

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1793
99TH GENERAL ASSEMBLY

5534H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 516.105 and 537.100, RSMo, and to enact in lieu thereof two new sections relating to service of process after the statute of limitations has expired for filing an action.

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

Section A. Sections 516.105 and 537.100, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 516.105 and 537.100, to read as follows:

516.105. **1.** All actions against physicians, hospitals, dentists, registered or licensed
2 practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical
3 therapists, mental health professionals licensed under chapter 337, and any other entity providing
4 health care services and all employees of any of the foregoing acting in the course and scope of
5 their employment, for damages for malpractice, negligence, error or mistake related to health
6 care shall be brought within two years from the date of occurrence of the act of neglect
7 complained of, except that:

8 (1) In cases in which the act of neglect complained of is introducing and negligently
9 permitting any foreign object to remain within the body of a living person, the action shall be
10 brought within two years from the date of the discovery of such alleged negligence, or from the
11 date on which the patient in the exercise of ordinary care should have discovered such alleged
12 negligence, whichever date first occurs; and

13 (2) In cases in which the act of neglect complained of is the negligent failure to inform
14 the patient of the results of medical tests, the action for failure to inform shall be brought within
15 two years from the date of the discovery of such alleged negligent failure to inform, or from the
16 date on which the patient in the exercise of ordinary care should have discovered such alleged
17 negligent failure to inform, whichever date first occurs; except that, no such action shall be

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 brought for any negligent failure to inform about the results of medical tests performed more than
19 two years before August 28, 1999. For purposes of this subdivision, the act of neglect based on
20 the negligent failure to inform the patient of the results of medical tests shall not include the act
21 of informing the patient of the results of negligently performed medical tests or the act of
22 informing the patient of erroneous test results; and

23 (3) In cases in which the person bringing the action is a minor less than eighteen years
24 of age, such minor shall have until his or her twentieth birthday to bring such action.

25 In no event shall any action for damages for malpractice, error, or mistake be commenced after
26 the expiration of ten years from the date of the act of neglect complained of or for two years from
27 a minor's eighteenth birthday, whichever is later.

28 **2. Any service on a defendant by a plaintiff after the statute of limitations set forth**
29 **in subsection 1 of this section has expired or after the expiration of any extension of the**
30 **time provided to commence an action pursuant to law shall be made within one hundred**
31 **eighty days of the filing of the petition. If such service is not made on a defendant within**
32 **one hundred eighty days of the filing of the petition, the court shall dismiss the action**
33 **against the defendant. The dismissal shall be without prejudice unless the plaintiff has**
34 **previously taken or suffered a nonsuit, in which case the dismissal shall be with prejudice.**

537.100. 1. Every action instituted under section 537.080 shall be commenced within
2 three years after the cause of action shall accrue; provided, that if any defendant, whether a
3 resident or nonresident of the state at the time any such cause of action accrues, shall then or
4 thereafter be absent or depart from the state, so that personal service cannot be had upon such
5 defendant in the state in any such action heretofore or hereafter accruing, the time during which
6 such defendant is so absent from the state shall not be deemed or taken as any part of the time
7 limited for the commencement of such action against him; and provided, that if any such action
8 shall have been commenced within the time prescribed in this section, and the plaintiff therein
9 take or suffer a nonsuit, or after a verdict for him the judgment be arrested, or after a judgment
10 for him the same be reversed on appeal or error, such plaintiff may commence a new action from
11 time to time within one year after such nonsuit suffered or such judgment arrested or reversed;
12 and in determining whether such new action has been begun within the period so limited, the
13 time during which such nonresident or absent defendant is so absent from the state shall not be
14 deemed or taken as any part of such period of limitation.

15 **2. Any service on a defendant by a plaintiff after the statute of limitations set forth**
16 **in subsection 1 of this section has expired or after the expiration of any extension of the**
17 **time provided to commence an action pursuant to law shall be made within one hundred**
18 **eighty days of the filing of the petition. If such service is not made on a defendant within**
19 **one hundred eighty days of the filing of the petition, the court shall dismiss the action**

20 **against the defendant. The dismissal shall be without prejudice unless the plaintiff has**
21 **previously taken or suffered a nonsuit, in which case the dismissal shall be with prejudice.**

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