

HB 1173 -- STATUTORY CAUSE OF ACTION CLAIMS

SPONSOR: Burlison

COMMITTEE ACTION: Voted "Do Pass" by the Special Standing Committee on Emerging Issues in Health Care by a vote of 8 to 4.

This bill changes the laws regarding claims arising out of the rendering or failure to render health care services by a health care provider. Currently, an action against a health care provider for rendering or failing to render health care services is a common law cause of action. The bill replaces the common law cause of action with a statutory cause of action for damages against a health care provider for personal injury or death arising out of the rendering of or failure to render health services. The elements of the statutory cause of action are that the health care provider failed to use that degree of skill and learning ordinarily used under the same or similar circumstances by similarly situated health care providers and that the failure proximately caused injury or death.

PROPONENTS: Supporters say that the common law was meant as a starting point and is to be changed on an as needed basis by the legislature, which is the correct, logical, and ethical course of action at this time. Missouri didn't adopt English common law as a substantive statute, and it was never meant to be permanent. Creating a statutory cause of action addresses the Missouri Supreme Court's opinion holding that the current noneconomic damage cap for the common law cause of action of medical malpractice to be unconstitutional under the Constitution of the State of Missouri. Astronomical increases in the cost of medical malpractice premiums paid by physicians is problematic and needs to be addressed. The ever increasing premiums are causing physicians to leave states that lack sufficient tort reform for states with more favorable tort reform laws. This "white coat walk" is even more problematic considering current physician shortages in Missouri. Damage caps help to reduce the number of malpractice claims, thereby decreasing the cost of medical malpractice insurance premiums.

Testifying for the bill were Representative Burlison; Dr. James Wolf, Missouri State Medical Association; Dr. David Redfern; Dr. Jerry Blair; Dana Freese; Dr. William Fisch, Missouri Academy of Family Physicians; Dr. John Hagen; Missouri Associated Industries of Missouri; Missouri Psychiatric Society; Missouri State Chiropractors Association; Missouri Health Care Association; CoxHealth; BJC Health Care Systems; Missouri Association of Rural Health Clinics; St. Louis Area Business Health Coalition; Missouri Insurance Coalition; LeadingAge Missouri; and Missouri Optometric Association.

OPPONENTS: Those who oppose the bill say that damage caps violate the right to a trial by jury. If the legislature cannot infringe upon the right to free speech, bear arms, and be free from illegal search and seizure, then the legislature should not be able to infringe on the right to a trial. Missouri has consistently averaged about 17,000 medical malpractice claims per year since tracking started in 1984, so damage caps are not that effective. The number of physicians practicing in Missouri has remained static over time and even grown in recent years, thus it is not being affected by the presence or lack of tort reform.

Testifying against the bill were Ken Vuylsteke, Missouri Association of Trial Attorneys; John Wallach; Pat Hagerty; and David Zevan.