

HCS HB 273 -- TORT REFORM

SPONSOR: Byrd

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 10 to 0.

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

- (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) Extends the immunity from civil liability currently granted to landowners adjoining the Katy Trail State Park and certain municipal and county trails to landowners adjoining all publicly owned trails dedicated for recreation (Section 258.100);
- (3) Increases from 1% to 10% the amount by which failure to wear a safety belt can reduce a plaintiff's damage award (Section 307.178);
- (4) Repeals and reenacts a section, ruled unconstitutional as originally passed, which provides for liens for health practitioners who provide medical services to patients injured by tort-feasors (Section 430.225);
- (5) Requires that venue in all tort actions be only 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);
- (6) Requires that venue in suits against corporations be commenced only in the county where the cause of action accrued (Section 508.040);
- (7) 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 (Section 508.120);
- (8) 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);
- (9) Provides that an order certifying a class in a class action

lawsuit is a final, appealable judgment (Section 512.023);

(10) 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);

(11) 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);

(12) 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);

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

(14) 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);

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

(16) Gives immunity to outfitters of paddlesport activities for injuries or death to participants due to the inherent risks of paddlesport activities. Outfitters are not immune from liability arising out of an employer-employee relationship. Outfitters are also not immune from liability when an outfitter acts intentionally or negligently, provides unsafe equipment or watercraft, fails to provide a personal flotation device, or fails to exercise ordinary care. All outfitters must post and maintain a warning in a clearly visible location and must include the warning in all contracts with participants (Section 537.327);

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

(18) Limits attorney 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);

(19) Limits attorney fees in class action lawsuits to 10% of the value of the judgment or settlement "actually collected" (as defined therein) by the members of the class (Section 537.768);

(20) 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);

(21) 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);

(22) Specifies that all individuals or entities whose liability is based solely upon an act or omission of an agent, servant, or employee be considered the same defendant as the agent, servant, or employee and specifies that all individuals and entities asserting a wrongful death claim be considered one plaintiff. The substitute 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;

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

(24) 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 is board-certified the same as the defendant, and allows an extension of time not to exceed an additional 90 days for filing the affidavit (Section 538.225);

(25) 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);

(26) Provides 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); and

(27) Authorizes the filing of a "miscellaneous" case for the purpose of securing copies of health care records, details what the petition should and should not contain, and provides that filing a miscellaneous case tolls the statute of limitations for medical malpractice for 120 days (Section 1).

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

FISCAL NOTE: Estimated Net Savings to General Revenue Fund of \$917,743 to Unknown in FY 2004, \$945,275 to Unknown in FY 2005, and \$973,634 to Unknown in FY 2006. Estimated Net Effect on State Legal Expense Fund of \$0 in FY 2004, FY 2005, and FY 2006. Estimated Net Savings to Highway Fund of Up to \$1,000,000 in FY 2004, FY 2005, and FY 2006.

PROPOSERS: Supporters say that tort reform is necessary to help curb the increasing medical malpractice insurance rates or Missouri will lose too many doctors. Also, venue laws need to be changed to disallow venue-shopping, especially in suits against corporations.

Testifying for the bill were Representative Byrd; Dr. Robert Ferris, Women's Health Obstetrics; Dr. Greg Walker; Dr. Debbi McCaul, Missouri Academy of Family Physicians; and Dr. Gordon Goldman, St. Louis Metropolitan Medical Society.

OPPOSERS: Those who oppose the bill say that capping damage awards to tort victims will not lower doctors' medical malpractice insurance premiums, and current venue statutes in Missouri work well.

Testifying against the bill were Missouri Association of Trial Attorneys; Robert Wallingford; Patricia Neal; and Burt Newman.

Julie Jinkens McNitt, Legislative Analyst