

HB 1304 -- Tort Reform

Sponsor: Byrd

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

(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 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) Defines "costs" to mean the total of fees, miscellaneous charges, and surcharges (defined in Section 488.010, RSMo), as well as reasonable charges and fees of endorsed expert witnesses and court reporters and reasonable expenses for travel, record retrieval, photocopying, long distance telephone calls, exhibit preparation, and videotaping;

(7) Provides that offers of settlement in all tort actions in which claimed damages exceed \$25,000 may be made by either party from 120 days after filing of the defendant's initial responsive pleading to 60 days prior to trial and must be made in writing and left open for 60 days;

(8) Awards costs to the prevailing party, defined as the plaintiff if the plaintiff's net recovery is greater than the plaintiff's offer of settlement, and defined as the defendant if

the plaintiff's net recovery is less than the defendant's offer of settlement. If the plaintiff's net recovery is between the parties' offers of settlement, neither party pays the costs of the other party;

(9) Permits a trial court, upon application, to extend the 60-day period for accepting or rejecting settlement offers consistent with an offer referring the cause to mediation;

(10) 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;

(11) Adds long-term care facilities licensed pursuant to Chapter 198 (Convalescent, Nursing, and Boarding Homes) to the definition of "health care provider" as used in Chapter 538 (Tort Actions Based on Improper Health Care);

(12) Increases the cap on noneconomic damages from \$350,000 to \$400,000, removes the "per occurrence" language in order to overrule a Missouri Supreme Court decision, and eliminates the requirement that award limitations for noneconomic damages be adjusted annually for inflation;

(13) 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;

(14) 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 bill 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;

(15) 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;

(16) 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;

(17) Includes a severability clause; and

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