

HB 755 -- Tort Reform

Sponsor: Avery

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

- (1) Establishes venue in all tort actions in which the cause of action occurred in a Missouri venue that is in any county within the judicial circuit where the cause of action accrued;
- (2) Defines "judicial circuit where the cause of action accrued" as the judicial circuit where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action;
- (3) Establishes venue in all tort actions in which the cause of action occurred outside Missouri:
 - (a) For corporate defendants, in any county within the judicial circuit 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 any county within the judicial circuit of the plaintiff's principal place of residence on the date the cause of action accrued; and
 - (b) For individual defendants, in any county within the judicial circuit 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 any county within the judicial circuit of the plaintiff's principal place of residence on the date the cause of action accrued;
- (4) 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;
- (5) 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 acts or negligent conduct alleged in the action;
- (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, be accompanied by an affidavit from the claimant describing the legal theory and damages claimed, list the medical providers of the claimant, include other medical information, contain authorization to allow the other party to obtain employment and medical records, and 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 Federal Funds Rate plus 3% for prejudgment interest and 5% for post-judgment interest;

(8) Defines "punitive damage award" to include an award for punitive or exemplary damages as well as an award for aggravating circumstances;

(9) Allows discovery of a defendant's assets only after the trial court finds that the plaintiff will have a submissible case for punitive damages;

(10) Specifies that in tort actions for damages, a defendant is jointly and severally liable for the amount of compensatory and non-economic damages rendered against defendants only with defendants whose apportioned percentage of fault is less than the defendant's;

(11) 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";

(12) Increases the cap on non-economic damages for all plaintiffs to \$400,000, irrespective of the number of defendants, and repeals provisions allowing the cap on non-economic damages to be adjusted based on inflation;

(13) 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;

(14) Specifies that health care providers who provide care in a hospital may not be liable for more than \$200,000 in non-economic damages for claims arising out of an act or omission in rendering care in an emergency room;

(15) 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;

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

(17) 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; and

(18) Specifies that the provisions of the bill apply to all causes of action filed after August 28, 2005.