

HCS HB 393 -- TORT REFORM

SPONSOR: Byrd

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 8 to 5.

This substitute changes the laws regarding 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 a Missouri venue that is in any county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action;

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

(a) For corporate defendants, in any county where the registered agent is located or, if the plaintiff's principal place of residence was in the state of Missouri when the plaintiff was first injured, in any county containing the plaintiff's principal place of residence on the date the plaintiff was first injured; and

(b) For individual defendants, in any county of the defendant's principal place of residence in Missouri or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in any county containing the plaintiff's principal place of residence on the date the plaintiff was first injured;

(3) Specifies that in wrongful death actions the plaintiff is considered first injured where the decedent was first injured by the wrongful acts or negligent conduct alleged in the action;

(4) Specifies that in a spouse's claim for loss of consortium the plaintiff claiming consortium is considered first injured where the other spouse was first injured by the wrongful acts or negligent conduct alleged in the action;

(5) Specifies that the court must transfer venue to the county unanimously chosen by the parties if all parties agree in writing to a change of venue. If parties are added after the date of transfer and they do not consent to the transfer, the cause of action will be transferred to a county in which venue is otherwise appropriate;

(6) Requires prejudgment interest to be calculated 90 days after the demand or offer is received by certified mail, return receipt requested. The demand or offer must be in writing, be accompanied by an affidavit from the claimant describing the

legal theory and damages claimed, list the medical providers of the claimant, include other medical information and contain authorization to allow the other party to obtain employment and medical records, and be left open for 90 days;

(7) Specifies that claims for prejudgment and post-judgment interest in tort actions are calculated at an interest rate that is equal to the intended Federal Funds Rate plus 3% for prejudgment interest and 5% for post-judgment interest;

(8) Allows parties to introduce evidence of the value of medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party. There is a rebuttable presumption that the dollar amount necessary to satisfy the financial obligation to the health care provider represents the value of the treatment rendered. The court can determine, outside the hearing of the jury, the value of medical treatment rendered based on additional evidence;

(9) Defines "punitive damage award" to include an award for punitive or exemplary damages as well as an award for aggravating circumstances;

(10) Allows discovery of a defendant's assets only after the trial court finds that the plaintiff will have a submissible case for punitive damages;

(11) Limits an award for punitive damages to the greater of \$250,000 or three times the net amount of the judgment awarded to the plaintiff against the defendant;

(12) Eliminates joint and several liability and specifies that the liability of each defendant is several only and not joint unless otherwise provided in actions in which there is a count alleging personal injury, emotional distress, property damage, or wrongful death and claims for improper health care. A party is responsible for the fault of another person or for payment of the proportionate share of another person if the other person was acting as an employee of the party or if the party's liability for fault of another arises out of a duty created by the Federal Employers' Liability Act;

(13) Includes long-term care facilities licensed under Chapter 198, RSMo, and manufacturers, wholesalers, or licensed distributors of drugs or devices approved by the federal Food and Drug Administration in the definition of "health care provider." Exemplary damages and damages for aggravating circumstances are included in the definition of "punitive damages";

(14) Lowers the cap on non-economic damages for all plaintiffs to \$250,000, irrespective of the number of defendants;

(15) Requires future medical payments to be made in an amount according to a schedule determined by the payee's life expectancy. The court must apply interest on future payments at an interest rate equal to the average auction price of a 52-week United States Treasury bill;

(16) Requires a court to dismiss any medical malpractice claim where the plaintiff fails to file an affidavit stating that he or she has obtained the written opinion of a legally qualified health care provider which states that the defendant failed to use reasonable care that caused the plaintiff's damages. Currently, the court gives discretion as to whether or not to dismiss a claim under these circumstances;

(17) Allows a defendant to file a motion 120 days after the filing of the petition asking the court to examine the opinion of the health care provider. If the opinion fails to meet the requirements specified in the substitute, the court must conduct a hearing within 30 days to determine whether there is probable cause to believe that one or more qualified and competent health care providers will testify that the plaintiff was injured because of the medical negligence of the defendant. If the court finds no probable cause, the court can dismiss the petition and hold the plaintiff responsible for the defendant's reasonable attorney fees and costs;

(18) Prohibits statements, writings, or benevolent gestures expressing sympathy made to the person or the family from being admitted into evidence;

(19) Specifies, for purposes of determining venue, that in any action against a health care provider for damages for personal injury or death arising out of the rendering of or failure to render health care services, the plaintiff will be considered injured by the health care provider in the county where the plaintiff was first examined for the medical condition at issue in the case;

(20) Limits the amount of a supersedeas bond to \$25 million in all cases in which there is a count alleging a tort;

(21) Specifies that costs that may be assessed in civil actions include reasonable fees for travel, expert witnesses, videotaping, and photocopying. Parties are allowed to make a post-trial challenge as to the reasonableness and necessity of the fees;

(22) Authorizes the appointment of a peer review committee by the board of trustees or chief executive officer of a long-term care facility licensed under Chapter 198;

(23) Specifies that the judge will transfer the case to a proper forum if a plaintiff or defendant is added or removed prior to trial which would alter the determination of venue if originally added or removed; and

(24) Specifies that the provisions of the bill, except for Section 512.099, apply to all causes of action filed after August 28, 2005.

FISCAL NOTE: No impact on General Revenue Fund in FY 2006, FY 2007, and FY 2008. Estimated Effect on Other State Funds of a Cost of Unknown to an Income of Unknown in FY 2006, FY 2007, and FY 2008.

PROPOSERS: Supporters say that doctors are leaving the state and new doctors are declining offers to come to Missouri because of medical malpractice insurance rates. Doctors practice defensive medicine to avoid malpractice claims, but doing so increases the cost of health care. Some doctors are reluctant to consult with other doctors over the telephone because of concerns about malpractice lawsuits. Others have stopped seeing patients or doing certain procedures because of the exposure to liability. The current system is causing disruptions in physician-patient relationships and limiting patients' access to care. Caps on non-economic damages will encourage more insurers to write policies in Missouri. The bill is a step in lowering costs for doctors to practice medicine in Missouri.

Testifying for the bill were Representative Byrd; Kansas City Metro Medical Society; Missouri State Medical Association; Dr. Ellen Nicholls; Dr. Thomas Tryon; Missouri Academy of Family Physicians; Missouri Association of Osteopathic Physicians and Surgeons; Medical Assurance, Incorporated; St. Louis Metropolitan Medical Society; Missouri Chamber of Commerce and Industry; Missouri Railroad Association; Associated Industries of Missouri; Missouri Retailers Association; Missouri State Chiropractors Association; Eastern Missouri Psychiatric Society; American Consulting Engineers Council of Missouri; Missouri Hospital Association; St. Louis Regional Commerce and Growth Association; Missouri Association of Homes for the Aging; National Federation of Independent Businesses - Missouri; Missouri Pediatric Medical Association; St. Louis Area Business Health Coalition; Mid-American Lumbermen; Southwestern Association, Farm Equipment and Hardware Dealers; Dr. Edward Higgins, Jr.; Alliance of Automobile Manufacturers; Missouri Ag Industries Council, Incorporated; Greater Kansas City Chamber of Commerce; and Blue Cross and Blue Shield of Missouri - Healthlink, Incorporated.

OPPOSERS: Those who oppose the bill say that judgments in medical malpractice cases are the only way to punish bad doctors.

People with meritorious claims should receive fair compensation for their injuries. Legislation should focus on limiting frivolous claims. The cap on non-economic damages will be a disincentive to a settlement for insurance companies. The caps on damages don't take into account the egregiousness of the abuse and neglect that can happen in nursing homes. Punitive damages are intended to punish the defendant, and there are already restrictions on punitive damages in Missouri. The venue provisions limit where an injured plaintiff can bring suit.

Testifying against the bill were Representative Schneider; Paul Passanante; Sylvia Rinebold; Thomas Stewart; Chanda Graves; George Wisdom; Andy Johnson; Angie Johnson; Gloria Brown; Mark Brown; Daniel Ryan; Marlene Barron; Delmer Brown; Lawrence Jenkins; Terry Mobley; Wayne Gross; David Terry; Gene Napier; Missouri Association of Trial Attorneys; Missouri Republican Attorneys for Civil Justice; Brotherhood of Locomotive Engineers and Trainmen; United Transportation Union; and George Cook.

Amy Woods, Senior Legislative Analyst