

HCS HB 1304 -- TORT REFORM

SPONSOR: Byrd

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 10 to 8.

This substitute makes changes to the laws affecting claims for damages and the payment thereof. In its main provisions, the substitute:

(1) Establishes venue in all tort actions in which the cause of action occurred in Missouri, including torts for improper health care, in the county where the cause of action occurred;

(2) Establishes venue in all tort actions in which the cause of action occurred outside Missouri:

(a) For individual defendants, in the county of the individual's principal place of residence; and

(b) For corporate defendants, in the county where the corporate defendant's registered agent is located or, if no registered agent is reported or maintained, in Cole County;

(3) Establishes venue in all actions in which a county is the plaintiff in the county where the defendant resides, or in the county suing and where the defendant may be found;

(4) Requires motions to dismiss or transfer based upon improper venue to be deemed granted if not denied within 60 days, unless the time period is waived in writing by all parties;

(5) Allows discovery of a defendant's assets in tort actions, including torts for improper health care, only after a court determines that the plaintiff has a submissible case on punitive damages;

(6) Provides that a defendant will be jointly and severally liable for the amount of compensatory and noneconomic damages only if the defendant is found to bear 50% or more of the fault, and a defendant will not be jointly and severally liable for more than the percentage of punitive damages for which fault is attributed to the defendant by the trier of fact;

(7) Adds long-term care facilities licensed pursuant to Chapter 198, RSMo, to the definition of "health care provider" as used in Chapter 538;

(8) Changes the cap on noneconomic damages from \$350,000,

adjusted annually for inflation (currently equal to \$565,000), to \$400,000, without an inflation adjustment, and removes the "per occurrence" language in order to overrule a Missouri Supreme Court decision;

(9) Limits civil damages recoverable against certain physicians, dentists, hospitals, and others to \$400,000 for care or assistance necessitated by traumatic injury and rendered in a hospital emergency room;

(10) Makes it mandatory rather than discretionary that a court dismiss any medical malpractice claim for which the plaintiff fails to file the required supporting expert affidavit and limits extensions of time to file the affidavit to an additional 90 days. The substitute also requires the expert to be licensed in substantially the same profession and specialty as the defendant and allows any defendant to request that the court review the expert opinion to determine whether the expert meets the required qualifications;

(11) Prohibits statements, writings, or benevolent gestures expressing sympathy from being admissible as evidence of an admission of liability in a civil action. Statements of fault will be admissible;

(12) Authorizes the filing of a "miscellaneous" case for the purpose of securing copies of health care records and details what the petition should and should not contain;

(13) Includes a severability clause; and

(14) Clarifies that the provisions of the substitute will only apply to causes of action filed after August 28, 2004.

FISCAL NOTE: No impact on General Revenue Fund. Total Estimated Effect on Other State Funds of Unknown in FY 2005, FY 2006, and FY 2007.

PROPOSERS: Supporters say that tort reform is urgently needed to curb increasing medical malpractice insurance rates or Missouri will continue to lose too many doctors. Also, venue laws need to be changed to disallow venue-shopping, especially in suits against corporations.

Testifying for the bill were Representative Byrd; Terri Kropf; Missouri State Medical Association; Metropolitan Medical Society of Kansas City; Missouri Chamber of Commerce and Industry; Missouri Hospital Association; St. Louis Area Business Health Coalition; Missouri Association of Health Plans; Missouri Association of Osteopathic Physicians and Surgeons; Missouri

Academy of Family Physicians; BJC HealthCare; Missouri Association of Homes for the Aging; Carondelet Health Systems; St. Louis Regional Commerce and Growth Association; Department of Transportation; Blue Cross Blue Shield of Missouri; Geri Morrison; and Associated Industries of Missouri.

OPPONENTS: Those who oppose the bill say that capping damage awards to tort victims will not lower doctors' medical malpractice insurance premiums, and current venue statutes in Missouri work well.

Testifying against the bill were Heather McGhay; Susan Stratman; Beverly Jane LaFief; Patrick Hagerty; Missouri Association of Trial Attorneys; and Pat Neal.

OTHERS: Others testifying on the bill gave information on public policy and fairness regarding joint and several liability.

Others testifying on the bill was Dale C. Doerhoff.

Julie Jinkens McNitt, Legislative Analyst