

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 591

AN ACT

To repeal sections 407.020, 407.025, 510.263, 510.265, 538.205, and 538.210, RSMo, and to enact in lieu thereof eight new sections relating to civil actions, with existing penalty provisions.

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

1 Section A. Sections 407.020, 407.025, 510.263, 510.265,
2 538.205, and 538.210, RSMo, are repealed and eight new sections
3 enacted in lieu thereof, to be known as sections 407.020,
4 407.025, 510.261, 510.263, 510.265, 538.205, 538.210, and 1, to
5 read as follows:

6 407.020. 1. The act, use or employment by any person of
7 any deception, fraud, false pretense, false promise,
8 misrepresentation, unfair practice or the concealment,
9 suppression, or omission of any material fact in connection with
10 the sale or advertisement of any merchandise in trade or commerce
11 or the solicitation of any funds for any charitable purpose, as
12 defined in section 407.453, in or from the state of Missouri, is
13 declared to be an unlawful practice. The use by any person, in
14 connection with the sale or advertisement of any merchandise in
15 trade or commerce or the solicitation of any funds for any
16 charitable purpose, as defined in section 407.453, in or from the

1 state of Missouri of the fact that the attorney general has
2 approved any filing required by this chapter as the approval,
3 sanction or endorsement of any activity, project or action of
4 such person, is declared to be an unlawful practice. Any act,
5 use or employment declared unlawful by this subsection violates
6 this subsection whether committed before, during or after the
7 sale, advertisement or solicitation.

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

9 (1) The owner or publisher of any newspaper, magazine,
10 publication or printed matter wherein such advertisement appears,
11 or the owner or operator of a radio or television station which
12 disseminates such advertisement when the owner, publisher or
13 operator has no knowledge of the intent, design or purpose of the
14 advertiser; [or]

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

24 (3) Any advertisement, merchandise, or transaction in which
25 the merchandise consists of a new residence in a transaction in
26 which the buyer is offered and accepts in the sale contract an
27 express warranty by the builder or through a third party warranty
28 company paid for by the builder and the sale contract contains

1 substantially the following disclaimer in all capital letters
2 with characters of at least ten-point type: "THIS CONTRACT,
3 MERCHANDISE AND PROPERTY CONVEYED UNDER THIS CONTRACT AND THE
4 TRANSACTION BETWEEN THE SELLER AND BUYER IS EXCLUDED FROM
5 COVERAGE UNDER THE MERCHANDISING PRACTICES ACT, SECTIONS 407.010
6 TO 407.130, RSMO.". As used in this section, the term
7 "residence" shall mean a single-family house, duplex, triplex,
8 quadruplex, or a unit in a multiunit residential structure in
9 which title to each individual unit is transferred to the owner
10 under a condominium or cooperative system and shall include
11 common areas and common elements as defined in subdivision (4) of
12 section 448.1-103.

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

17 4. It shall be the duty of each prosecuting attorney and
18 circuit attorney in their respective jurisdictions to commence
19 any criminal actions under this section, and the attorney general
20 shall have concurrent original jurisdiction to commence such
21 criminal actions throughout the state where such violations have
22 occurred.

23 5. It shall be an unlawful practice for any long-term care
24 facility, as defined in section 192.2300, except a facility which
25 is a residential care facility or an assisted living facility, as
26 defined in section 198.006, which makes, either orally or in
27 writing, representation to residents, prospective residents,
28 their families or representatives regarding the quality of care

1 provided, or systems or methods utilized for assurance or
2 maintenance of standards of care to refuse to provide copies of
3 documents which reflect the facility's evaluation of the quality
4 of care, except that the facility may remove information that
5 would allow identification of any resident. If the facility is
6 requested to provide any copies, a reasonable amount, as
7 established by departmental rule, may be charged.

8 6. Any long-term care facility, as defined in section
9 192.2300, which commits an unlawful practice under this section
10 shall be liable for damages in a civil action of up to one
11 thousand dollars for each violation, and attorney's fees and
12 costs incurred by a prevailing plaintiff, as allowed by the
13 circuit court.

14 407.025. 1. (1) Any person who purchases or leases
15 merchandise primarily for personal, family or household purposes
16 and thereby suffers an ascertainable loss of money or property,
17 real or personal, as a result of the use or employment by another
18 person of a method, act or practice declared unlawful by section
19 407.020, may bring a private civil action in either the circuit
20 court of the county in which the seller or lessor resides or in
21 which the transaction complained of took place, to recover actual
22 damages.

23 (2) A person seeking to recover damages shall establish:

24 (a) That the person acted as a reasonable consumer would in
25 light of all circumstances;

26 (b) That the method, act, or practice declared unlawful by
27 section 407.020 would cause a reasonable person to enter into the
28 transaction that resulted in damages; and

1 (c) Individual damages with sufficiently definitive and
2 objective evidence to allow the loss to be calculated with a
3 reasonable degree of certainty.

4
5 A court may dismiss a claim as a matter of law where the claim
6 fails to show a likelihood that the method, act, or practice
7 alleged to be unlawful would mislead a reasonable consumer.

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

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

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

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

15 3. No action may be brought under this section to recover
16 damages for personal injury or death in which a claim can be made
17 under chapter 538.

18 4. A cause of action under this section accrues on the date
19 of purchase or lease described in subsection 1 of this section or
20 upon receipt of notice of a method, act, or practice declared
21 unlawful by section 407.020.

22 [2.] 5. Persons entitled to bring an action pursuant to
23 subsection 1 of this section may, if the unlawful method, act or
24 practice has caused similar injury to numerous other persons,
25 institute an action as representative or representatives of a
26 class against one or more defendants as representatives of a
27 class, and the petition shall allege such facts as will show that
28 these persons or the named defendants specifically named and

1 served with process have been fairly chosen and adequately and
2 fairly represent the whole class, to recover damages as provided
3 for in subsection 1 of this section. The plaintiff shall be
4 required to prove such allegations, unless all of the members of
5 the class have entered their appearance, and it shall not be
6 sufficient to prove such facts by the admission or admissions of
7 the defendants who have entered their appearance. The class
8 representative or representatives shall establish:

9 (1) That the representative or representatives acted as a
10 reasonable consumer would in light of all circumstances;

11 (2) That the method, act, or practice declared unlawful by
12 section 407.020 would cause a reasonable person to enter into the
13 transaction that resulted in damages; and

14 (3) Individual damages with sufficiently definitive and
15 objective evidence to allow the loss to be calculated with a
16 reasonable degree of certainty.

17
18 All other members of the class shall establish individual
19 damages in a manner determined by the court. In any action
20 brought pursuant to this section, the court may in its discretion
21 order, in addition to damages, injunction or other equitable
22 relief and reasonable attorney's fees. Attorney's fees, if
23 awarded, shall bear a reasonable relationship to the amount of
24 the judgment. When the judgment grants equitable relief, the
25 attorney's fees shall be based on the amount of time reasonably
26 expended.

27 [3.] 6. An action may be maintained as a class action in a
28 manner consistent with Rule 23 of the Federal Rules of Civil

1 Procedure and Missouri rule of civil procedure 52.08 to the
2 extent such state rule is not inconsistent with the federal rule
3 if:

4 (1) The class is so numerous that joinder of all members is
5 impracticable;

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

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

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

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

13 (a) Inconsistent or varying adjudications with respect to
14 individual members of the class which would establish
15 incompatible standards of conduct for the party opposing the
16 class; or

17 (b) Adjudications with respect to individual members of the
18 class which would as a practical matter be dispositive of the
19 interests of the other members not parties to the adjudications
20 or substantially impair or impede their ability to protect their
21 interests; or

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

26 (7) The court finds that the questions of law or fact
27 common to the members of the class predominate over any questions
28 affecting only individual members, and that a class action is

1 superior to other available methods for the fair and efficient
2 adjudication of the controversy. The matters pertinent to the
3 findings include:

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

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

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

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

12 [4.] 7. (1) As soon as practicable after the commencement
13 of an action brought as a class action, the court shall determine
14 by order whether it is to be so maintained. An order pursuant to
15 this subdivision may be conditional, and may be altered or
16 amended before the decision on the merits.

17 (2) In any class action maintained pursuant to subdivision
18 (7) of subsection [3] 6 of this section, the court shall direct
19 to the members of the class the best notice practicable under the
20 circumstances, including individual notice to all members who can
21 be identified through reasonable effort. The notice shall advise
22 each member that:

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

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

27 (c) Any member who does request exclusion may, if such
28 member desires, enter an appearance through such member's

1 counsel.

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

13 (4) When appropriate an action may be brought or maintained
14 as a class action with respect to particular issues, or a class
15 may be divided into subclasses and each subclass treated as a
16 class, and the provisions of this section shall then be construed
17 and applied accordingly.

18 [5.] 8. In the conduct of actions to which this section
19 applies, the court may make appropriate orders:

20 (1) Determining the course of proceedings or prescribing
21 measures to prevent undue repetition or complication in the
22 presentation of evidence or argument;

23 (2) Requiring, for the protection of the members of the
24 class or otherwise for the fair conduct of the action, that
25 notice be given in such manner as the court may direct to some or
26 all of the members of any step in the action, or of the proposed
27 extent of the judgment, or of the opportunity of members to
28 signify whether they consider the representation fair and

1 adequate, to intervene and present claims or defenses, or
2 otherwise to come into the action;

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

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

8 (5) Dealing with similar procedural matters.

9 [6.] 9. A class action shall not be dismissed or
10 compromised without the approval of the court, and notice of the
11 proposed dismissal or compromise shall be given to all members of
12 the class in such manner as the court directs.

13 [7.] 10. Upon commencement of any action brought pursuant
14 to subsection 1 of this section, the plaintiff or plaintiffs
15 shall inform the clerk of the court in which such action is
16 brought, on forms to be provided by such clerk, that the action
17 is brought pursuant to this section. The clerk of the court
18 shall forthwith inform the attorney general of the commencement
19 of such action, together with a copy of the complaint or other
20 initial pleading, and, upon entry of any judgment or decree in
21 the action, the clerk shall mail a copy of such judgment or
22 decree to the attorney general.

23 [8.] 11. Any permanent injunction, judgment or order of the
24 court made pursuant to section 407.100 shall be prima facie
25 evidence in an action brought pursuant to this section that the
26 respondent used or employed a method, act or practice declared
27 unlawful by section 407.020.

28 510.261. 1. Except as otherwise provided by statute,

1 punitive damages shall not be awarded unless the claimant proves
2 by clear and convincing evidence that the defendant intentionally
3 harmed the plaintiff without just cause or acted with a
4 deliberate and flagrant disregard for the safety of others.

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

11 3. Punitive damages can properly be awarded against an
12 employer or other principal because of an act by an agent if, but
13 only if:

14 (1) The principal or a managerial agent of the principal
15 authorized the doing and the manner of the act;

16 (2) The agent was unfit and the principal or a managerial
17 agent of the principal was reckless in employing or retaining him
18 or her;

19 (3) The agent was employed in a managerial capacity and was
20 acting in the scope of employment; or

21 (4) The principal or a managerial agent of the principal
22 ratified or approved the act.

23 4. When an employer admits liability for the actions of an
24 agent in a claim for compensatory damages, the court shall grant
25 limited discovery consisting only of employment records and
26 documents or information related to the agent's qualifications.

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 The responsive pleading shall be limited to responding to the
24 newly amended punitive damages claim.

25 6. The amount of punitive damages shall not be based, in
26 whole or in part, on harm to nonparties.

27 7. No judgment that includes a punitive damage award shall
28 be entered in any civil action in any court of this state, or in

1 any court in which claims are asserted based on the constitution,
2 statutes, or common law of this state, unless the requirements
3 and procedures for a punitive damage award contained in this
4 section and sections 510.263 and 537.675 are met.

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

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

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

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

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

1 of such defendant's net worth shall be admissible during the
2 second stage of such trial.

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

1 from the law of the state of Missouri, except with respect to
2 section 537.675, and that the nature of such deviation provides
3 good cause for disallowance of the credit based on the public
4 policy of Missouri, then the trial court may disallow all or any
5 part of the credit provided by this section.

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

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

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

16 8. Discovery as to a defendant's assets shall be allowed
17 only after a [finding by the trial court that it is more likely
18 than not that the plaintiff will be able to present a submissible
19 case to the trier of fact on the plaintiff's claim of punitive
20 damages] trial court has granted leave to file a pleading seeking
21 punitive damages in accordance with subsection 5 of section
22 510.261.

23 510.265. 1. No award of punitive damages against any
24 defendant shall exceed the greater of:

25 (1) Five hundred thousand dollars; or

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

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

5 2. The provisions of this section and sections 510.261 and
6 510.263 shall not apply to civil actions brought under section
7 213.111 that allege a violation of section 213.040, 213.045,
8 213.050, or 213.070, to the extent that the alleged violation of
9 section 213.070 relates to or involves a violation of section
10 213.040, 213.045, or 213.050, or subdivision (3) of subsection 1
11 of section 213.070 as it relates to housing.

12 538.205. As used in sections 538.205 to 538.230, the
13 following terms shall mean:

14 (1) "Catastrophic personal injury", a physical injury
15 resulting in:

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

18 (b) Paraplegia defined as the permanent loss of functional
19 use of two limbs;

20 (c) Loss of two or more limbs;

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

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

28 (f) Vision loss such that the patient's central visual

1 acuity is no more than twenty/two-hundred in the better eye with
2 the best correction or whose field of vision in the better eye is
3 restricted to a degree that its widest diameter subtends an angle
4 no greater than twenty degrees;

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

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

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

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

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

27 (7) "Health care services", any services that a health care
28 provider renders to a patient in the ordinary course of the

1 health care provider's profession or, if the health care provider
2 is an institution, in the ordinary course of furthering the
3 purposes for which the institution is organized. Professional
4 services shall include, but are not limited to, transfer to a
5 patient of goods or services incidental or pursuant to the
6 practice of the health care provider's profession or in
7 furtherance of the purposes for which an institutional health
8 care provider is organized;

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

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

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

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

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

27 538.210. 1. A statutory cause of action for damages
28 against a health care provider for personal injury or death

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

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

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

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

25 3. [(1)] This section shall also apply to any individual
26 or entity, or their employees or agents[,]:

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

1 plaintiff; and

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

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

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

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

27 7. For purposes of sections 538.205 to 538.230, any spouse
28 claiming damages for loss of consortium of their spouse shall be

1 considered to be the same plaintiff as their spouse.

2 8. Any provision of law or court rule to the contrary
3 notwithstanding, an award of punitive damages against a health
4 care provider governed by the provisions of sections 538.205 to
5 538.230 shall be made only upon a [showing by a plaintiff]
6 finding by the jury that the evidence clearly and convincingly
7 demonstrated that the health care provider [demonstrated willful,
8 wanton or malicious misconduct with respect to his actions which
9 are found to have injured or caused or contributed to cause the
10 damages claimed in the petition] intentionally caused damage to
11 the plaintiff or demonstrated malicious misconduct that caused
12 damage to the plaintiff. Evidence of negligence including, but
13 not limited to, indifference to or conscious disregard for the
14 safety of others shall not constitute intentional conduct or
15 malicious misconduct.

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

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

28 11. In any claim for damages under this chapter, and upon

1 post-trial motion following a jury verdict with noneconomic
2 damages exceeding four hundred thousand dollars, the trial court
3 shall determine whether the limitation in subsection 2 of this
4 section shall apply based on the severity of the most severe
5 injuries.

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

17 Section 1. The provisions of this act shall apply to causes
18 of action filed on or after August 28, 2020.