

CCS SS SCS HCS HB 393 -- TORT REFORM

This bill changes the laws regarding claims for damages and their payment. In its main provisions, the bill:

(1) Establishes venue in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in all tort actions in which the plaintiff was first injured in Missouri;

(2) Establishes venue in all tort actions in which the plaintiff was first injured 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 Missouri when the plaintiff was first injured, in the county of 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 the 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 act 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 the 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 and be accompanied by an affidavit from the claimant describing the nature of the claim and the damages claimed. For wrongful death, personal injury, and bodily injury claims, the demand letter must also list the medical providers of the claimant and include copies of all reasonably available medical bills, other medical information, and authorization to allow the other party to obtain employment and medical records. The demand must 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 may 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 \$500,000 or five times the net amount of the judgment awarded to the plaintiff against the defendant. The limits on punitive damages do not apply to certain causes of action relating to housing discrimination;

(12) Allows joint and several liability if a defendant is found to be 51% or more at fault. The defendant is jointly and severally liable for the amount of the judgment rendered against the defendant. If a defendant is found to be less than 51% at fault, the defendant is only responsible for the percentage of the judgment he or she is determined to be responsible for by the trier of fact. A party is responsible for the fault of another defendant or for payment of the proportionate share of another defendant if the other defendant was an employee of the party or if the party's liability for the fault of another arises out of the duty created by the Federal Employers' Liability Act. Defendants are only severally liable for the percentage of punitive damages that are attributed to the defendant by the trier of fact. In all tort actions, parties are prohibited from disclosing to the trier of fact the impact of the provisions relating to joint and several liability;

(13) Includes long-term care facilities licensed under Chapter 198, RSMo, in the definition of "health care provider." Exemplary damages and damages for aggravating circumstances are included in the definition of "punitive damages";

(14) Specifies that the cap on non-economic damages for all plaintiffs is \$350,000, irrespective of the number of defendants. There is no inflation adjustment on the non-economic damages cap;

(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. The parties are not prohibited from agreeing to settle and resolve the claim for future damages; and if an agreement is reached, the future payment schedule does not apply;

(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 180 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 bill, 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 may dismiss the petition and hold the plaintiff responsible for the defendant's reasonable attorney fees and costs;

(18) Specifies that physicians who provide medical treatment to patients in city, county, or nonprofit health clinics that provide free health care service are not liable for civil damages for acts or omissions, unless the damages were caused by gross negligence or by willful or wanton acts or omissions of the physician;

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

(20) 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 only in the county where the plaintiff first received treatment by a defendant for the medical condition at issue in the case;

(21) Limits the amount of a supersedeas bond to \$50 million in all cases in which there is a count alleging a tort;

(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 disclosure of interviews, memoranda, proceedings, findings, or deliberations of a peer review committee does not waive or have an effect on the confidentiality, nondiscoverability, or nonadmissibility of the documents;

(24) 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;

(25) Specifies that for purposes of determining damages, if the deceased was not employed full-time and was at least 50% responsible for the care of one or more minors, disabled persons, or persons over the age of 65, there is a rebuttable presumption that the value of the care provided is equal to 110% of the state average weekly wage;

(26) Specifies that actions against physicians and other health care providers for malpractice must be brought within two years of a minor's eighteenth birthday. Currently, the statute of limitations is 10 years from the minor's twentieth birthday; and

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