

HB 273 -- Tort Reform

Co-Sponsors: Byrd, Hanaway, Jetton, Crowell, Portwood, Dusenberg, Hunter, Cunningham (86), Schaaf, Holand, Cooper (155), Shoemaker (8), Black, Bean, Icet, Engler, Dixon, Kingery, Schlottach, Lembke (85), Purgason, Avery, Townley, Myers, Pearce, Stefanick, Johnson (47), Baker, Guest, Bearden, Page, Yates, Wood, Smith (14), Wasson, Hubbard

This bill makes various changes to laws affecting claims for damages for personal injuries. In its main provisions, the bill:

- (1) Clarifies that the maximum liability of the state Legal Expense Fund to any one claimant will be \$500,000 (Section 105.711, RSMo);
- (2) Repeals and reenacts a section ruled unconstitutional which provides for liens for health practitioners who provide medical services to patients injured by tort-feasors (Section 430.225);
- (3) Requires that venue in all tort actions only be in the county in which the cause of action accrued. If the cause of action did not accrue in Missouri, venue will be determined as if it were not a tort action (Section 508.010);
- (4) Allows civil defendants to change venue to an appropriate venue if a new defendant is added which would have made the current venue inappropriate had the later-added defendant been named initially (eliminating the procedural maneuvering often referred to as the "St. Louis Two-Step" to establish venue in the City of St. Louis) (Section 508.120);
- (5) Requires clear and convincing evidence that a defendant's actions were willful, wanton, or malicious in order to award punitive damages and allows discovery as to a defendant's assets only after a finding by the court that the plaintiff has a submissible case on punitive damages (Section 510.263);
- (6) Provides that an order certifying a class in a class action lawsuit is a final, appealable judgment (Section 512.023);
- (7) Provides that in appellate cases involving monetary judgments in excess of \$3 million, a \$3 million supersedeas bond will be sufficient to stay execution, with the remainder of the judgment being an immediate but nonexecutable lien upon the appellant's assets (Section 512.080);
- (8) Defines "costs" to mean the total of fees, miscellaneous charges, and surcharges (defined in Section 488.010), as well as reasonable charges and fees of endorsed expert witnesses and

court reporters and reasonable expenses for travel, record retrieval, photocopying, long distance telephone calls, exhibit preparation, and videotaped depositions (Section 514.035);

(9) Requires mediation in all tort actions in which claimed damages exceed \$25,000, unless the court finds that mediation would have no chance of success. Awards costs to the prevailing party, defined as the plaintiff if the plaintiff's net recovery exceeds his or her last position at mediation and defined as the defendant if the plaintiff's net recovery is less than the defendant's last position at mediation. If plaintiff's net recovery is between the parties' last positions at mediation, neither party prevails nor pays the costs of the other party (Section 514.060);

(10) Reduces the statute of limitations for claims by minors less than 18 years of age against physicians, hospitals, dentists, etc., from the minor's twentieth birthday to two years from the date of occurrence of the alleged negligence (Section 516.105);

(11) Limits to five years the extension of time to file a cause of action once the disabilities of minority or mental incapacity are removed (Section 516.170);

(12) Eliminates defendants' joint and several liability in tort actions unless a principal-agent relationship exists between the defendants (Section 537.067);

(13) Requires an affidavit from a similarly-licensed professional supporting a cause of action for non-medical claims of professional negligence (Section 537.530);

(14) Limits attorneys contingency fees in tort actions to 33% of the first \$500,000, 28% of the next \$500,000, and 15% of all damages recovered in excess of \$1 million (Section 537.767);

(15) Limits attorneys fees in class action lawsuits to 10% of the value of the judgment or settlement "actually collected" by the members of the class (Section 537.768);

(16) Prohibits the Attorney General or any state agency from entering into any contingency fee agreement or any agreement providing any incentive bonus with any attorney regarding any claim relating in any manner to a tort action (Section 537.770);

(17) Adds long-term care facilities licensed pursuant to Chapter 198 (Convalescent, Nursing and Boarding Homes) to the definition of "health care provider" as used in Chapter 538 (Tort Actions Based on Improper Health Care) (Section 538.205);

(18) Specifies that all individuals or entities whose liability is based solely upon an act or omission of an agent, servant, or employee will be considered the same defendant as the agent, servant, or employee and specifies that all individuals and entities asserting a wrongful death claim will be considered one plaintiff. The bill also eliminates the requirement that the award limitations for noneconomic damages be adjusted annually for inflation and removes the "per occurrence" language in order to overrule a recent Missouri Supreme Court decision (Section 538.210). There is an emergency clause for this section;

(19) Limits civil damages recoverable against certain physicians, dentists, hospitals, etc. to \$150,000 for care or assistance necessitated by traumatic injury and rendered in a designated trauma center (Section 538.213);

(20) Requires that the health care provider affidavit required in medical professional negligence cases include the name and address of the affiant, requires that the opinion upon which the affidavit is based be rendered by a physician who has the same board certification as the defendant, and allows an extension of time not to exceed an additional 90 days for filing the affidavit (Section 538.225);

(21) Prohibits statements, writings, or benevolent gestures expressing sympathy from being admissible as evidence of an admission of liability in a civil action (Section 538.226); and

(22) Prohibits certain records, written proceedings, or documents produced by or through the activities of any state or federal agency from being admissible in certain civil, criminal, and administrative proceedings against facilities licensed pursuant to Chapter 198 (Convalescent, Nursing and Boarding Homes) (Section 538.301).

There is an emergency clause for Section 538.210, which clarifies the definition of "defendant" in actions against health care providers and tightens the limitation on noneconomic damage awards.