

HS HCS HB 1304 -- TORT REFORM (Byrd)

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 accrued in Missouri, including torts for improper health care, in the county where the cause of action accrued;
- (2) Establishes venue in all tort actions in which the cause of action accrued 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) Clarifies the meaning of "county where the cause of action accrued" for the purpose of venue in tort actions;
- (4) Requires motions to dismiss or transfer based upon improper venue to be deemed granted if not denied within 90 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 it's more likely than not that the plaintiff will present 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 51% 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 its current limit of \$565,000 (after annual inflation adjustment of base amount of \$350,000 set in 1986) to \$350,000, 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 the extension of time to file the affidavit to an additional 90 days. The substitute also requires the expert to be licensed and certified 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) Changes the requirements for awarding prejudgment interest in tort actions;

(13) Changes the rate of prejudgment and postjudgment interest awarded in tort actions from 9% per annum to a rate tied to the average auction price of a 2-year United States Treasury note;

(14) Requires clear and convincing evidence of liability for punitive damages;

(15) Requires future medical periodic payments to be made in an amount according to a schedule determined by the payee's life expectancy and ties the applicable interest rate to the average auction price of a 52-week United States Treasury bill;

(16) Allows parties to introduce evidence of the amounts actually paid and the amounts due for reasonably necessary medical treatment rendered to a party;

(17) Includes a severability clause; and

(18) 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 in FY 2005, FY 2006, and FY 2007. Total Estimated Net Effect on Other State Funds of Unknown in FY 2005, FY 2006, and FY 2007.