

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1102
99TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, April 12, 2018, with recommendation that the Senate Committee Substitute do pass.

6804S.05C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 34.378, 307.178, 407.020, 407.025, 435.350, 435.355, 435.440, 507.040, 507.050, 507.060, 508.010, 508.012, 510.263, 516.105, 537.067, 537.100, 537.762, 538.205, and 538.210, RSMo, and to enact in lieu thereof thirty-two new sections relating to civil actions, with an existing penalty provision.

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

Section A. Sections 34.378, 307.178, 407.020, 407.025, 435.350, 435.355, 435.440, 507.040, 507.050, 507.060, 508.010, 508.012, 510.263, 516.105, 537.067, 537.100, 537.762, 538.205, and 538.210, RSMo, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 34.378, 307.178, 407.012, 407.020, 407.025, 407.027, 435.350, 435.355, 435.440, 507.040, 507.050, 507.060, 508.010, 508.012, 510.259, 510.263, 516.099, 516.105, 537.067, 537.100, 537.761, 537.762, 537.763, 537.880, 537.882, 537.884, 537.886, 537.888, 537.890, 537.900, 538.205, and 538.210, to read as follows:

34.378. 1. The state shall not enter into a contingency fee contract with a private attorney unless the attorney general makes a written determination prior to entering into such a contract that contingency fee representation is both cost effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

(1) Whether there exists sufficient and appropriate legal and financial resources within the attorney general's office to handle the matter;

(2) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 properly;

11 (3) The geographic area where the attorney services are to be provided;
12 and

13 (4) The amount of experience desired for the particular kind of attorney
14 services to be provided and the nature of the private attorney's experience with
15 similar issues or cases.

16 2. If the attorney general makes the determination described in subsection
17 1 of this section, the attorney general shall request written proposals from private
18 attorneys to represent the state, unless the attorney general determines that
19 requesting proposals is not feasible under the circumstances and sets forth the
20 basis for this determination in writing. If a request for proposals is issued, the
21 attorney general shall choose the lowest and best bid or request **that** the office
22 of administration establish an independent panel to evaluate the proposals and
23 choose the lowest and best bid.

24 3. The state shall not enter into a contract for contingency fee attorney
25 services unless the following requirements are met throughout the contract period
26 and any extensions to the contract:

27 (1) The government attorneys shall retain complete control over the course
28 and conduct of the case;

29 (2) A government attorney with supervisory authority shall oversee the
30 litigation;

31 (3) The government attorneys shall retain veto power over any decisions
32 made by outside counsel;

33 (4) A government attorney with supervisory authority for the case shall
34 attend all settlement conferences; and

35 (5) Decisions regarding settlement of the case shall be reserved
36 exclusively to the discretion of the attorney general.

37 4. The attorney general shall develop a standard addendum to every
38 contract for contingent fee attorney services that shall be used in all cases,
39 describing in detail what is expected of both the contracted private attorney and
40 the state, including, without limitation, the requirements listed in subsection 3
41 of this section.

42 5. Copies of any executed contingency fee contract and the attorney
43 general's written determination to enter into a contingency fee contract with the
44 private attorney shall be posted on the attorney general's website for public
45 inspection within five business days after the date the contract is executed and

46 shall remain posted on the website for the duration of the contingency fee
47 contract, including any extensions or amendments to the contract. Any payment
48 of contingency fees shall be posted on the attorney general's website within fifteen
49 days after the payment of such contingency fees to the private attorney and shall
50 remain posted on the website for at least three hundred sixty-five days.

51 6. Any private attorney under contract to provide services to the state on
52 a contingency fee basis shall, from the inception of the contract until at least four
53 years after the contract expires or is terminated, maintain detailed current
54 records, including documentation of all expenses, disbursements, charges, credits,
55 underlying receipts and invoices, and other financial transactions that concern
56 the provision of such attorney services. The private attorney shall maintain
57 detailed contemporaneous time records for the attorneys and paralegals working
58 on the matter in increments of no greater than one-tenth of an hour and shall
59 promptly provide these records to the attorney general, upon request. Any
60 request under chapter 610 for inspection and copying of such records shall be
61 served upon and responded to by the attorney general's office.

62 7. **Except as otherwise provided in subsection 8 of this section,**
63 **a retained private attorney shall not be entitled to a fee, exclusive of**
64 **any costs and expenses described in subsection 8 of this section, of**
65 **more than:**

66 (1) **Fifteen percent of that portion of any amount recovered that**
67 **is ten million dollars or less;**

68 (2) **Ten percent of that portion of any amount recovered that is**
69 **more than ten million dollars but less than or equal to fifteen million**
70 **dollars;**

71 (3) **Five percent of that portion of any amount recovered that is**
72 **more than fifteen million dollars but less than or equal to twenty**
73 **million dollars; and**

74 (4) **Two percent of that portion of any amount recovered that is**
75 **more than twenty million dollars.**

76 8. **The total fee payable to all retained private attorneys in any**
77 **matter that is the subject of a contingency fee contract shall not exceed**
78 **ten million dollars, exclusive of any costs and expenses provided by the**
79 **contract and actually incurred by the retained private attorneys,**
80 **regardless of the number of actions or proceedings or the number of**
81 **retained private attorneys involved in the matter.**

82 **9. A contingency fee:**

83 **(1) Shall be payable only from moneys that are actually received**
84 **under a judgment or settlement agreement; and**

85 **(2) Shall not be based on any amount attributable to a fine or**
86 **civil penalty.**

87 **10. As used in this section, "amount recovered" does not include**
88 **any moneys paid as costs.**

89 **11.** By February first of each year, the attorney general shall submit a
90 report to the president pro tem of the senate and the speaker of the house of
91 representatives describing the use of contingency fee contracts with private
92 attorneys in the preceding calendar year. At a minimum, the report shall:

93 (1) Identify all new contingency fee contracts entered into during the year
94 and all previously executed contingency fee contracts that remain current during
95 any part of the year, and for each contract describe:

96 (a) The name of the private attorney with whom the department has
97 contracted, including the name of the attorney's law firm;

98 (b) The nature and status of the legal matter;

99 (c) The name of the parties to the legal matter;

100 (d) The amount of any recovery; and

101 (e) The amount of any contingency fee paid;

102 (2) Include copies of any written determinations made under subsections
103 1 and 2 of this section.

307.178. 1. As used in this section, the term "passenger car" means every
2 motor vehicle designed for carrying [ten] **fifteen** persons or less and used for the
3 transportation of persons; except that, the term "passenger car" shall not include
4 motorcycles, motorized bicycles, motor tricycles, and trucks with a licensed gross
5 weight of twelve thousand pounds or more.

6 2. Each driver, except persons employed by the United States Postal
7 Service while performing duties for that federal agency which require the
8 operator to service postal boxes from their vehicles, or which require frequent
9 entry into and exit from their vehicles, and front seat passenger of a passenger
10 car manufactured after January 1, 1968, operated on a street or highway in this
11 state, and persons less than eighteen years of age operating or riding in a truck,
12 as defined in section 301.010, on a street or highway of this state shall wear a
13 properly adjusted and fastened safety belt that meets federal National Highway,
14 Transportation and Safety Act requirements. No person shall be stopped,

15 inspected, or detained solely to determine compliance with this subsection. The
16 provisions of this section and section 307.179 shall not be applicable to persons
17 who have a medical reason for failing to have a seat belt fastened about their
18 body, nor shall the provisions of this section be applicable to persons while
19 operating or riding a motor vehicle being used in agricultural work-related
20 activities. Noncompliance with this subsection shall not constitute probable cause
21 for violation of any other provision of law. The provisions of this subsection shall
22 not apply to the transporting of children under sixteen years of age, as provided
23 in section 307.179.

24 3. Each driver of a motor vehicle transporting a child less than sixteen
25 years of age shall secure the child in a properly adjusted and fastened restraint
26 under section 307.179.

27 4. In any action to recover damages arising out of the ownership, common
28 maintenance or operation of a motor vehicle, failure to wear a safety belt [in
29 violation of this section] **or misuse of a safety belt by any occupant of a**
30 **passenger car** shall [not] be considered evidence of comparative
31 negligence. Failure to wear a safety belt [in violation of this section] **or misuse**
32 **of a safety belt by any occupant of a passenger car** may also be admitted
33 to mitigate damages[, but only under the following circumstances:

34 (1) Parties seeking to introduce evidence of the failure to wear a safety
35 belt in violation of this section must first introduce expert evidence proving that
36 a failure to wear a safety belt contributed to the injuries claimed by plaintiff;

37 (2)]. If the evidence supports such a finding **regarding comparative**
38 **negligence or mitigation of damages**, the trier of fact may find that the
39 plaintiff's failure to wear a safety belt [in violation of this section] **or misuse of**
40 **a safety belt** contributed to the plaintiff's claimed injuries, and may reduce the
41 amount of the plaintiff's recovery by [an] **any** amount [not to exceed one percent
42 of the damages awarded after any reductions for comparative negligence].

43 5. Except as otherwise provided for in section 307.179, each person who
44 violates the provisions of subsection 2 of this section is guilty of an infraction for
45 which a fine not to exceed ten dollars may be imposed. All other provisions of law
46 and court rules to the contrary notwithstanding, no court costs shall be imposed
47 on any person due to a violation of this section. In no case shall points be
48 assessed against any person, pursuant to section 302.302, for a violation of this
49 section.

50 6. The state highways and transportation commission shall initiate and

51 develop a program of public information to develop understanding of, and ensure
52 compliance with, the provisions of this section. The commission shall evaluate
53 the effectiveness of this section and shall include a report of its findings in the
54 annual evaluation report on its highway safety plan that it submits to NHTSA
55 and FHWA pursuant to 23 U.S.C. 402.

56 7. If there are more persons than there are seat belts in the enclosed area
57 of a motor vehicle, then the passengers who are unable to wear seat belts shall
58 sit in the area behind the front seat of the motor vehicle unless the motor vehicle
59 is designed only for a front-seated area. The passenger or passengers occupying
60 a seat location referred to in this subsection is not in violation of this
61 section. This subsection shall not apply to passengers who are accompanying a
62 driver of a motor vehicle who is licensed under section 302.178.

**407.012. 1. In a civil action brought under section 407.025, absent
2 a state statute to the contrary, the courts shall be guided by the
3 policies of the Federal Trade Commission and interpretations given by
4 the Federal Trade Commission and the federal courts to Section 5(a)(1)
5 of the Federal Trade Commission Act, 15 U.S.C. Section 45(a)(1), as
6 amended.**

**7 2. Section 407.025 shall not apply to actions or transactions
8 otherwise permitted, approved, or regulated by the Federal Trade
9 Commission or any other regulatory agency acting under statutory
10 authority of this state or the United States.**

407.020. 1. The act, use or employment by any person of any deception,
2 fraud, false pretense, false promise, misrepresentation, unfair practice or the
3 concealment, suppression, or omission of any material fact in connection with the
4 sale or advertisement of any merchandise in trade or commerce or the solicitation
5 of any funds for any charitable purpose, as defined in section 407.453, in or from
6 the state of Missouri, is declared to be an unlawful practice. The use by any
7 person, in connection with the sale or advertisement of any merchandise in trade
8 or commerce or the solicitation of any funds for any charitable purpose, as defined
9 in section 407.453, in or from the state of Missouri of the fact that the attorney
10 general has approved any filing required by this chapter as the approval, sanction
11 or endorsement of any activity, project or action of such person, is declared to be
12 an unlawful practice. Any act, use or employment declared unlawful by this
13 subsection violates this subsection whether committed before, during or after the
14 sale, advertisement or solicitation.

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

16 (1) The owner or publisher of any newspaper, magazine, publication or
17 printed matter wherein such advertisement appears, or the owner or operator of
18 a radio or television station which disseminates such advertisement when the
19 owner, publisher or operator has no knowledge of the intent, design or purpose
20 of the advertiser; [or]

21 (2) Any institution, company, or entity that is subject to chartering,
22 licensing, or regulation by the director of the department of insurance, financial
23 institutions and professional registration under chapter 354 or chapters 374 to
24 385, the director of the division of credit unions under chapter 370, or director of
25 the division of finance under chapters 361 to 369, or chapter 371, unless such
26 directors specifically authorize the attorney general to implement the powers of
27 this chapter or such powers are provided to either the attorney general or a
28 private citizen by statute; or

29 **(3) Any advertisement, merchandise, or transaction in which the**
30 **merchandise consists of a new residence in a transaction in which the**
31 **buyer is offered in the sale contract an express warranty by the builder**
32 **or through a third party warranty company paid for by the builder and**
33 **the sale contract contains substantially the following disclaimer in all**
34 **capital letters with characters of at least ten point type:**

35 **THIS CONTRACT, MERCHANDISE, AND PROPERTY CONVEYED**
36 **UNDER THIS CONTRACT AND THE TRANSACTION BETWEEN THE**
37 **SELLER AND BUYER IS EXCLUDED FROM COVERAGE UNDER THE**
38 **MERCHANDISING PRACTICES ACT, SECTIONS 407.010 TO 407.130.**

39 **As used in this subdivision, the term "residence" shall mean a single-**
40 **family house, duplex, triplex, quadruplex, or a unit in a multiunit**
41 **residential structure in which title to each individual unit is**
42 **transferred to the owner under a condominium or cooperative system,**
43 **and shall include common areas and common elements as defined in**
44 **subdivision (4) of section 448.1-103.**

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

48 4. It shall be the duty of each prosecuting attorney and circuit attorney
49 in their respective jurisdictions to commence any criminal actions under this
50 section, and the attorney general shall have concurrent original jurisdiction to

51 commence such criminal actions throughout the state where such violations have
52 occurred.

53 5. It shall be an unlawful practice for any long-term care facility, as
54 defined in section 192.2300, except a facility which is a residential care facility
55 or an assisted living facility, as defined in section 198.006, which makes, either
56 orally or in writing, representation to residents, prospective residents, their
57 families or representatives regarding the quality of care provided, or systems or
58 methods utilized for assurance or maintenance of standards of care to refuse to
59 provide copies of documents which reflect the facility's evaluation of the quality
60 of care, except that the facility may remove information that would allow
61 identification of any resident. If the facility is requested to provide any copies,
62 a reasonable amount, as established by departmental rule, may be charged.

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

407.025. 1. Any person who purchases or leases merchandise primarily
2 for personal, family or household purposes and thereby suffers an ascertainable
3 loss of money or property, real or personal, as a result of the use or employment
4 by another person of a method, act or practice declared unlawful by section
5 407.020, may bring a private civil action in either the circuit court of the county
6 in which the seller or lessor resides or in which the transaction complained of
7 took place, to recover actual damages. **A person seeking to recover damages**
8 **shall demonstrate that he or she acted reasonably in light of all the**
9 **circumstances and establish his or her individual damages with**
10 **sufficiently definitive and objective evidence to allow the loss to be**
11 **calculated with a reasonable degree of certainty. The damages shall be**
12 **measured by the person's out-of-pocket loss, which shall be defined as**
13 **an amount of money equal to the difference between the amount paid**
14 **by the consumer for the good or service and the actual market value of**
15 **the good or service that the consumer actually received. In order to**
16 **recover damages under this section, each person shall be required to**
17 **prove that the method, act, or practice declared unlawful by section**
18 **407.020 caused him or her to enter into the transaction that resulted in**
19 **his or her damages.** The court may, in its discretion, award punitive damages
20 [and]. **The court may, in its discretion,** award to the prevailing party

21 attorney's fees, based on the amount of time reasonably expended, and may
22 provide such [equitable] **injunctive** relief as it deems necessary or proper to
23 **protect the prevailing party from the methods, acts, or practices**
24 **declared unlawful by section 407.020. No action may be brought under**
25 **this section to recover damages for personal injury or death. A cause**
26 **of action under this section accrues on the date of the purchase or**
27 **lease described in the first sentence of this section.**

28 2. Persons entitled to bring an action pursuant to subsection 1 of this
29 section may, if the unlawful method, act or practice has caused similar injury to
30 numerous other persons, institute an action as representative or representatives
31 of a class against one or more defendants as representatives of a class, and the
32 petition shall allege such facts as will show that these persons or the named
33 defendants specifically named and served with process have been fairly chosen
34 and adequately and fairly represent the whole class, to recover **compensatory**
35 **but not punitive** damages as provided for in subsection 1 of this section. The
36 plaintiff shall be required to prove such allegations, unless all of the members of
37 the class have entered their appearance, and it shall not be sufficient to prove
38 such facts by the admission or admissions of the defendants who have entered
39 their appearance. **In order to recover damages in a class action under**
40 **this section, each class member shall be required to prove that his or**
41 **her damages were proximately caused by the method, act, or practice**
42 **declared unlawful by section 407.020, and that the method, act, or**
43 **practice caused the class member to enter into the transaction that**
44 **resulted in his or her damages. The court shall not infer that damages**
45 **proven to have been suffered by one or more class members were**
46 **suffered by all class members.** In any action brought pursuant to this
47 section, the court may in its discretion [order, in addition to damages, injunction
48 or other equitable relief and] **enjoin the methods, acts, or practices**
49 **declared unlawful by section 407.020. The court may also determine a**
50 **proposed award of reasonable attorney's fees for the counsel to the**
51 **class. Attorney's fees, if awarded, shall bear a reasonable relationship**
52 **to the amount of the judgment.**

53 3. An action may be maintained as a class action in a manner consistent
54 with Rule 23 of the Federal Rules of Civil Procedure and Missouri rule of civil
55 procedure 52.08 to the extent such state rule is not inconsistent with the federal
56 rule if:

- 57 (1) The class is so numerous that joinder of all members is impracticable;
- 58 (2) There are questions of law or fact common to the class;
- 59 (3) The claims or defenses of the representative parties are typical of the
60 claims or defenses of the class; and
- 61 (4) The representative parties will fairly and adequately protect the
62 interests of the class; and, in addition
- 63 (5) The prosecution of separate action by or against individual members
64 of the class would create a risk of:
- 65 (a) Inconsistent or varying adjudications with respect to individual
66 members of the class which would establish incompatible standards of conduct for
67 the party opposing the class; or
- 68 (b) Adjudications with respect to individual members of the class which
69 would as a practical matter be dispositive of the interests of the other members
70 not parties to the adjudications or substantially impair or impede their ability to
71 protect their interests; or
- 72 (6) The party opposing the class has acted or refused to act on grounds
73 generally applicable to the class, thereby making appropriate final injunctive
74 relief or corresponding declaratory relief with respect to the class as a whole; or
- 75 (7) The court finds that the questions of law or fact common to the
76 members of the class predominate over any questions affecting only individual
77 members, and that a class action is superior to other available methods for the
78 fair and efficient adjudication of the controversy. The matters pertinent to the
79 findings include:
- 80 (a) The interest of members of the class in individually controlling the
81 prosecution or defense of separate actions;
- 82 (b) The extent and nature of any litigation concerning the controversy
83 already commenced by or against members of the class;
- 84 (c) The desirability or undesirability of concentrating the litigation of the
85 claims in the particular forum;
- 86 (d) The difficulties likely to be encountered in the management of a class
87 action.
- 88 4. (1) As soon as practicable after the commencement of an action brought
89 as a class action, the court shall determine by order whether it is to be so
90 maintained. An order pursuant to this subdivision may be conditional, and may
91 be altered or amended before the decision on the merits. **An order permitting**
92 **a class action shall specify how the class claims and any issues**

93 **affecting only individual members, raised by the claims or defenses**
94 **asserted in the pleadings, will be tried in a manageable, time efficient**
95 **manner.**

96 (2) In any class action maintained pursuant to subdivision (7) of
97 subsection 3 of this section, the court shall direct to the members of the class the
98 best notice practicable under the circumstances, including individual notice to all
99 members who can be identified through reasonable effort. The notice shall advise
100 each member that:

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

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

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

107 (3) **Prior to an entry of a judgment against a defendant in an**
108 **action maintained as a class action under subsection 3 of this section,**
109 **the court shall require each member of the class claiming to be entitled**
110 **to monetary relief to submit a statement in a form prescribed by the**
111 **court requesting a specific dollar amount and providing information**
112 **regarding the nature of his or her loss, injury, claim, or damage. No**
113 **award of damages under this section shall be made without objective**
114 **proof that the person or persons seeking damages suffered actual**
115 **damages. No judgment shall be entered until the trier of fact has**
116 **determined the amount of money, if any, owed to each class member**
117 **based upon his or her individual proof. The amount of judgment shall**
118 **not exceed the sum of the money owed to each class member. The**
119 **judgment shall identify each member of the class and his or her**
120 **individual monetary award.** The judgment in an action maintained as a class
121 action pursuant to subdivision (5) of subsection 3 of this section or subdivision (6)
122 of subsection 3 of this section, whether or not favorable to the class, shall include
123 and describe those whom the court finds to be members of the class. The
124 judgment in an action maintained as a class action pursuant to subdivision (7)
125 of subsection 3 of this section, whether or not favorable to the class, shall include
126 and specify or describe those to whom the notice provided in subdivision (2) of
127 this subsection was directed, and who have requested exclusion, and whom the
128 court finds to be members of the class.

129 (4) When appropriate, **in a case that otherwise meets the class**
130 **action requirements of subsection 3 of this section**, an action may be
131 brought or maintained as a class action with respect to particular issues, or a
132 class may be divided into subclasses and each subclass treated as a class, and the
133 provisions of this section shall then be construed and applied accordingly.

134 5. In the conduct of actions to which this section applies, the court may
135 make appropriate orders:

136 (1) Determining the course of proceedings or prescribing measures to
137 prevent undue repetition or complication in the presentation of evidence or
138 argument;

139 (2) Requiring, for the protection of the members of the class or otherwise
140 for the fair conduct of the action, that notice be given in such manner as the court
141 may direct to some or all of the members of any step in the action, or of the
142 proposed extent of the judgment, or of the opportunity of members to signify
143 whether they consider the representation fair and adequate, to intervene and
144 present claims or defenses, or otherwise to come into the action;

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

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

149 (5) Dealing with similar procedural matters.

150 6. A class action shall not be dismissed or compromised without the
151 approval of the court, and notice of the proposed dismissal or compromise shall
152 be given to all members of the class in such manner as the court directs.

153 7. Upon commencement of any action brought pursuant to subsection 1
154 of this section, the plaintiff or plaintiffs shall inform the clerk of the court in
155 which such action is brought, on forms to be provided by such clerk, that the
156 action is brought pursuant to this section. The clerk of the court shall forthwith
157 inform the attorney general of the commencement of such action, together with
158 a copy of the complaint or other initial pleading, and, upon entry of any judgment
159 or decree in the action, the clerk shall mail a copy of such judgment or decree to
160 the attorney general.

161 8. Any permanent injunction, judgment or order of the court made
162 pursuant to section 407.100 shall be prima facie evidence in an action brought
163 pursuant to this section that the respondent used or employed a method, act or
164 practice declared unlawful by section 407.020.

165 **9. In any suit seeking relief under section 407.025 or any suit for**
166 **product liability, subsection 1 of section 507.040 shall not be satisfied**
167 **if the plaintiffs' claims are based on separate occurrences. Separate**
168 **purchases of the same product or service and separate injuries from**
169 **the same product shall be considered separate occurrences for**
170 **purposes of this section.**

407.027. The provisions of sections 407.012, 407.020, and 407.025
2 **as enacted by this act shall only apply to causes of action that accrue**
3 **on or after the effective date of this act.**

 435.350. 1. A written agreement to submit any existing controversy to
2 arbitration or a provision in a written contract, except contracts of insurance and
3 contracts of adhesion, to submit to arbitration any controversy thereafter arising
4 between the parties is valid, enforceable and irrevocable, save upon such grounds
5 as exist at law or in equity for the revocation of any contract. [Contracts which
6 warrant new homes against defects in construction and reinsurance contracts are
7 not "contracts of insurance or contracts of adhesion" for purposes of the
8 arbitration provisions of this section.]

9 **2. Except in cases where the agreement expressly and**
10 **unequivocally delegates the issue of arbitrability to the court, in**
11 **agreements between an employer and at-will employee to submit to**
12 **arbitration certain controversies thereafter arising between the**
13 **parties, the arbitrator, and not the court, shall make all initial**
14 **decisions as to arbitrability including, but not limited to, deciding**
15 **whether the parties have agreed to arbitrate, whether the agreement**
16 **is a valid and enforceable contract for arbitration, and whether specific**
17 **claims must be arbitrated pursuant to the arbitration agreement. Such**
18 **arbitrator or arbitrators shall be selected by mutual agreement of the**
19 **parties or, in the event that an arbitrator is not mutually agreed upon,**
20 **through a strike and ranking process.**

21 **3. In deciding all arbitrability issues as described in subsection**
22 **2 of this section, the arbitrator shall find such agreements valid and**
23 **supported by adequate consideration, not illusory, and not contracts of**
24 **adhesion for purposes of this section where:**

25 **(1) The agreement requires both the employer and the employee**
26 **to arbitrate those disputes that are subject to arbitration as set forth**
27 **in the arbitration agreement;**

28 **(2) The employer notifies the employee, in writing, of the terms**

29 of the agreement;

30 (3) The agreement complies with the provisions of this chapter,
31 including but not limited to the provisions of section 435.460;

32 (4) The employee so notified acknowledges acceptance of the
33 terms in writing and continues to be employed after the effective date
34 of the arbitration agreement;

35 (5) The agreement contains a provision that any modifications
36 to the arbitration agreement shall not:

37 (a) Apply to any claim that has accrued prior to the effective
38 date of any such modifications; or

39 (b) Allow unilateral modification of the arbitration agreement;
40 and

41 (6) The agreement requires that the arbitrator or arbitrators
42 shall be selected by mutual agreement of the parties or, in the event
43 that an arbitrator is not mutually agreed upon, through a strike and
44 ranking process.

45 4. Nothing in subsection 2 of this section shall apply to or affect
46 the enforceability of an arbitration provision contained in a collective
47 bargaining agreement.

48 5. Contracts that warrant new homes against defects in
49 construction and reinsurance contracts are not contracts of insurance
50 or contracts of adhesion for purposes of the arbitration provisions of
51 this section.

435.355. 1. On motion by a party showing an agreement described
2 in subsection 2 of section 435.350, the court shall stay any action or
3 proceeding pending before the court and order the parties to proceed
4 to arbitration. The procedures set out in subsection 2 of this section do
5 not apply.

6 2. With respect to arbitration agreements other than those
7 described in subsection 2 of section 435.350, the provisions of this
8 subsection shall apply:

9 (1) On application of a party showing an **arbitration** agreement
10 [described in section 435.350], and the opposing party's refusal to arbitrate, the
11 court shall order the parties to proceed with arbitration, but if the opposing party
12 denies the existence of the agreement to arbitrate, the court shall proceed
13 summarily to the determination of the issue so raised and shall order arbitration
14 if found for the moving party; otherwise, the application shall be denied[.];

15 [2.] (2) On application, the court may stay an arbitration proceeding
16 commenced or threatened on a showing that there is no agreement to
17 arbitrate. Such an issue, when in substantial and bona fide dispute, shall be
18 forthwith and summarily tried and the stay ordered if found for the moving party.
19 If found for the opposing party, the court shall order the parties to proceed to
20 arbitration[.];

21 [3.] (3) If an issue referable to arbitration under the alleged agreement
22 is involved in action or proceeding pending in a court having jurisdiction to hear
23 applications under [subsection 1] **subdivision (1)** of this [section] **subsection**,
24 the application shall be made therein. Otherwise and subject to section 435.435,
25 the application may be made in any court of competent jurisdiction[.];

26 [4.] (4) Any action or proceeding involving an issue subject to arbitration
27 shall be stayed if an order for arbitration or an application therefor has been
28 made under this section or, if the issue is severable, the stay may be with respect
29 thereto only. When the application is made in such action or proceeding, the
30 order for arbitration shall include such stay[.];

31 [5.] (5) An order for arbitration shall not be refused on the ground that
32 the claim in issue lacks merit or bona fides or because any fault or grounds for
33 the claim sought to be arbitrated have not been shown.

435.440. 1. An appeal may be taken from:

- 2 (1) An order denying an application to compel arbitration made under
3 **subdivision (1) of subsection 2 of** section 435.355;
- 4 (2) An order granting an application to stay arbitration made under
5 **subdivision (2) of** subsection 2 of section 435.355;
- 6 (3) An order confirming or denying confirmation of an award;
- 7 (4) An order modifying or correcting an award;
- 8 (5) An order vacating an award without directing a rehearing; or
- 9 (6) A judgment or decree entered pursuant to the provisions of sections
10 435.350 to 435.470.

11 2. The appeal shall be taken in the manner and to the same extent as
12 from orders or judgments in a civil action.

507.040. 1. All persons may join in one action as plaintiffs if they assert
2 any right to relief jointly, severally, or in the alternative in respect of or arising
3 out of the same transaction, occurrence, or series of transactions or occurrences
4 and if any question of law or fact common to all of them will arise in the action.
5 All persons may be joined in one action as defendants if there is asserted against

6 them jointly, severally, or in the alternative, any right to relief in respect of or
7 arising out of the same transaction, occurrence, or series of transactions or
8 occurrences and if any question of law or fact common to all of them will arise in
9 the action. **Notwithstanding any other provision of law to the contrary,**
10 **for any action in which a plaintiff was injured outside the state of**
11 **Missouri, claims arising out of separate purchases of the same product**
12 **or service, or separate incidents involving the same product or services**
13 **shall not satisfy this section.** A plaintiff or defendant need not be interested
14 in obtaining or defending against all the relief demanded. Judgment may be
15 given for one or more of the plaintiffs according to their respective rights to relief,
16 and against one or more defendants according to their respective liabilities.

17 **2. In addition to the requirements of subsection 1 of this section,**
18 **in any civil action in which there is a count alleging a tort, two or more**
19 **plaintiffs may be joined in a single action only if each plaintiff could**
20 **have separately filed an action in that venue, independently of the**
21 **claims of any other plaintiff. Two or more defendants may be joined in**
22 **a single action only if:**

23 **(1) Personal jurisdiction is proper for each defendant,**
24 **independently of the claims against any other defendant; and**

25 **(2) Each plaintiff can establish proper venue against each**
26 **defendant, independently of the claims against any other defendant.**

27 **3. All parties for which proper personal jurisdiction and venue**
28 **cannot be independently established shall be deemed**
29 **misjoined. Misjoined parties may be joined only where at least one**
30 **claim is properly pending in the court, and all parties to the action**
31 **waive objection to the misjoinder. All other misjoined parties shall be**
32 **subject to the provisions of section 507.050. The requirements under**
33 **this section are procedural.**

34 **4. Notwithstanding any other provision of law to the contrary,**
35 **if two or more plaintiffs were first injured outside of the state of**
36 **Missouri as a result of a single occurrence in which injuries occurred**
37 **simultaneously, such as with an automobile collision or industrial**
38 **explosion, the plaintiffs may be joined in one action in Cole County.**

39 **5. The court may make such orders as will prevent a party from being**
40 **embarrassed, delayed, or put to expense by the inclusion of a party against whom**
41 **he asserts no claim and who asserts no claim against him, and may order**
42 **separate trials or make other orders to prevent delay or prejudice.**

507.050. 1. Misjoinder of parties is not ground for dismissal of an
2 action. Parties may be dropped [or], added, **or severed** by order of the court on
3 motion of any party or of its own initiative at any stage of the action and on such
4 terms as are just. Any claim against a party may be severed and proceeded with
5 separately. **If a plaintiff or defendant is deemed misjoined pursuant to**
6 **subsection 3 of section 507.040, all claims brought by that plaintiff or**
7 **against that defendant shall be severed from the action and those**
8 **claims shall be transferred to a county in which venue exists upon the**
9 **motion of any party. If there is no county in Missouri in which venue**
10 **exists, those claims shall be dismissed without prejudice.**

11 2. A motion to drop or add parties may be made at the same time as other
12 motions provided for in section 509.290, and if so made, the provisions of section
13 509.340 with reference to the consolidation of motions and waiver of objections
14 shall also apply. If said motion is made at any other time, the hearing and
15 determination thereof shall not delay the trial. Objections on account of
16 misjoinder or nonjoinder of parties may also be raised by answer or reply.

507.060. 1. Persons having claims against the plaintiff **or the plaintiff's**
2 **insured** may be joined as defendants and required to interplead when their
3 claims are such that the plaintiff is or may be exposed to [double or] multiple
4 liability, **including multiple claims against the same insurance coverage.**
5 It is not ground for objection to the joinder that the claims of the several
6 claimants or the titles on which their claims depend do not have a common origin
7 or are not identical but are adverse to and independent of one another, or that
8 the plaintiff avers that he is not liable in whole or in part to any or all of the
9 claimants. A defendant exposed to similar liability may obtain such interpleader
10 by way of cross-claim or counterclaim. The provisions of this section supplement
11 and do not in any way limit the joinder of parties permitted in section 507.040.

12 2. **For purposes of this section, the term "claim" includes all**
13 **actual or potential claims against a plaintiff or plaintiff's insured and**
14 **the term "plaintiff" includes the insurer of an insured person or entity**
15 **subject to more than one claim.**

16 3. **If within ninety days after receiving any offer of settlement or**
17 **demand for payment by one or more claimants the plaintiff files an**
18 **action for interpleader under this section and the insurer timely**
19 **deposits all applicable limits of coverage into the court within thirty**
20 **days of the court's order granting interpleader, the plaintiff shall not**

21 **be liable to any insured or defendant for any amount in excess of the**
22 **plaintiff's contractual limits of coverage in the interpleader or any**
23 **other action, so long as the plaintiff defends its insured from any**
24 **further claim or lawsuit, even after depositing its limits of coverage**
25 **into the court notwithstanding any policy provision otherwise releasing**
26 **the insurer of its duty to defend the insured.**

27 **4. Nothing in this section shall require a release or dismissal of**
28 **any claim for damages against any insured person or entity upon**
29 **interpleader by an insurer of that person or entity, however the**
30 **satisfaction of any judgment against that person or entity shall not**
31 **include further recovery from any insurer, if that insurer has deposited**
32 **its limits of coverage into court as provided in subsection 3 of this**
33 **section.**

508.010. 1. As used in this section, "principal place of residence" shall
2 mean the county which is the main place where an individual resides in the state
3 of Missouri. [There shall be a rebuttable presumption that the county of voter
4 registration at the time of injury is the principal place of residence.] There shall
5 be only one principal place of residence.

6 **(1) For an individual person, there shall be a rebuttable**
7 **presumption that the county of voter registration at the time of injury**
8 **is the principal place of residence.**

9 **(2) For an individual whose conduct at issue was alleged to be**
10 **in the course and scope of his or her employment with a corporation,**
11 **the individual's principal place of residence is the applicable**
12 **corporation's principal place of residence.**

13 **(3) For a corporation, the county where the corporation has its**
14 **registered agent is the principal place of residence.**

15 **(4) For a domestic insurance corporation, the county where the**
16 **corporation has its registered office is the principal place of residence.**

17 **(5) For a foreign insurance corporation, the county where the**
18 **foreign corporation has its registered office is its principal place of**
19 **residence; if such a foreign corporation does not have a registered**
20 **office in any county in Missouri, the principal place of residence shall**
21 **be Cole County.**

22 **2. In all actions in which there is no count alleging a tort, venue shall be**
23 **determined as follows:**

24 **(1) When the defendant is a resident of the state, either in the county**

25 within which the defendant resides, or in the county within which the plaintiff
26 resides, and the defendant may be found;

27 (2) When there are several defendants, and they reside in different
28 counties, the suit may be brought in any such county;

29 (3) When there are several defendants, some residents and others
30 nonresidents of the state, suit may be brought in any county in this state in
31 which any defendant resides;

32 (4) When all the defendants are nonresidents of the state, suit may be
33 brought in any county in this state, **provided there is personal jurisdiction**
34 **over each defendant, independent of each other defendant.**

35 3. The term "tort" shall include claims based upon improper health care,
36 under the provisions of chapter 538.

37 4. Notwithstanding any other provision of [law] **this section to the**
38 **contrary**, in all actions in which there is any count alleging a tort **or alleging**
39 **damages for benefits due under an insurance contract based on any**
40 **insured's bodily injury, personal injury, wrongful death, or property**
41 **damage**, and in which the plaintiff **or insured** was first injured **or the**
42 **property damaged** in the state of Missouri, venue shall be in the county where
43 the plaintiff **or the plaintiff's decedent** was first injured **or the property**
44 **damaged** by the [wrongful] acts or [negligent] conduct alleged in the
45 action. **For purposes of any action alleging a tort arising from an**
46 **insurance contract, the plaintiff is deemed first injured in the county**
47 **where he or she resided at the time of the alleged economic damage.**

48 5. Notwithstanding any other provision of law, in all actions in which
49 there is any count alleging a tort and in which the plaintiff was first injured
50 outside the state of Missouri, venue **as to that individual plaintiff** shall be
51 determined as follows:

52 (1) If the defendant is a corporation, then venue shall be in [any] **the**
53 county where a defendant [corporation's registered agent is located] **has its**
54 **principal place of residence** or, if the plaintiff's principal place of residence
55 was in the state of Missouri on the date the plaintiff was first injured, then venue
56 may be in the county of the plaintiff's principal place of residence on the date the
57 plaintiff was first injured;

58 (2) If the defendant is an individual, then venue shall be in [any] **the**
59 county [of] **where** the [individual defendant's] **defendant has its** principal
60 place of residence in the state of Missouri or, if the plaintiff's principal place of

61 residence was in the state of Missouri on the date the plaintiff was first injured,
62 then venue **as to that individual plaintiff** may be in the county containing the
63 plaintiff's principal place of residence on the date the plaintiff was first injured;

64 (3) **In any case in which the cause of action accrued on or after**
65 **the effective date of this subdivision and in which venue is not**
66 **expressly prescribed by subdivisions (1) or (2) of this subsection, venue**
67 **shall be in the county containing the seat of state government;**

68 (4) Notwithstanding subdivisions (1) and (2) of this subsection, if the
69 plaintiff was first injured in a foreign country in connection with any railroad
70 operations therein and any defendant is a:

71 (a) Corporation that, either directly or through its subsidiaries, wholly
72 owns or operates the foreign railroad; or

73 (b) Wholly owned subsidiary of a corporation that, either directly or
74 through its subsidiaries, wholly owns or operates the foreign railroad;

75 then venue shall exclusively be in the county where any such defendant
76 corporation's registered agent is located, regardless of venue as to any other
77 defendant or, if the plaintiff's principal place of residence was in the state of
78 Missouri on the date the plaintiff was first injured, then venue may be in the
79 county of the plaintiff's principal place of residence on the date the plaintiff was
80 first injured.

81 6. Any action, in which any county shall be a plaintiff, may be commenced
82 and prosecuted to final judgment in the county in which the defendant or
83 defendants reside, or in the county suing and where the defendants, or one of
84 them, may be found.

85 7. In all actions, process shall be issued by the court in which the action
86 is filed and process may be served in any county within the state.

87 8. In any action for defamation or for invasion of privacy, the plaintiff
88 shall be considered first injured in the county in which the defamation or
89 invasion was first published.

90 9. In all actions, venue shall be determined as of the date the plaintiff was
91 first injured.

92 10. All motions to dismiss or to transfer based upon a claim of improper
93 venue shall be deemed granted if not denied within ninety days of filing of the
94 motion unless such time period is waived in writing by all parties.

95 11. In a wrongful death action, the plaintiff shall be considered first
96 injured where the decedent was first injured by the wrongful acts or negligent

97 conduct alleged in the action. In any spouse's claim for loss of consortium, the
98 plaintiff claiming consortium shall be considered first injured where the other
99 spouse was first injured by the wrongful acts or negligent conduct alleged in the
100 action.

101 12. The provisions of this section shall apply irrespective of whether the
102 defendant is a for-profit or a not-for-profit entity.

103 13. In any civil action, if all parties agree in writing to a change of venue,
104 the court shall transfer venue to the county within the state unanimously chosen
105 by the parties. If any parties are added to the cause of action after the date of
106 said transfer who do not consent to said transfer then the cause of action shall
107 be transferred to such county in which venue is appropriate under this section,
108 based upon the amended pleadings.

109 14. A plaintiff is considered first injured where the trauma or exposure
110 occurred rather than where symptoms are first manifested.

111 **15. Notwithstanding any other provision of law to the contrary,**
112 **in any civil action in which there is any count alleging a tort, each**
113 **plaintiff shall establish that the court where the action is filed is a**
114 **proper venue against each defendant, independent of the claims**
115 **brought by any other plaintiff or against any other defendant. Venue**
116 **for each plaintiff and each defendant cannot be established by joinder**
117 **or intervention.**

118 16. If the county where the plaintiff's claim is filed is not a
119 proper venue, that plaintiff shall be transferred to a county where
120 proper venue can be established. If no such county exists in the state
121 of Missouri, the claim shall be dismissed without prejudice.

122 17. Denial of a motion to transfer venue pursuant to sections
123 507.040, 507.050, or 508.010, if denied in error, requires reversal, and no
124 finding of prejudice under Missouri supreme court rule 84.13(b) is
125 required for reversal.

126 18. For the purposes of this section, the principal place of
127 residence of a domestic insurance company shall be the county where
128 its registered office is maintained. The principal place of residence of
129 a foreign insurance company shall be in the county where its registered
130 office is maintained, unless it does not maintain such an office within
131 the state. If a foreign insurance company does not maintain a
132 registered office in any county in Missouri, the principal place of

133 **residence of the foreign insurance company shall be in Cole County.**

508.012. At any time prior to the commencement of a trial, if a plaintiff
2 or defendant, including a third-party plaintiff or defendant, is either added [or]
3 **to**, removed, **or severed** from a petition filed in any court in the state of
4 Missouri which would have, if originally added [or] **to**, removed [to], **or severed**
5 **from** the initial petition, altered the determination of venue under section
6 508.010, then the judge shall upon application of any party transfer the case to
7 a proper forum [under section 476.410].

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

6 **2. Punitive damages shall only be recovered if the trier of fact**
7 **awards more than nominal damages.**

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

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

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

17 **(3) The employee or agent was unfit to perform acts or duties of**
18 **the kind for which a punitive damage award is sought, and the**
19 **employer or principal expressly authorized the employee or agent to**
20 **perform acts or duties of that kind.**

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

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

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

27 **(3) Any other officer, employee, or agent with policy-making**
28 **authority**

29 **shall be deemed to be the act, conduct, authorization, ratification, or**

30 intention of the employer or principal.

31 5. No initial pleading in a civil action shall contain a claim for
32 a punitive damage award. Any later pleading containing a claim for a
33 punitive damage award may be filed only with leave of the court. A
34 trial court may grant leave to file such a pleading only on written
35 motion by the claimant, filed no later than one hundred twenty days
36 prior to the final pretrial conference in the case or, if there is no
37 scheduled pretrial conference, one hundred twenty days prior to the
38 date set for trial, that is supported by affidavits, exhibits, or discovery
39 materials establishing a reasonable basis for recovery of punitive
40 damages. Any party opposing leave may file affidavits, exhibits, or
41 discovery materials demonstrating that the standards for a punitive
42 damages award under this section have not been established. If the
43 trial court concludes, following its review of all materials submitted in
44 connection with the motion, that based on the evidence to be admitted
45 at trial a reasonable trier of fact is likely to conclude, based on clear
46 and convincing evidence, that the standards for a punitive damages
47 award contained in this section have been met, the court shall grant
48 leave to file the pleading seeking a punitive damages award. The court
49 shall rule on a motion for leave to file a pleading seeking punitive
50 damages no later than forty-five days after a hearing on the motion or,
51 if no hearing is held on the motion, after the party opposing the motion
52 has filed its response to the motion.

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

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

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

64 9. Except to the extent that they are expressly inconsistent with
65 this section, all common law limitations on punitive damages, including
66 the doctrine of remittitur, and all limitations on the recovery of

67 **punitive damages contained in other sections of the laws of this state**
68 **remain in full force and effect.**

69 **10. The provisions of this section shall apply to:**

70 **(1) Any civil action pending on August 28, 2018, in which a claim**
71 **for a punitive damage award has been asserted in any pleading, unless**
72 **in that action a verdict or judgment containing a punitive damage**
73 **award has been returned or entered prior to such date;**

74 **(2) Any civil action pending on August 28, 2018, in which a party**
75 **seeks, on or after such date, to assert a claim for a punitive damage**
76 **award; and**

77 **(3) Any civil action filed on or after August 28, 2018.**

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

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

12 3. [If during the first stage of a bifurcated trial the jury determines that
13 a defendant is liable for punitive damages, that] **If an award of compensatory**
14 **damages above nominal damages has been made against a defendant,**
15 **the court shall promptly commence a hearing to determine whether**
16 **punitive damages may be considered by the same jury. The court shall**
17 **determine whether the issue of punitive damages may be submitted to**
18 **the jury and, if so, the** jury shall determine[, in a second stage of trial, the
19 amount of] **whether to award** punitive damages [to be awarded against such
20 defendant] **and in what amount.** Evidence of such defendant's net worth shall
21 be admissible during the second stage of such trial.

22 4. Within the time for filing a motion for new trial, a defendant may file
23 a post-trial motion requesting the amount awarded by the jury as punitive
24 damages be credited by the court with amounts previously paid **in any state or**
25 **federal court** by the defendant for punitive damages arising out of the same

26 conduct on which the imposition of punitive damages is based. At any hearing,
27 the burden on all issues relating to such a credit shall be on the defendant and
28 either party may introduce relevant evidence on such motion. Such a motion
29 shall be determined by the trial court within the time and according to
30 procedures applicable to motions for new trial. If the trial court sustains such a
31 motion the trial court shall credit the jury award of punitive damages by the
32 amount found by the trial court to have been previously paid by the defendant
33 arising out of the same conduct and enter judgment accordingly. If the defendant
34 fails to establish entitlement to a credit under the provisions of this section, or
35 the trial court finds from the evidence that the defendant's conduct out of which
36 the prior punitive damages award arose was not the same conduct on which the
37 imposition of punitive damages is based in the pending action, or the trial court
38 finds the defendant unreasonably continued the conduct after acquiring actual
39 knowledge of the dangerous nature of such conduct, the trial court shall disallow
40 such credit, or, if the trial court finds that the laws regarding punitive damages
41 in the state **or federal court** in which the prior award of punitive damages was
42 entered substantially and materially deviate from the law of the state of Missouri,
43 **except with respect to section 537.675**, and that the nature of such deviation
44 provides good cause for disallowance of the credit based on the public policy of
45 Missouri, then the trial court may disallow all or any part of the credit provided
46 by this section.

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

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

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

55 [8.] 7. Discovery as to a defendant's assets shall be allowed only after [a
56 finding by the trial court that it is more likely than not that the plaintiff will be
57 able to present a submissible case to the trier of fact on the plaintiff's claim of
58 punitive damages] **a trial court has granted leave to file a pleading**
59 **seeking punitive damages in accordance with subsection 5 of section**
60 **510.259. Upon request of the defendant, the trial court shall issue an**
61 **order making the records produced regarding defendant's assets**

62 confidential until the trier of fact returns a finding of liability for
63 punitive damages. Public disclosure by the plaintiff or plaintiff's
64 representatives, including counsel, shall be grounds for dismissal of the
65 punitive damage claim and such other relief as the court may order.

66 8. The provisions of this section shall apply to:

67 (1) Any civil action pending on August 28, 2018, in which a claim
68 for a punitive damage award has been asserted in any pleading, unless
69 in that action a verdict or judgment containing a punitive damage
70 award has been returned or entered prior to such date;

71 (2) Any civil action pending on August 28, 2018, in which a party
72 seeks, on or after such date, to assert a claim for a punitive damage
73 award; and

74 (3) Any civil action filed on or after August 28, 2018.

516.099. 1. Any action to recover damages for economic loss,
2 personal injury, property damage, or wrongful death arising out of a
3 defective or unsafe condition of any item that is sold, leased, or
4 otherwise placed in the stream of commerce, or arising out of the
5 negligent design, manufacture, sale, or distribution of any such item,
6 shall be commenced within ten years of the date on which such item is
7 first sold or leased to any person, or first otherwise placed into the
8 stream of commerce.

9 2. This section shall apply to all actions falling within it, whether
10 arising under the common law or by operation of statute, except that
11 if an action within this section is barred by another provision of law,
12 that other provision of law shall govern.

13 3. This section shall not apply:

14 (1) To any action brought with respect to an item that is real
15 property or an improvement to real property;

16 (2) If the person against whom an action is brought has
17 knowingly concealed any defective or unsafe condition in the item that
18 is the subject of the action, or has knowingly concealed any negligence
19 in the item's construction, manufacture, sale, distribution, or placing
20 into the stream of commerce, and if any matter so concealed directly
21 resulted in the economic loss, personal injury, property damage, or
22 wrongful death for which the action is brought;

23 (3) If a manufacturer, lessor, seller, or person who first placed
24 an item in the stream of commerce against whom an action within this

25 section is brought brings an action for indemnity or contribution
26 against a person who is or may be liable to such person for all or any
27 portion of any judgment rendered against such person, in which event
28 such action for indemnity or contribution shall not be barred by this
29 section;

30 (4) If a manufacturer, lessor, seller, or person who first placed
31 an item in the stream of commerce has stated in a written warranty or
32 an advertisement to the public that the item has an expected useful life
33 for a period certain that is greater than ten years, in which event any
34 action that is otherwise within this section and is not barred by any
35 other provision of law shall be brought no later than two years
36 following the expiration of that period certain; or

37 (5) To any action regarding negligent service or negligent
38 maintenance of a product.

39 4. This section shall apply to all civil actions commenced on or
40 after August 28, 2018, or any new causes of action asserted in civil
41 actions pending on that date, except that any cause of action falling
42 within this section that accrued on or before August 28, 2018, may in
43 any event be brought not later than August 28, 2019, unless barred by
44 another provision of law.

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

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

15 (2) In cases in which the act of neglect complained of is the negligent
16 failure to inform the patient of the results of medical tests, the action for failure

17 to inform shall be brought within two years from the date of the discovery of such
18 alleged negligent failure to inform, or from the date on which the patient in the
19 exercise of ordinary care should have discovered such alleged negligent failure to
20 inform, whichever date first occurs; except that, no such action shall be brought
21 for any negligent failure to inform about the results of medical tests performed
22 more than two years before August 28, 1999. For purposes of this subdivision,
23 the act of neglect based on the negligent failure to inform the patient of the
24 results of medical tests shall not include the act of informing the patient of the
25 results of negligently performed medical tests or the act of informing the patient
26 of erroneous test results; and

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

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

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

537.067. 1. In all tort actions for damages, [if a defendant is found to
2 bear fifty-one percent or more of fault, then such defendant shall be jointly and
3 severally liable for the amount of the judgment rendered against the defendants.
4 If a defendant is found to bear less than fifty-one percent of fault, then the
5 defendant shall only be responsible for the percentage of the judgment for which
6 the defendant is determined to be responsible by the trier of fact; except that, a
7 party is responsible for the fault of another defendant or for payment of the
8 proportionate share of another defendant if any of the following applies:

9 (1) The other defendant was acting as an employee of the party;
10 (2) The party's liability for the fault of another person arises out of a duty
11 created by the federal Employers' Liability Act, 45 U.S.C. Section 51.

12 2. The defendants shall only be severally liable for the percentage of

13 punitive damages for which fault is attributed to such defendant by the trier of
14 fact] **the liability of each defendant for compensatory or punitive**
15 **damages shall be several only and shall not be joint. Each defendant**
16 **shall be liable only for the amount of damages allocated to that**
17 **defendant in direct proportion to that defendant's percentage of fault.**
18 **A separate several judgment shall be rendered against that defendant**
19 **for that amount.**

20 **2. To determine the amount of judgment to be entered against**
21 **each defendant, the court shall multiply the total amount of damages**
22 **recoverable by the plaintiff with regard to each defendant by the**
23 **percentage of each defendant's fault. That amount shall be the**
24 **maximum recoverable against that defendant.**

25 **3. In assessing percentages of fault, the trier of fact shall**
26 **consider the fault of all persons or entities who contributed to the**
27 **alleged injury or damages, regardless of whether the person or entity**
28 **was, or could have been, named as a party to the suit.**

29 **4. Negligence or fault of a nonparty may be considered if the**
30 **plaintiff entered into a settlement agreement with the nonparty or if**
31 **the defending party gives notice before trial, in accordance with**
32 **requirements established by court rule, that a nonparty was wholly or**
33 **partially at fault. Assessments of percentages of fault of nonparties**
34 **shall be used only in the determination of the percentage of fault of**
35 **named parties. Where fault is assessed against nonparties under this**
36 **section, findings of fact shall not subject any nonparty to liability in**
37 **any action or be introduced as evidence of liability in any action.**

38 **[3.] 5. In all tort actions, no party may disclose to the trier of fact the**
39 **impact of this section.**

537.100. **1. Every action instituted under section 537.080 shall be**
2 **commenced within three years after the cause of action shall accrue; provided,**
3 **that if any defendant, whether a resident or nonresident of the state at the time**
4 **any such cause of action accrues, shall then or thereafter be absent or depart**
5 **from the state, so that personal service cannot be had upon such defendant in the**
6 **state in any such action heretofore or hereafter accruing, the time during which**
7 **such defendant is so absent from the state shall not be deemed or taken as any**
8 **part of the time limited for the commencement of such action against him; and**
9 **provided, that if any such action shall have been commenced within the time**

10 prescribed in this section, and the plaintiff therein take or suffer a nonsuit, or
11 after a verdict for him the judgment be arrested, or after a judgment for him the
12 same be reversed on appeal or error, such plaintiff may commence a new action
13 from time to time within one year after such nonsuit suffered or such judgment
14 arrested or reversed; and in determining whether such new action has been begun
15 within the period so limited, the time during which such nonresident or absent
16 defendant is so absent from the state shall not be deemed or taken as any part
17 of such period of limitation.

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

537.761. 1. In a products liability action in which a plaintiff
2 **alleges a design defect, the burden is on the plaintiff to prove by a**
3 **preponderance of the evidence that:**

4 **(1) There was a safer alternative design; and**

5 **(2) The defect was a proximate and producing cause of the**
6 **personal injury, property damage, or death for which the plaintiff seeks**
7 **recovery.**

8 **2. As used in this section, "safer alternative design" means a**
9 **product design other than the one actually used that in reasonable**
10 **probability:**

11 **(1) Would have prevented or significantly reduced the risk of the**
12 **plaintiff's personal injury, property damage, or death without**
13 **substantially impairing the product's utility; and**

14 **(2) Was economically and technologically feasible at the time the**
15 **product left the control of the manufacturer or seller by the application**
16 **of existing or reasonably achievable scientific knowledge.**

537.762. 1. A defendant whose liability is based solely on his status as
2 **a seller in the stream of commerce may be dismissed from a products liability**
3 **claim as provided in this section.**

4 **2. This section shall apply to any products liability claim in which another**
5 **defendant, including the manufacturer, is properly before the court and from**

6 whom total recovery may be had for plaintiff's claim.

7 3. A defendant may move for dismissal under this section within the time
8 for filing an answer or other responsive pleading unless permitted by the court
9 at a later time for good cause shown. The motion shall be accompanied by an
10 affidavit which shall be made under oath and shall state that the defendant is
11 aware of no facts or circumstances upon which a verdict might be reached against
12 him, other than his status as a seller in the stream of commerce.

13 4. The parties shall have sixty days in which to conduct discovery on the
14 issues raised in the motion and affidavit. The court for good cause shown, may
15 extend the time for discovery, and may enter a protective order pursuant to the
16 rules of civil procedure regarding the scope of discovery on other issues.

17 5. Any party may move for a hearing on a motion to dismiss under this
18 section. If the requirements of subsections 2 and 3 of this section are met, and
19 no party comes forward at such a hearing with evidence of facts which would
20 render the defendant seeking dismissal under this section liable on some basis
21 other than his status as a seller in the stream of commerce, the court shall
22 dismiss without prejudice the claim as to that defendant.

23 6. [No order of dismissal under this section shall operate to divest a court
24 of venue or jurisdiction otherwise proper at the time the action was commenced.
25 A defendant dismissed pursuant to this section shall be considered to remain a
26 party to such action only for such purposes.

27 7.] An order of dismissal under this section shall be interlocutory until
28 final disposition of plaintiff's claim by settlement or judgment and may be set
29 aside for good cause shown at anytime prior to such disposition.

**537.763. The provisions of sections 537.761 and 537.762 as enacted
2 by this act shall only apply to causes of action that accrue on or after
3 the effective date of this act.**

**537.880. 1. The provisions of sections 537.880 to 537.890 shall
2 apply to asbestos actions filed on or after the effective date of such
3 sections and to pending asbestos actions in which trial has not
4 commenced as of such date.**

5 2. As used in sections 537.880 to 537.890, the following words and
6 terms shall have the meanings indicated, unless the context clearly
7 requires otherwise:

8 (1) "Asbestos action", any claim for damages or other relief
9 presented in a civil action arising out of, based on, or related to the

10 health effects of exposure to asbestos and any derivative claim made by
11 or on behalf of a person exposed to asbestos or a representative,
12 spouse, parent, child, or other relative of that person;

13 (2) "Asbestos trust", a government-approved or court-approved
14 trust, qualified settlement fund, compensation fund, or claims facility
15 created as a result of an administrative or legal action, a
16 court-approved bankruptcy, or created under 11 U.S.C. Section 524(g)
17 or 11 U.S.C. Section 1121(a) or other applicable provision of law, that
18 is intended to provide compensation to claimants arising out of, based
19 on, or related to the health effects of exposure to asbestos;

20 (3) "Asbestos trust claim", any claim for compensation by an
21 exposed person or the exposed person's representative against any
22 asbestos trust;

23 (4) "Claimant", any person bringing an asbestos action or
24 asserting an asbestos trust claim, including a personal representative
25 if the asbestos action or asbestos trust claim is brought by an estate, or
26 a conservator or next friend if the asbestos action or asbestos trust
27 claim is brought on behalf of a minor or legally incapacitated
28 individual. "Claimant" includes a claimant, counter-claimant,
29 cross-claimant, or third-party claimant;

30 (5) "Exposed person", any person whose exposure to asbestos or
31 to asbestos-containing products is the basis for an asbestos claim;

32 (6) "Trust claim materials", all documents and information
33 relevant or related to a pending or potential asbestos trust claim
34 including, but not limited to, claim forms, proofs of claim, all materials
35 submitted by a claimant in order to have the claim evaluated by the
36 asbestos trust, including copies of electronic data and emails. "Trust
37 claim materials" include claim forms and supplementary materials,
38 proofs of claim, affidavits, depositions and trial testimony of the
39 claimant and others knowledgeable about the claimant's exposure
40 history, work history, exposure allegations, and medical and health
41 records relating to the claimant's claim including, but not limited to,
42 x-rays, test results, diagnostic reports, CT reports, cytology reports, and
43 all other medical reports and pathology results;

44 (7) "Trust governance document", all documents that relate to
45 eligibility and payment levels, including claims payment matrices, trust
46 distribution procedures, or plans for reorganization for an asbestos

47 trust.

537.882. 1. Within thirty days after an asbestos action is filed or
2 within thirty days of the effective date of this section for asbestos
3 actions that are pending on that effective date, the claimant shall:

4 (1) Provide the court and parties with a sworn statement signed
5 by the claimant and claimant's counsel, under penalties of perjury,
6 indicating that an investigation of all asbestos trust claims has been
7 conducted and that all asbestos trust claims that can be made by the
8 claimant or any person on the claimant's behalf have been completed
9 and filed. A deferral or placeholder claim that is missing necessary
10 documentation for the trust to review and pay the claim does not meet
11 the requirements of this section. The sworn statement shall indicate
12 whether there has been a request to delay, suspend, withdraw, or
13 otherwise alter the standing of any asbestos trust claim and provide the
14 status and disposition of each asbestos trust claim;

15 (2) Provide all parties with all trust claim materials, including
16 trust claim materials that relate to conditions other than those that are
17 the basis for the asbestos action and including all trust claim materials
18 from all law firms connected to the claimant in relation to exposure to
19 asbestos, including anyone at a law firm involved in the asbestos
20 action, any referring law firm, and any other firm that has filed an
21 asbestos trust claim for the claimant or on the claimant's
22 behalf. Documents should be accompanied by a custodial affidavit from
23 the asbestos trust certifying that the trust claim materials submitted
24 to the defendants are true and complete; and

25 (3) Produce all available trust claims filed by any individual
26 other than the claimant if the claimant's asbestos trust claim is based
27 on exposure to asbestos through that other individual.

28 2. The claimant shall have a continuing duty, until final
29 resolution of the asbestos action, to supplement the statement and
30 materials provided under subsection 1 of this section. The claimant
31 shall supplement and amend the information and materials provided
32 under subsection 1 of this section within thirty days after the claimant
33 files an additional asbestos trust claim, supplements an existing
34 asbestos trust claim, or receives additional trust claim materials
35 related to any asbestos trust claim made against an asbestos trust.

36 3. A court may impose sanctions for failure by a claimant or

37 claimant's counsel to comply with this section, including dismissal of
38 the asbestos action with prejudice for willful failure to comply with the
39 requirements of sections 537.880 to 537.890.

40 4. The submission of the sworn statement under subsection 1 of
41 this section shall be in addition to any disclosure requirements
42 otherwise imposed by law, rules of civil procedure, court order or
43 ruling, applicable agreement or stipulation, local rule, or case
44 management order. Nothing in this section shall prevent a court of
45 competent jurisdiction from requiring any disclosures in addition to
46 the disclosures required under this section.

537.884. 1. A defendant may file a motion requesting a stay of
2 the asbestos action on or before the later of the sixtieth day before the
3 date the trial in the action is set to commence or the fifteenth day after
4 the defendant first obtains information that could support additional
5 trust claims by the claimant. The motion shall identify the asbestos
6 trust claims the defendant believes the claimant can file and include
7 information supporting those asbestos trust claims.

8 2. Within ten days after the filing of the defendant's motion, the
9 claimant shall:

10 (1) File the asbestos trust claims and produce all related trust
11 claim materials; or

12 (2) File a written response with the court stating why there is
13 insufficient evidence for the claimant to file the asbestos trust claims.

14 3. Within ten days of the claimant filing a written response to the
15 defendant's motion to stay, the court shall determine if there is a
16 sufficient basis for the claimant to file the asbestos trust claim
17 identified in the motion to stay.

18 4. If the court determines that there is a sufficient basis for the
19 claimant to file an asbestos trust claim identified in the motion to stay,
20 the court shall stay the asbestos action until the claimant files the
21 asbestos trust claim and produces all related trust claim materials.

22 5. An asbestos action shall not be set for trial until at least
23 forty-five days after the claimant produces the documentation required
24 by this section.

537.886. 1. Trust claim materials and trust governance
2 documents are presumed to be relevant and authentic and are
3 admissible in evidence in an asbestos action. No claims of privilege

4 apply to trust claim materials or trust governance documents.

5 2. A defendant in an asbestos action may seek discovery against
6 an asbestos trust identified under sections 537.880 to 537.890. The
7 claimant shall not claim privilege or confidentiality to bar
8 discovery. The claimant shall provide consent or any other expression
9 of permission that may be required by the asbestos trust to release
10 information and materials sought by the defendant.

11 3. Trust claim materials that are sufficient to entitle a claim to
12 consideration for payment under the applicable trust governance
13 documents may be sufficient to support a jury finding that the claimant
14 was exposed to products for which the trust was established to provide
15 compensation and that such exposure was a substantial contributing
16 factor in causing the claimant's injury that is at issue in the asbestos
17 action.

18 4. The parties in the asbestos action may introduce at trial any
19 trust claim materials or trust governance documents to prove, without
20 limitation, alternative causation for the exposed person's claimed
21 injury, death, or loss to person; to prove that the bankrupt entity is a
22 joint-tortfeasor, liable for the same injury or wrongful death for the
23 purposes of section 537.060; or to prove issues relevant to an
24 adjudication of the asbestos claim, unless the exclusion of the trust
25 claim material is otherwise required by the rules of evidence. The jury
26 shall not be informed of the specific amount of consideration paid by
27 a trust to a claimant in settlement of a claim.

 537.888. 1. Not less than thirty days before trial in an asbestos
2 action, the court shall enter into the record a document that identifies
3 every asbestos trust claim made by the claimant or on the claimant's
4 behalf.

5 2. If a claimant proceeds to trial in an asbestos action before an
6 asbestos trust claim is resolved, there is a rebuttable presumption that
7 the claimant is entitled to, and will receive, the compensation specified
8 in the trust governance documents applicable to his or her claim at the
9 time of trial. The court shall take judicial notice that the trust
10 governance documents specify compensation amounts and payment
11 percentages and shall establish an attributed value to the claimant's
12 asbestos trust claims.

13 3. In an asbestos action in which damages are awarded and

14 setoffs are permitted under applicable law, a defendant is entitled to
15 a setoff or credit in the amount the claimant has been awarded from an
16 asbestos trust identified in subsection 1 of this section, and the amount
17 of the valuation established under subsection 2 of this section. If
18 multiple defendants are found liable for damages, the court shall
19 distribute the amount of setoff or credit proportionally between the
20 defendants, according to the liability of each defendant.

537.890. 1. In an asbestos action, upon the filing by a defendant
2 or judgment debtor of an appropriate motion seeking sanctions or other
3 relief, the court may impose any sanction provided by court rule or law
4 of this state including, but not limited to, vacating a judgment rendered
5 in an asbestos tort action for a claimant's failure to comply with the
6 disclosure requirements of sections 537.880 to 537.890.

7 2. If, subsequent to obtaining a judgment in an asbestos action,
8 a claimant files any additional asbestos trust claim with, or submits any
9 additional asbestos trust claim to, an asbestos trust that was in
10 existence at the time the claimant obtained that judgment, the trial
11 court, upon the filing by a defendant or judgment debtor of an
12 appropriate motion seeking sanctions or other relief, has jurisdiction
13 to reopen the judgment in the asbestos action and adjust the judgment
14 by the amount of any subsequent asbestos trust payments obtained by
15 the claimant and order any other relief that the court considers just
16 and proper.

17 3. A defendant or judgment debtor shall file any motion under
18 this section within a reasonable time and not more than one year after
19 the judgment was entered or taken.

537.900. 1. This section shall be known and may be cited as the
2 "Silica Claims Priorities Act".

3 2. As used in this section, the following terms mean:

4 (1) "Silica", a respirable crystalline form of the naturally
5 occurring mineral form of silicon dioxide including, but not limited to,
6 quartz, cristobalite, and tridymite;

7 (2) "Silica claim", any claim for damages, losses, indemnification,
8 contribution, or other relief of whatever nature arising out of, based
9 on, or in any way related to the alleged health effects associated with
10 the inhalation of silica, including loss of consortium, personal injury or
11 death, mental or emotional injury, risk or fear of disease or other

12 injury, or the costs of medical monitoring or surveillance, to the extent
13 such claims are recognized under state law, and any claim made by or
14 on behalf of any person exposed to silica dust, or a representative,
15 spouse, parent, child, or other relative of the exposed person. The term
16 does not include a claim for compensatory benefits under chapter 287
17 or a veterans' benefits program;

18 (3) "Silicosis", fibrosis of the lung produced by inhalation of
19 silica, including acute silicosis, accelerated silicosis, and chronic
20 silicosis.

21 3. No person shall bring or maintain a silica claim related to an
22 alleged silicosis or an alleged silica-related condition in the absence of
23 a prima facie showing of physical impairment as a result of a medical
24 condition for which exposure to silica is a substantial factor. Such a
25 prima facie showing shall be made as to each defendant and include a
26 detailed narrative medical report and diagnosis by a licensed physician
27 that includes all of the following:

28 (1) Evidence verifying that the diagnosing, licensed physician
29 has taken a detailed occupational, exposure, medical, and smoking
30 history from the exposed person or, if that person is deceased, from a
31 person who is knowledgeable regarding such history;

32 (2) Evidence verifying that the exposed person has silicosis,
33 based at a minimum on radiological and pathological evidence of
34 silicosis;

35 (3) Evidence verifying there has been a sufficient latency period
36 for the applicable type of silicosis;

37 (4) A determination by the diagnosing, licensed physician, on the
38 basis of a personal medical examination and pulmonary function
39 testing of the exposed person, or if the exposed person is deceased,
40 based upon the person's medical records, that the exposed person has
41 had a permanent respiratory impairment rating of at least Class 2 as
42 defined by and evaluated under the American Medical Association's
43 Guides to the Evaluation of Permanent Impairment; and

44 (5) Evidence verifying that the diagnosing, licensed physician
45 has concluded that the exposed person's impairment was not more
46 probably the result of causes other than silica exposure. A conclusion
47 by the licensed physician that states that the impairment is consistent
48 or compatible with silica exposure or silica-related disease does not

49 meet the requirements of this subdivision.

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

- 3 (1) "Catastrophic personal injury", a physical injury resulting in:
 - 4 (a) Quadriplegia defined as the permanent loss of functional use of all
5 four limbs;
 - 6 (b) Paraplegia defined as the permanent loss of functional use of two
7 limbs;
 - 8 (c) Loss of two or more limbs;
 - 9 (d) An injury to the brain that results in permanent cognitive impairment
10 resulting in the permanent inability to make independent decisions or engage in
11 one or more of the following activities of daily living: eating, dressing, bathing,
12 toileting, transferring, and walking;
 - 13 (e) An injury that causes irreversible failure of one or more major organ
14 systems; or
 - 15 (f) Vision loss such that the patient's central visual acuity is no more than
16 twenty/two-hundred in the better eye with the best correction or whose field of
17 vision in the better eye is restricted to a degree that its widest diameter subtends
18 an angle no greater than twenty degrees;
- 19 (2) "Economic damages", damages arising from pecuniary harm including,
20 without limitation, medical damages, and those damages arising from lost wages
21 and lost earning capacity;
- 22 (3) "Employee", any individual who is directly compensated by a health
23 care provider for health care services rendered by such individual and other
24 nonphysician individuals who are supplied to a health care provider by an entity
25 that provides staffing;
- 26 (4) "Equitable share", the share of a person or entity in an obligation that
27 is the same percentage of the total obligation as the person's or entity's allocated
28 share of the total fault, as found by the trier of fact;
- 29 (5) "Future damages", damages that the trier of fact finds will accrue after
30 the damages findings are made;
- 31 (6) "Health care provider", any physician, hospital, health maintenance
32 organization, ambulatory surgical center, long-term care facility including those
33 licensed under chapter 198, dentist, registered or licensed practical nurse,
34 optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist,
35 psychologist, physician-in-training, and any other person or entity that provides

36 health care services under the authority of a license or certificate;

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

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

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

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

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

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

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

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

12 (2) [Notwithstanding the provisions of subdivision (1) of this subsection,

13 in any action against a health care provider for damages for a catastrophic
14 personal injury arising out of the rendering or failure to render health care
15 services, no plaintiff shall recover more than seven hundred thousand dollars for
16 noneconomic damages irrespective of the number of defendants.

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

21 3. (1) This section shall also apply to any individual or entity, or their
22 employees or agents, that provide, refer, coordinate, consult upon, or arrange for
23 the delivery of health care services to the plaintiff; and

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

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

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

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

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

47 8. Any provision of law or court rule to the contrary notwithstanding, an
48 award of punitive damages against a health care provider governed by the

49 provisions of sections 538.205 to 538.230 shall be made only upon a [showing by
50 a plaintiff] **finding by the jury that the evidence clearly and convincingly**
51 **demonstrated** that the health care provider [demonstrated willful, wanton or
52 malicious misconduct with respect to his actions which are found to have injured
53 or caused or contributed to cause the damages claimed in the petition]
54 **intentionally caused damage to the plaintiff or demonstrated malicious**
55 **misconduct. Neither indifference to nor conscious disregard for the**
56 **safety of others shall constitute a basis for an award of punitive**
57 **damages against a health care provider.**

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

61 10. [The limitations on awards for noneconomic damages provided for in
62 this section shall be increased by one and seven-tenths percent on an annual
63 basis effective January first of each year. The current value of the limitation
64 shall be calculated by the director of the department of insurance, financial
65 institutions and professional registration, who shall furnish that value to the
66 secretary of state, who shall publish such value in the Missouri Register on the
67 first business day following January first, but the value shall otherwise be
68 exempt from the provisions of section 536.021.

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

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

Section B. If any provision of sections 407.012, 407.020, 407.025, 407.027,
2 508.010, 537.761, 537.762, and 537.763 or the application thereof to anyone or to
3 any circumstance is held invalid, the remainder of those sections and the

4 application of such provisions to others or other circumstances shall not be
5 affected thereby.

✓

Unofficial

Bill

Copy