requests in writing, the commission shall issue to  
11 the person claiming to be aggrieved a letter indicating his or  
12 her right to bring a civil action within ninety days of such  
13 notice against the respondent named in the complaint. The  
14 commission may not at any other time or for any other reason  
15 issue a letter indicating a complainant's right to bring a civil  
16 action. Such an action may be brought in any circuit court in  
17 any county in which the unlawful discriminatory practice is  
18 alleged to have been committed, either before a circuit or  
19 associate circuit judge. Upon issuance of this notice, the  
20 commission shall terminate all proceedings relating to the  
21 complaint. No person may file or reinstate a complaint with the  
22 commission after the issuance of a notice under this section  
23 relating to the same practice or act. Any action brought in  
24 court under this section shall be filed within ninety days from  
25 the date of the commission's notification letter to the  
26 individual but no later than two years after the alleged cause  
27 occurred or its reasonable discovery by the alleged injured  
28 party.

1           2. The court may grant as relief, as it deems appropriate,  
2 any permanent or temporary injunction, temporary restraining  
3 order, or other order, and may award to the plaintiff actual and  
4 punitive damages, and may award court costs and reasonable  
5 attorney fees to the prevailing party, other than a state agency  
6 or commission or a local commission; except that, a prevailing  
7 respondent may be awarded reasonable attorney fees only upon a  
8 showing that the case was without foundation. No award of  
9 damages shall include punitive damages in any civil action  
10 brought pursuant to this section in which the respondent is the  
11 state, any political subdivision of the state, or any official or  
12 employee thereof if such person was acting within the scope of  
13 his or her official duties or employment.

14           3. Any party to any action initiated under this section has  
15 a right to a trial by jury.

16           4. The sum of the amount of actual damages, including  
17 damages for future pecuniary losses, emotional pain, suffering,  
18 inconvenience, mental anguish, loss of enjoyment of life, and  
19 other nonpecuniary losses, and punitive damages awarded under  
20 this section shall not exceed for each complaining party:

21           (1) Actual back pay and interest on back pay; and

22           (2) (a) In the case of a respondent who has more than five  
23 and fewer than one hundred one employees in each of twenty or  
24 more calendar weeks in the current or preceding calendar year,  
25 fifty thousand dollars;

26           (b) In the case of a respondent who has more than one  
27 hundred and fewer than two hundred one employees in each of  
28 twenty or more calendar weeks in the current or preceding

1 calendar year, one hundred thousand dollars;

2 (c) In the case of a respondent who has more than two  
3 hundred and fewer than five hundred one employees in each of  
4 twenty or more calendar weeks in the current or preceding  
5 calendar year, two hundred thousand dollars; or

6 (d) In the case of a respondent who has more than five  
7 hundred employees in each of twenty or more calendar weeks in the  
8 current or preceding calendar year, five hundred thousand  
9 dollars.

10 5. In any employment-related civil action brought under  
11 this chapter, the plaintiff shall bear the burden of proving the  
12 alleged unlawful decision or action was made or taken because of  
13 his or her protected classification and was the direct proximate  
14 cause of the claimed damages.

15 260.210. 1. It is unlawful for any person to:

16 (1) Dump or deposit, or permit dumping or depositing of any  
17 solid wastes onto the surface of the ground or into streams,  
18 springs, and all bodies of surface or ground water, whether  
19 natural or artificial, within the boundaries of the state except  
20 in a solid waste processing facility or solid waste disposal area  
21 having a permit as required by section 260.205; provided that,  
22 this subdivision shall not prohibit the use or require a permit  
23 for the use of solid wastes in normal farming operations or in  
24 the processing or manufacturing of other products in a manner  
25 that will not create a public nuisance or adversely affect the  
26 public health, and shall not prohibit the disposal of or require  
27 a permit for the disposal by an individual of solid wastes  
28 resulting from his or her own residential activities on property

1 owned or lawfully occupied by him or her when such wastes do not  
2 thereby create a public nuisance or adversely affect the public  
3 health;

4 (2) Construct or alter a solid waste processing facility or  
5 solid waste disposal area of a solid waste management system  
6 without approval from the department;

7 (3) Conduct any solid waste burning operations in violation  
8 of the rules and regulations of the Missouri air conservation  
9 commission or the department;

10 (4) Except as otherwise provided, store, collect,  
11 transport, process, or dispose of solid waste in violation of the  
12 rules, regulations or orders of the department or in such a  
13 manner as to create a public nuisance or adversely affect the  
14 public health; or

15 (5) Refuse entry or access, requested for purposes of  
16 inspecting solid waste processing facilities or solid waste  
17 disposal areas, to an agent or employee of the department who  
18 presents appropriate credentials, or hinder the agent or employee  
19 in carrying out the inspection. A suitably restricted search  
20 warrant, upon a showing of probable cause in writing and upon  
21 oath, shall be issued by any circuit or associate circuit judge  
22 having jurisdiction to any such agent or employee for the purpose  
23 of enabling him to make such inspection.

24 2. Information obtained from waste disposed or deposited in  
25 violation of this section may be a rebuttable presumption that  
26 the person so identified committed the violation of sections  
27 260.200 to 260.345. If the operator or passenger of any vehicle  
28 is witnessed by a peace officer or employee of the department of

1 natural resources to have violated the provisions of this section  
2 and the identity of the operator is not determined or otherwise  
3 apparent, it may be a rebuttable presumption that the person in  
4 whose name such vehicle is registered committed the violation.

5 3. No person shall be held responsible pursuant to this  
6 section for the dumping or depositing of any solid waste on land  
7 owned or lawfully occupied by him or her without his or her  
8 express or implied consent, permission or knowledge.

9 4. The department shall investigate reports of the dumping  
10 or depositing of solid waste or demolition waste in a manner  
11 contrary to the requirements of sections 260.200 to 260.345. The  
12 department shall immediately issue a cease and desist order if it  
13 determines that any person has been or is dumping or depositing  
14 solid waste or demolition waste, or has allowed the dumping or  
15 disposal of solid waste or demolition waste or has received  
16 compensation for same, in a manner contrary to sections 260.200  
17 to 260.345. The department shall order the owner of the property  
18 or the person placing solid waste or demolition waste thereon, or  
19 both, to remove all solid waste from the premises if it  
20 determines that the waste might be reasonably expected to cause a  
21 public nuisance or health hazard.

22 5. The department shall order a site cleaned up pursuant to  
23 the provisions of section 260.230, when it determines that the  
24 property owner or the operator has accepted remuneration or  
25 otherwise benefitted financially for placing solid waste or  
26 demolition waste in or on the site in contravention of this  
27 section. Persons who knowingly haul solid waste or demolition  
28 waste to a site which is operating without a permit, persons who

1 operate such a site and persons who own the property where the  
2 solid waste or demolition waste is being dumped or deposited  
3 shall be jointly and severally liable for cleanup costs and any  
4 damage to third parties caused by the dumping or disposing of  
5 solid waste or demolition waste on the property if the owner or  
6 operator has accepted remuneration or otherwise benefitted  
7 financially from such disposal. The provisions of sections  
8 260.230 and 260.240, relating to the issuance of orders, shall be  
9 applicable to an action pursuant to this section. Any person  
10 aggrieved by any action of the department pursuant to this  
11 section may appeal in the manner provided in section 260.235.  
12 Any person may bring civil action for actual and exemplary  
13 damages against the responsible party if the person has sustained  
14 injury due to violations of this section, except no exemplary  
15 damages shall be awarded if the responsible party is a city,  
16 county, political subdivision, authority, state agency or  
17 institution, or any official or employee thereof if such person  
18 was acting within the scope of his or her official duties or  
19 employment.

20 6. Notwithstanding subsection 1 of section 260.250, any  
21 solid waste disposal area or solid waste processing facility  
22 serving a city with a population of more than four hundred  
23 thousand inhabitants may accept yard waste commingled with solid  
24 waste that results from an illegal dump cleanup activity or  
25 program conducted by the local government of such city pursuant  
26 to this section. The local government of such city shall provide  
27 certification to the solid waste disposal area or solid waste  
28 processing facility that the origin of the yard waste is from the

1 cleanup of illegally dumped solid waste.

2 7. Any person who engages in building construction,  
3 modification or in construction, modification or demolition which  
4 produces demolition waste, in types and quantities established by  
5 the department, shall dispose of such waste in a demolition or  
6 sanitary landfill or other authorized sites as provided by rule.  
7 Each such person shall maintain records of sites used for  
8 demolition disposal for a period of one year. These records  
9 shall be made available to the department upon request.

10 8. Cities and counties which issue building permits shall  
11 reprint the following on each permit or on a separate notice:

12 "Notice: The disposal of demolition waste is regulated  
13 by the department of natural resources pursuant to  
14 chapter 260, RSMo. Such waste, in types and quantities  
15 established by the department, shall be taken to a  
16 demolition landfill or a sanitary landfill for  
17 disposal."

18 9. A demolition landfill may accept clean fill, waste  
19 resulting from building or demolishing structures and all other  
20 waste not required to be placed in a sanitary landfill or a  
21 hazardous waste disposal facility for final disposition.

22 10. Notwithstanding subsection 7 of this section, certain  
23 wastes may be disposed of as provided by this subsection:

24 (1) A person engaged in any activity which produces clean  
25 fill may use such material for fill, reclamation or other  
26 beneficial purposes on his or her own property or on the property  
27 of another person with the permission of the owner of such  
28 property, provided that such use does not violate any state law

1 or local ordinance or order;

2 (2) A person engaged in any activity which produces wood  
3 waste may reuse or recycle such waste or may dispose of wood  
4 waste on the site where generated if such disposal is in  
5 compliance with applicable state law or local ordinances or  
6 orders;

7 (3) A person who engages in clearance, trimming or removal  
8 of trees, brush or other vegetation may use wood wastes from such  
9 activities for beneficial purposes including, but not limited to,  
10 firewood, ground cover, erosion control, mulch, compost or cover  
11 for wildlife.

12 407.020. 1. The act, use or employment by any person of  
13 any deception, fraud, false pretense, false promise,  
14 misrepresentation, unfair practice or the concealment,  
15 suppression, or omission of any material fact in connection with  
16 the sale or advertisement of any merchandise in trade or commerce  
17 or the solicitation of any funds for any charitable purpose, as  
18 defined in section 407.453, in or from the state of Missouri, is  
19 declared to be an unlawful practice. The use by any person, in  
20 connection with the sale or advertisement of any merchandise in  
21 trade or commerce or the solicitation of any funds for any  
22 charitable purpose, as defined in section 407.453, in or from the  
23 state of Missouri of the fact that the attorney general has  
24 approved any filing required by this chapter as the approval,  
25 sanction or endorsement of any activity, project or action of  
26 such person, is declared to be an unlawful practice. Any act,  
27 use or employment declared unlawful by this subsection violates  
28 this subsection whether committed before, during or after the



1 sale, advertisement or solicitation.

2 2. Nothing contained in this section shall apply to:

3 (1) The owner or publisher of any newspaper, magazine,  
4 publication or printed matter wherein such advertisement appears,  
5 or the owner or operator of a radio or television station which  
6 disseminates such advertisement when the owner, publisher or  
7 operator has no knowledge of the intent, design or purpose of the  
8 advertiser; [or]

9 (2) Any institution, company, or entity that is subject to  
10 chartering, licensing, or regulation by the director of the  
11 department of commerce and insurance under chapter 354 or  
12 chapters 374 to 385, the director of the division of credit  
13 unions under chapter 370, or director of the division of finance  
14 under chapters 361 to 369, or chapter 371, unless such directors  
15 specifically authorize the attorney general to implement the  
16 powers of this chapter or such powers are provided to either the  
17 attorney general or a private citizen by statute; or

18 (3) Any advertisement, merchandise, or transaction in which  
19 the merchandise consists of a new residence in a transaction in  
20 which the buyer is offered in the sale contract an express  
21 warranty by the builder or through a third party warranty company  
22 paid for by the builder and the sale contract contains  
23 substantially the following disclaimer in all capital letters  
24 with characters of at least ten-point type: "THIS CONTRACT,  
25 MERCHANDISE AND PROPERTY CONVEYED UNDER THIS CONTRACT AND THE  
26 TRANSACTION BETWEEN THE SELLER AND BUYER IS EXCLUDED FROM  
27 COVERAGE UNDER THE MERCHANDISING PRACTICES ACT, SECTIONS 407.010  
28 TO 407.130, RSMO.". As used in this section, the term

1 "residence" shall mean a single-family house, duplex, triplex,  
2 quadruplex, or a unit in a multiunit residential structure in  
3 which title to each individual unit is transferred to the owner  
4 under a condominium or cooperative system and shall include  
5 common areas and common elements as defined in subdivision (4) of  
6 section 448.1-103.

7 3. Any person who willfully and knowingly engages in any  
8 act, use, employment or practice declared to be unlawful by this  
9 section with the intent to defraud shall be guilty of a class E  
10 felony.

11 4. It shall be the duty of each prosecuting attorney and  
12 circuit attorney in their respective jurisdictions to commence  
13 any criminal actions under this section, and the attorney general  
14 shall have concurrent original jurisdiction to commence such  
15 criminal actions throughout the state where such violations have  
16 occurred.

17 5. It shall be an unlawful practice for any long-term care  
18 facility, as defined in section 192.2300, except a facility which  
19 is a residential care facility or an assisted living facility, as  
20 defined in section 198.006, which makes, either orally or in  
21 writing, representation to residents, prospective residents,  
22 their families or representatives regarding the quality of care  
23 provided, or systems or methods utilized for assurance or  
24 maintenance of standards of care to refuse to provide copies of  
25 documents which reflect the facility's evaluation of the quality  
26 of care, except that the facility may remove information that  
27 would allow identification of any resident. If the facility is  
28 requested to provide any copies, a reasonable amount, as

1 established by departmental rule, may be charged.

2 6. Any long-term care facility, as defined in section  
3 192.2300, which commits an unlawful practice under this section  
4 shall be liable for damages in a civil action of up to one  
5 thousand dollars for each violation, and attorney's fees and  
6 costs incurred by a prevailing plaintiff, as allowed by the  
7 circuit court.

8 407.025. 1. Any person who purchases or leases merchandise  
9 primarily for personal, family or household purposes and thereby  
10 suffers an ascertainable loss of money or property, real or  
11 personal, as a result of the use or employment by another person  
12 of a method, act or practice declared unlawful by section  
13 407.020, may bring a private civil action in either the circuit  
14 court of the county in which the seller or lessor resides or in  
15 which the transaction complained of took place, to recover actual  
16 damages.

17 2. A person seeking to recover damages shall establish:

18 (1) That the person acted as a reasonable consumer would in  
19 light of all circumstances;

20 (2) That the method, act, or practice declared unlawful by  
21 section 407.020 caused the person to enter into the transaction  
22 that resulted in damages; and

23 (3) Individual damages with sufficiently definitive and  
24 objective evidence to allow the loss to be calculated with a  
25 reasonable degree of certainty.

26  
27 A court may dismiss a claim as a matter of law where the claim  
28 fails to show a likelihood that the method, act, or practice

1 alleged to be unlawful would mislead a reasonable consumer.

2 3. The court may, in its discretion[, ]:

3 (1) Award punitive damages [and may];

4 (2) Award to the prevailing party attorney's fees, based on  
5 the amount of time reasonably expended[, ]; and [may]

6 (3) Provide such equitable relief as it deems necessary or  
7 proper to protect the prevailing party from the methods, acts, or  
8 practices declared unlawful by section 407.020.

9 4. No action may be brought under this section to recover  
10 damages for personal injury or death.

11 5. A cause of action under this section accrues on the date  
12 of purchase or lease described in subsection 1 of this section.

13 [2.] 6. Persons entitled to bring an action pursuant to  
14 subsection 1 of this section may, if the unlawful method, act or  
15 practice has caused similar injury to numerous other persons,  
16 institute an action as representative or representatives of a  
17 class against one or more defendants as representatives of a  
18 class, and the petition shall allege such facts as will show that  
19 these persons or the named defendants specifically named and  
20 served with process have been fairly chosen and adequately and  
21 fairly represent the whole class, to recover damages as provided  
22 for in subsection 1 of this section. The plaintiff shall be  
23 required to prove such allegations, unless all of the members of  
24 the class have entered their appearance, and it shall not be  
25 sufficient to prove such facts by the admission or admissions of  
26 the defendants who have entered their appearance. In any action  
27 brought pursuant to this section, the court may in its discretion  
28 order, in addition to damages, injunction or other equitable

1 relief and reasonable attorney's fees. Attorney's fees, if  
2 awarded, shall bear a reasonable relationship to the amount of  
3 the judgment. When the judgment is a rescission of the sale, the  
4 attorney's fees shall be based on the amount of time reasonably  
5 expended.

6 [3.] 7. An action may be maintained as a class action in a  
7 manner consistent with Rule 23 of the Federal Rules of Civil  
8 Procedure and Missouri rule of civil procedure 52.08 to the  
9 extent such state rule is not inconsistent with the federal rule  
10 if:

11 (1) The class is so numerous that joinder of all members is  
12 impracticable;

13 (2) There are questions of law or fact common to the class;

14 (3) The claims or defenses of the representative parties  
15 are typical of the claims or defenses of the class; and

16 (4) The representative parties will fairly and adequately  
17 protect the interests of the class; and, in addition

18 (5) The prosecution of separate action by or against  
19 individual members of the class would create a risk of:

20 (a) Inconsistent or varying adjudications with respect to  
21 individual members of the class which would establish  
22 incompatible standards of conduct for the party opposing the  
23 class; or

24 (b) Adjudications with respect to individual members of the  
25 class which would as a practical matter be dispositive of the  
26 interests of the other members not parties to the adjudications  
27 or substantially impair or impede their ability to protect their  
28 interests; or

1           (6) The party opposing the class has acted or refused to  
2 act on grounds generally applicable to the class, thereby making  
3 appropriate final injunctive relief or corresponding declaratory  
4 relief with respect to the class as a whole; or

5           (7) The court finds that the questions of law or fact  
6 common to the members of the class predominate over any questions  
7 affecting only individual members, and that a class action is  
8 superior to other available methods for the fair and efficient  
9 adjudication of the controversy. The matters pertinent to the  
10 findings include:

11           (a) The interest of members of the class in individually  
12 controlling the prosecution or defense of separate actions;

13           (b) The extent and nature of any litigation concerning the  
14 controversy already commenced by or against members of the class;

15           (c) The desirability or undesirability of concentrating the  
16 litigation of the claims in the particular forum;

17           (d) The difficulties likely to be encountered in the  
18 management of a class action.

19           **[4.] 8.** (1) As soon as practicable after the commencement  
20 of an action brought as a class action, the court shall determine  
21 by order whether it is to be so maintained. An order pursuant to  
22 this subdivision may be conditional, and may be altered or  
23 amended before the decision on the merits.

24           (2) In any class action maintained pursuant to subdivision  
25 (7) of subsection **[3] 7** of this section, the court shall direct  
26 to the members of the class the best notice practicable under the  
27 circumstances, including individual notice to all members who can  
28 be identified through reasonable effort. The notice shall advise

1 each member that:

2 (a) The court will exclude such member from the class if  
3 such member so requests by a specified date;

4 (b) The judgment, whether favorable or not, will include  
5 all members who do not request exclusion; and

6 (c) Any member who does request exclusion may, if such  
7 member desires, enter an appearance through such member's  
8 counsel.

9 (3) The judgment in an action maintained as a class action  
10 pursuant to subdivision (5) of subsection [3] 7 of this section  
11 or subdivision (6) of subsection [3] 7 of this section, whether  
12 or not favorable to the class, shall include and describe those  
13 whom the court finds to be members of the class. The judgment in  
14 an action maintained as a class action pursuant to subdivision  
15 (7) of subsection [3] 7 of this section, whether or not favorable  
16 to the class, shall include and specify or describe those to whom  
17 the notice provided in subdivision (2) of this subsection was  
18 directed, and who have requested exclusion, and whom the court  
19 finds to be members of the class.

20 (4) When appropriate an action may be brought or maintained  
21 as a class action with respect to particular issues, or a class  
22 may be divided into subclasses and each subclass treated as a  
23 class, and the provisions of this section shall then be construed  
24 and applied accordingly.

25 [5.] 9. In the conduct of actions to which this section  
26 applies, the court may make appropriate orders:

27 (1) Determining the course of proceedings or prescribing  
28 measures to prevent undue repetition or complication in the

1 presentation of evidence or argument;

2 (2) Requiring, for the protection of the members of the  
3 class or otherwise for the fair conduct of the action, that  
4 notice be given in such manner as the court may direct to some or  
5 all of the members of any step in the action, or of the proposed  
6 extent of the judgment, or of the opportunity of members to  
7 signify whether they consider the representation fair and  
8 adequate, to intervene and present claims or defenses, or  
9 otherwise to come into the action;

10 (3) Imposing conditions on the representative parties or on  
11 intervenors;

12 (4) Requiring that the pleadings be amended to eliminate  
13 therefrom allegations as to representation of absent persons, and  
14 that the action proceed accordingly;

15 (5) Dealing with similar procedural matters.

16 [6.] 10. A class action shall not be dismissed or  
17 compromised without the approval of the court, and notice of the  
18 proposed dismissal or compromise shall be given to all members of  
19 the class in such manner as the court directs.

20 [7.] 11. Upon commencement of any action brought pursuant  
21 to subsection 1 of this section, the plaintiff or plaintiffs  
22 shall inform the clerk of the court in which such action is  
23 brought, on forms to be provided by such clerk, that the action  
24 is brought pursuant to this section. The clerk of the court  
25 shall forthwith inform the attorney general of the commencement  
26 of such action, together with a copy of the complaint or other  
27 initial pleading, and, upon entry of any judgment or decree in  
28 the action, the clerk shall mail a copy of such judgment or



1 decree to the attorney general.

2 [8.] 12. Any permanent injunction, judgment or order of the  
3 court made pursuant to section 407.100 shall be prima facie  
4 evidence in an action brought pursuant to this section that the  
5 respondent used or employed a method, act or practice declared  
6 unlawful by section 407.020.

7 417.457. 1. Except to the extent that a material and  
8 prejudicial change of position prior to acquiring knowledge or  
9 reason to know of misappropriation renders a monetary recovery  
10 inequitable, a complainant is entitled to recover damages for  
11 misappropriation. Damages can include both the actual loss  
12 caused by misappropriation and the unjust enrichment caused by  
13 misappropriation that is not taken into account in computing  
14 actual loss. In lieu of damages measured by any other methods,  
15 the damages caused by misappropriation may be measured by  
16 imposition of liability for a reasonable royalty for a  
17 misappropriator's unauthorized disclosure or use of a trade  
18 secret.

19 2. If misappropriation is outrageous because of the  
20 misappropriator's evil motive or reckless indifference to the  
21 rights of others, the court may award punitive damages, except  
22 that punitive damages shall not be awarded if the misappropriator  
23 is a governmental subdivision or agency, or an official or  
24 employee thereof if such person was acting within the scope of  
25 his or her official duties or employment.

26 435.415. 1. Except as provided in subsection 2 of this  
27 section, upon the granting of an order confirming, modifying or  
28 correcting an award, judgment or decree shall be entered in

1 conformity therewith and be enforced as any other judgment or  
2 decree. Costs of the application and of the proceedings  
3 subsequent thereto, and disbursements may be awarded by the  
4 court.

5 2. Any arbitration award or any judgment or decree entered  
6 on an award shall not be binding on any liability insurer, be  
7 admissible in evidence in any lawsuit against any liability  
8 insurer for any party to an award, or provide the basis for any  
9 judgment or decree, including any garnishment, against any  
10 liability insurer, unless the liability insurer has agreed in  
11 writing to the arbitration proceeding. Any arbitration award or  
12 any judgment or decree confirming, modifying, or correcting any  
13 arbitration award shall not be subject to garnishment,  
14 enforcement, or collection from any liability insurer unless the  
15 liability insurer has agreed in writing to the written  
16 arbitration agreement. Unless otherwise required by the  
17 insurance contract, a liability insurer's election not to  
18 participate in an arbitration proceeding shall not constitute,  
19 nor be construed to be, bad faith. Nothing in this section shall  
20 apply to any arbitration award arising out of an arbitration  
21 agreement preceding the date of the injury or loss on which an  
22 arbitration award is based.

23 3. As used in this section, the term "insurer" shall  
24 include any entity authorized to transact liability insurance  
25 business in this state including, but not limited to, any  
26 liability insurance company organized, incorporated, or doing  
27 business pursuant to the provisions of chapter 379, any entity  
28 formed pursuant to section 537.620, any entity which is subject

1 to sections 537.700 to 537.756, or any entity which provides risk  
2 management services to any public or private entity.

3 448.4-117. If a declarant or any other person subject to  
4 sections 448.1-101 to 448.4-120 fails to comply with any  
5 provision hereof or any provision of the declaration or bylaws,  
6 any person or class of persons adversely affected by such failure  
7 to comply has a claim for appropriate relief. Punitive damages  
8 may be awarded in the case of a willful, wanton and malicious  
9 failure to comply with any provision of sections 448.1-101 to  
10 448.4-120, except that punitive damages shall not be awarded if  
11 the declarant or any other person subject to sections 448.1-101  
12 to 448.4-120 is the government, governmental subdivision or  
13 agency, or an official or employee thereof if such person was  
14 acting within the scope of his or her official duties or  
15 employment. The court, in an appropriate case, may award  
16 reasonable attorney's fees.

17 510.261. 1. Except as otherwise provided by statute,  
18 punitive damages shall not be awarded unless the claimant proves  
19 by clear and convincing evidence that the defendant intentionally  
20 harmed the plaintiff without just cause or acted with a  
21 deliberate and flagrant disregard for the safety of others.

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

28 3. Punitive damages shall not be awarded against an

1 employer or a principal because of the act or conduct of an  
2 employee or agent unless the claimant can satisfy the standard of  
3 proof in subsection 1 of this section and:

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

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

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

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

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

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

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

24  
25 shall be deemed to be the act, conduct, authorization,  
26 ratification, or intention of the employer or principal.

27 5. No initial pleading in a civil action shall contain a  
28 claim for a punitive damage award. Any later pleading containing

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

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

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

1 and procedures for a punitive damage award contained in this  
2 section and sections 510.263 and 537.675 are met.

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

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

11 510.263. 1. All actions tried before a jury involving  
12 punitive damages[, including tort actions based upon improper  
13 health care,] shall be conducted in a bifurcated trial before the  
14 same jury if requested by any party.

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

25 3. [If during the first stage of a bifurcated trial the  
26 jury determines that a defendant is liable for punitive damages,  
27 that jury shall determine, in a second stage of trial, the amount  
28 of punitive damages to be awarded against such defendant.] If an

1 award of compensatory damages above nominal damages has been made  
2 against a defendant, the court shall promptly commence a hearing  
3 to determine whether punitive damages may be considered by the  
4 same jury. Upon such a determination, the second stage of the  
5 bifurcated trial shall be conducted and the jury shall determine  
6 whether a defendant is liable for punitive damages and, if so,  
7 the amount of punitive damages, subject to the provisions of  
8 section 510.265. Evidence of such defendant's net worth shall be  
9 admissible during the second stage of such trial.

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

1 imposition of punitive damages is based in the pending action, or  
2 the trial court finds the defendant unreasonably continued the  
3 conduct after acquiring actual knowledge of the dangerous nature  
4 of such conduct, the trial court shall disallow such credit, or,  
5 if the trial court finds that the laws regarding punitive damages  
6 in the state or federal court in which the prior award of  
7 punitive damages was entered substantially and materially deviate  
8 from the law of the state of Missouri, except with respect to  
9 section 537.675, and that the nature of such deviation provides  
10 good cause for disallowance of the credit based on the public  
11 policy of Missouri, then the trial court may disallow all or any  
12 part of the credit provided by this section.

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

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

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

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



1 510.261.

2 510.265. 1. No award of punitive damages against any  
3 defendant shall exceed the greater of:

4 (1) Five hundred thousand dollars; or

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

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

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

17 3. The provisions of this section and sections 510.261 and  
18 510.263 shall not apply to civil actions brought under section  
19 213.111 that allege a violation of section 213.040, 213.045,  
20 213.050, or 213.070, to the extent that the alleged violation of  
21 section 213.070 relates to or involves a violation of section  
22 213.040, 213.045, or 213.050, or subdivision (3) of subsection 1  
23 of section 213.070 as it relates to housing.

24 4. In any civil action, punitive damages shall not be  
25 awarded against the state, a political subdivision of the state,  
26 or any official or employee thereof if such person was acting  
27 within the scope of his or her official duties or employment.

28 537.065. 1. Any person having an unliquidated claim for

1 damages against a tort-feasor, on account of personal injuries,  
2 bodily injuries, or death[, provided that, such tort-feasor's  
3 insurer or indemnitor has the opportunity to defend the  
4 tort-feasor without reservation but refuses to do so,] may enter  
5 into a contract with such tort-feasor or any insurer on his or  
6 her behalf or both if the insurer has refused to withdraw a  
7 reservation of rights or declined coverage for such unliquidated  
8 claim, whereby, in consideration of the payment of a specified  
9 amount, the person asserting the claim agrees that in the event  
10 of a judgment against the tort-feasor, neither such person nor  
11 any other person, firm, or corporation claiming by or through him  
12 or her will levy execution, by garnishment or as otherwise  
13 provided by law, except against the specific assets listed in the  
14 contract and except against any insurer which insures the legal  
15 liability of the tort-feasor for such damage and which insurer is  
16 not excepted from execution, garnishment or other legal procedure  
17 by such contract. Execution or garnishment proceedings in aid  
18 thereof shall lie only as to assets of the tort-feasor  
19 specifically mentioned in the contract or the insurer or insurers  
20 not excluded in such contract. Such contract, when properly  
21 acknowledged by the parties thereto, may be recorded in the  
22 office of the recorder of deeds in any county where a judgment  
23 may be rendered, or in the county of the residence of the  
24 tort-feasor, or in both such counties, and if the same is so  
25 recorded then such tort-feasor's property, except as to the  
26 assets specifically listed in the contract, shall not be subject  
27 to any judgment lien as the result of any judgment rendered  
28 against the tort-feasor, arising out of the transaction for which

1 the contract is entered into.

2 2. [Before a judgment may be entered against any  
3 tort-feasor after such tort-feasor has entered into a contract  
4 under this section, the insurer or insurers shall be provided  
5 with written notice of the execution of the contract and shall  
6 have thirty days after receipt of such notice to intervene as a  
7 matter of right in any pending lawsuit involving the claim for  
8 damages] If any action seeking a judgment on the claim against  
9 the tort-feasor is pending at the time of the execution of any  
10 contract entered into under this section, then, within thirty  
11 days after such execution, the tort-feasor shall provide his or  
12 her insurer or insurers with a copy of the executed contract and  
13 a copy of any such action. If any action seeking a judgment on  
14 the claim against the tort-feasor is pending at the time of the  
15 execution of any contract entered into under this section but is  
16 thereafter dismissed, then, within thirty days after the refiling  
17 of that action or the filing of any subsequent action arising out  
18 of the claim for damages against the tort-feasor, the tort-feasor  
19 shall provide his or her insurer or insurers with a copy of the  
20 executed contract and a copy of the refiled or subsequently filed  
21 action seeking a judgment on the claim against the tort-feasor.  
22 If no action seeking a judgment on the claim against the  
23 tort-feasor is pending at the time of the execution of any  
24 contract entered into under this section, then, within thirty  
25 days after the tort-feasor receives notice of any subsequent  
26 action, by service of process or otherwise, the tort-feasor shall  
27 provide his or her insurer or insurers with a copy of the  
28 executed contract and a copy of any action seeking a judgment on

1 the claim against the tort-feasor.

2 3. No judgment shall be entered against any tort-feasor  
3 after such tort-feasor has entered into a contract under this  
4 section for at least thirty days after the insurer or insurers  
5 have received written notice as provided in subsection 2 of this  
6 section.

7 4. Any insurer or insurers who receive notice pursuant to  
8 this section shall have the unconditional right to intervene in  
9 any pending civil action involving the claim for damages within  
10 thirty days after receipt of such notice. Upon intervention  
11 pursuant to this section, the intervenor shall have all rights  
12 afforded to defendants under the Missouri rules of civil  
13 procedure including, but not limited to, the right to conduct  
14 discovery, the right to engage in motion practice, and the right  
15 to a trial by jury. The intervenor shall also have the right to  
16 assert any rights or raise any defenses available to the tort-  
17 feasor and to assert any rights or raise any defenses that would  
18 have been available to the tort-feasor in the absence of the  
19 contract entered into under this section or other agreement  
20 between the parties to that contract. However, nothing in this  
21 section shall alter or reduce the intervening insurer's  
22 obligations to any insureds other than the tort-feasor, including  
23 any co-insureds of the defendant tort-feasor.

24 [3.] 5. The provisions of this section shall apply to any  
25 covenant not to execute or any contract to limit recovery to  
26 specified assets, regardless of whether it is referred to as a  
27 contract under this section.

28 6. All terms of any covenant not to execute or of any

1 contract to limit recovery to specified assets, regardless of  
2 whether it is referred to as a contract under this section, shall  
3 be in writing and signed by the parties to the covenant or  
4 contract. No unwritten term of any covenant not to execute or of  
5 any contract to limit recovery to specified assets, regardless of  
6 whether it is referred to as a contract under this section, shall  
7 be enforceable against any party to the covenant or contract, the  
8 liability insurer of any party to the covenant or contract, or  
9 any other person or entity.

10 [4.] 7. Nothing in this section shall be construed to  
11 prohibit an insured from bringing a separate action asserting  
12 that the insurer acted in bad faith. In any such action for bad  
13 faith, any agreement between the tort-feasor and the insured,  
14 including any contract under this section, shall be admissible in  
15 evidence. The exercise of any rights under this section shall  
16 not be construed to be bad faith.

17 8. As used in this section, the term "insurer" shall  
18 include any entity authorized to transact liability insurance  
19 business in this state including, but not limited to, any  
20 liability insurance company organized, incorporated, or doing  
21 business pursuant to the provisions of chapter 379, any entity  
22 formed pursuant to section 537.620, any entity which is subject  
23 to sections 537.700 to 537.756, or any entity which provides risk  
24 management services to any public or private entity.

25 537.090. In every action brought under section 537.080, the  
26 trier of the facts may give to the party or parties entitled  
27 thereto such damages as the trier of the facts may deem fair and  
28 just for the death and loss thus occasioned, having regard to the

1 pecuniary losses suffered by reason of the death, funeral  
2 expenses, and the reasonable value of the services, consortium,  
3 companionship, comfort, instruction, guidance, counsel, training,  
4 and support of which those on whose behalf suit may be brought  
5 have been deprived by reason of such death and without limiting  
6 such damages to those which would be sustained prior to attaining  
7 the age of majority by the deceased or by the person suffering  
8 any such loss. In addition, the trier of the facts may award  
9 such damages as the deceased may have suffered between the time  
10 of injury and the time of death and for the recovery of which the  
11 deceased might have maintained an action had death not ensued.  
12 The mitigating or aggravating circumstances attending the death  
13 may be considered by the trier of the facts, but damages for  
14 grief and bereavement by reason of the death shall not be  
15 recoverable. If the deceased was not employed full time and was  
16 at least fifty percent responsible for the care of one or more  
17 minors or disabled persons, or persons over sixty-five years of  
18 age, there shall be a rebuttable presumption that the value of  
19 the care provided, regardless of the number of persons cared for,  
20 is equal to one hundred and ten percent of the state average  
21 weekly wage, as computed under section 287.250. If the deceased  
22 is under the age of eighteen, there shall be a rebuttable  
23 presumption that the annual pecuniary losses suffered by reason  
24 of the death shall be calculated based on the annual income of  
25 the deceased's parents, provided that if the deceased has only  
26 one parent earning income, then the calculation shall be based on  
27 such income, but if the deceased had two parents earning income,  
28 then the calculation shall be based on the average of the two

1 incomes. In any action brought pursuant to section 537.080,  
2 punitive damages or damages based on aggravating circumstances  
3 shall not be awarded against a public body or an official or  
4 employee of a public body if such person was acting within the  
5 scope of his or her official duties or employment. For purposes  
6 of this section, the term "public body" shall include the state  
7 and any political subdivision thereof.

8 538.205. As used in sections 538.205 to 538.230, the  
9 following terms shall mean:

10 (1) "Catastrophic personal injury", a physical injury  
11 resulting in:

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

14 (b) Paraplegia defined as the permanent loss of functional  
15 use of two limbs;

16 (c) Loss of two or more limbs;

17 (d) An injury to the brain that results in permanent  
18 cognitive impairment resulting in the permanent inability to make  
19 independent decisions or engage in one or more of the following  
20 activities of daily living: eating, dressing, bathing,  
21 toileting, transferring, and walking;

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

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

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

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

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

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

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

23           (7) "Health care services", any services that a health care  
24 provider renders to a patient in the ordinary course of the  
25 health care provider's profession or, if the health care provider  
26 is an institution, in the ordinary course of furthering the  
27 purposes for which the institution is organized. Professional  
28 services shall include, but are not limited to, transfer to a



1 patient of goods or services incidental or pursuant to the  
2 practice of the health care provider's profession or in  
3 furtherance of the purposes for which an institutional health  
4 care provider is organized;

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

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

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

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

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

23 538.210. 1. A statutory cause of action for damages  
24 against a health care provider for personal injury or death  
25 arising out of the rendering of or failure to render health care  
26 services is hereby created, replacing any such common law cause  
27 of action. The elements of such cause of action are that the  
28 health care provider failed to use that degree of skill and

1 learning ordinarily used under the same or similar circumstances  
2 by members of the defendant's profession and that such failure  
3 directly caused or contributed to cause the plaintiff's injury or  
4 death.

5 2. (1) In any action against a health care provider for  
6 damages for personal injury arising out of the rendering of or  
7 the failure to render health care services, no plaintiff shall  
8 recover more than four hundred thousand dollars for noneconomic  
9 damages irrespective of the number of defendants.

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

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

21 3. [(1)] This section shall also apply to any individual  
22 or entity, or their employees or agents[, ]:

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

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

1 render health care services.

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

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

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

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

26 8. Any provision of law or court rule to the contrary  
27 notwithstanding, an award of punitive damages against a health  
28 care provider governed by the provisions of sections 538.205 to

1 538.230 shall be made only upon a [showing by a plaintiff]  
2 finding by the jury that the evidence clearly and convincingly  
3 demonstrated that the health care provider [demonstrated willful,  
4 wanton or malicious misconduct with respect to his actions which  
5 are found to have injured or caused or contributed to cause the  
6 damages claimed in the petition] intentionally caused damage to  
7 the plaintiff or demonstrated malicious misconduct that caused  
8 damage to the plaintiff. Evidence of negligence including, but  
9 not limited to, indifference to or conscious disregard for the  
10 safety of others shall not constitute a basis for an award of  
11 punitive damages against a health care provider.

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

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

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

1 injuries.

2 12. If a court of competent jurisdiction enters a final  
3 judgment on the merits that is not subject to appeal and that  
4 declares any provision or part of either section 1.010 or this  
5 section to be unconstitutional or unenforceable, then section  
6 1.010 and this section, as amended by this act and in their  
7 entirety, are invalid and shall have no legal effect as of the  
8 date of such judgment, and this act, including its repealing  
9 clause, shall likewise be invalid and of no legal effect. In  
10 such event, the versions of sections 1.010 and this section that  
11 were in effect prior to the enactment of this act shall remain in  
12 force.

13 13. In any action brought pursuant to this section, no  
14 plaintiff shall recover punitive damages from a health care  
15 provider that is a public body or an official or employee of a  
16 public body if such person was acting within the scope of his or  
17 her official duties or employment. For purposes of this  
18 subsection, the term "public body" shall include the state and  
19 any political subdivision thereof.

20 542.418. 1. The contents of any wire communication or  
21 evidence derived therefrom shall not be received in evidence or  
22 otherwise disclosed in any civil or administrative proceeding,  
23 except in civil actions brought pursuant to this section.

24 2. Any person whose wire communication is intercepted,  
25 disclosed, or used in violation of sections 542.400 to 542.422  
26 shall:

27 (1) Have a civil cause of action against any person who  
28 intercepts, discloses, or uses, or procures any other person to

1 intercept, disclose, or use such communications; and

2 (2) Be entitled to recover from any such person:

3 (a) Actual damages, but not less than liquidated damages  
4 computed at the rate of one hundred dollars a day for each day of  
5 violation or ten thousand dollars whichever is greater;

6 (b) Punitive damages on a showing of a willful or  
7 intentional violation of sections 542.400 to 542.422, except that  
8 punitive damages shall not be awarded if the person who  
9 intercepts, discloses, or uses, or procures any other person to  
10 intercept, disclose, or use such communications is an employee or  
11 agent of this state or a political subdivision of this state if  
12 such person was acting within the scope of his or her employment;  
13 and

14 (c) A reasonable attorney's fee and other litigation costs  
15 reasonably incurred.

16 3. A good faith reliance on a court order or on the  
17 provisions of section 542.408 shall constitute a prima facie  
18 defense to any civil or criminal action brought under sections  
19 542.400 to 542.422.

20 4. Nothing contained in this section shall limit any cause  
21 of action available prior to August 28, 1989.

22 544.195. 1. Nothing in sections 544.193 to 544.197 shall  
23 be construed as limiting any common law or statutory rights of  
24 any person regarding any action for damages or injunctive relief,  
25 or as precluding the prosecution under another provision of law  
26 of any law enforcement official or employee who has violated  
27 sections 544.193 to 544.197.

28 2. Any person who suffers actual damage as a result of the

1 violation of sections 544.193 to 544.197 may bring a private  
2 civil action in the circuit court of any county in which any  
3 defendant resides or in which the search complained of occurred  
4 or in which any plaintiff resides and a defendant may be found,  
5 to recover actual damages. In addition to actual damages, the  
6 court may, in its discretion, also award [punitive damages and]  
7 such equitable relief as it deems necessary and proper. The  
8 court may award reasonable attorney's fees to the prevailing  
9 party, which attorney's fees shall be based on the amount of time  
10 reasonably expended by an attorney on behalf of the prevailing  
11 party.