

SS SB 239 -- STATUTORY CAUSE OF ACTION AGAINST HEALTH CARE PROVIDERS

SPONSOR: Brown (Frederick)

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Health and Mental Health Policy by a vote of 9 to 1. Voted "Do Pass" by the Select Committee on Social Services by a vote of 8 to 0.

Currently, Missouri follows the common law of England as of 1607, unless the General Assembly abrogates from the common law statutorily. This bill excludes from the English common law claims arising out of the rendering of or failure to render health care services by a health care provider.

The bill creates 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 care services. In any action against a health care provider for damages a plaintiff must not recover more than \$400,000 in noneconomic damages for personal injury; no more than \$700,000 in noneconomic damages for a catastrophic personal injury, as defined in the bill; and no more than \$700,000 in noneconomic damages for death. These limitations must increase by 1.7% each year, and the value must be calculated by the Director of the Department of Insurance, Financial Institutions and Professional Registration who must furnish the value to the Secretary of State who must publish the value in the Missouri Register. When a jury does return a verdict awarding noneconomic damages exceeding \$400,000, and upon a post-trial motion, the trial court must determine whether the limitations as provided in the bill must apply based on the severity of the most severe injuries.

If a court declares any part of the bill unconstitutional, the bill and the provisions it amends in their entirety must have no legal effect as of the date of the judgment.

PROPOSERS: Supporters say that the 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. The bill will help entities to recruit and retain physicians in Missouri and will make the state more business friendly.

Testifying for the bill were Representative Brown; Missouri State Medical Association; Missouri Association of Physicians and Surgeons; Missouri Chamber; Healthcare Services Group; Missouri Retailers Association; BJC Health Care Systems; Missouri Academy of Family Physicians; Nikki Strong; Associated Industries of Missouri; Missouri Society of Eye Physicians and Surgeons; SSM Health Care; Missouri Dermatological Society Association; Missouri Ambulatory Surgery Center Association; Signature Health Services; American Congress of Obstetricians and Gynecologists-Missouri Sector; Missouri College of Emergency Physicians; Missouri Society of Interventional Pain; Missouri Society of Anesthesiologists; Missouri State Chiropractors Association; and Missouri Psychiatric Association.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say they appreciate the opportunity to work with other stakeholders to come up with a good compromise. The bill is an approach to dealing with the objections of the court and does in a lot of ways address the court's concerns although they are not sure how the court will rule if the language is challenged.

Testifying on the bill was Missouri Association of Trial Attorneys.