

HB 393 -- Tort Reform

Sponsor: Byrd

This bill changes the laws regarding 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 a Missouri venue that is in any county within the judicial circuit 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 within the judicial circuit 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 within the judicial circuit containing the plaintiff's principal place of residence on the date the plaintiff was first injured; and

(b) For individual defendants, in any county within the judicial circuit 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 within the judicial circuit 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 Federal Funds Rate plus 3% for prejudgment interest and 5% for post-judgment interest;

(8) Allows parties to introduce amounts actually paid for medical treatment rendered to a party that was reasonable, necessary, and the proximate result of the negligence of any party;

(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 in tort actions for damages, a defendant is responsible for the percentage of the judgment for which the defendant is determined to be responsible by the trier of fact;

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

(18) 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;

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

(20) 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;

(21) 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;

(22) 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

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