



Tort Law Revisions Advance

Senate examines and debates important House Bill 393

Significant progress was made this past week towards improving Missouri's tort environment as the Senate debated House Bill 393. The Senate debated the House version for nearly eight hours, debate that I immersed myself in to fight for what I believe is just and best for all Missourians. In the end, senators voted to change some provisions in the House Bill, and the legislation will go to a conference committee this week where members from both chambers will iron out the differences.

Non-Economic Damages

The heart, lungs, and brain of the civil justice system include caps on non-economic damages, venue, and determining liability. Non-economic damages are awarded to a plaintiff for pain and suffering; economic damages are awarded to compensate a plaintiff for medical bills, ambulance charges, loss of wages, and property repair. Non-economic damages are subjective, meaning they are not very concrete. What one jury determines as a fair amount for pain and suffering is often significantly different from another jury's determination.

The legislation heard by the Senate last week proposed caps to non-economic damages in medical malpractice cases only. Currently the cap on non-economic damages is set at \$579,000 per occurrence. The House version decreased the amount to \$250,000; the Senate agreed on \$350,000. This is one of the differences the conference committee will look at this week. Equally important, both chambers agreed to remove the words "per occurrence," which will prevent plaintiffs from receiving multiple caps for one incident, a byproduct of the Scott decision.

Venue

Venue refers to establishing the proper location for trial. What seems to be a straight-forward matter has become problematic as trial attorneys do everything they can to hear a case in a jurisdiction known for consistently higher than average awards. Both chambers agreed on language that would significantly limit this practice known as venue shopping.

Determining Liability

At the core of the lengthy debate on the Senate floor last week was determining liability when multiple defendants are involved. Currently Missouri uses a joint and several liability system where one defendant can be held liable for the amount that other defendants cannot pay. This system is abused by trial attorneys as they habitually attempt to name incidental defendants with deep pockets in a lawsuit. The tactic succeeds because if a jury assigns a defendant just one percent of the fault, that defendant is liable for the entire sum if the other defendants cannot pay. I strongly disagree with these tactics, which is why I fought for much of eight hours to eliminate joint and several liability completely. I believe that one defendant shouldn't be liable for paying another defendant's share of a judgment under any circumstance. People should be held responsible for their actions, not others.

The House version eliminates joint and several liability. With my encouragement, the Senate defeated an amendment restoring joint and several liability to those defendants found more than 15% at fault. To my disappointment, the Senate later narrowly adopted another amendment that holds those found more than 50% at fault to be jointly and severally liable. While certainly an improvement over the old system, I believe the Senate could and should have done better. This is another difference that will be addressed by the conference committee.

Overall the changes made will improve Missouri's civil justice system. The new system will curb out of control premiums that so many physicians face. The changes will also improve Missouri's business environment. Legal systems are very important to businesses when deciding where to expand or locate. The U.S. Chamber of Commerce ranked Missouri's legal system as the 40th worst in the U.S. The new system will no longer discourage businesses from expanding their Missouri operations or from relocating to our state.

Contact Me

As always, I appreciate hearing your comments, opinions and concerns. Please feel free to contact me in Jefferson City at (573) 751-2459. You may write to me at Jason Crowell; Missouri Senate; State Capitol; Jefferson City, MO 65101, or email me at: jcrowell@senate.mo.gov or visit me on the web at <http://www.jasoncrowell.com>.

Thank you for your time.

Senator Jason Crowell represents the people of Bollinger, Cape Girardeau, Madison, Mississippi, Perry and Scott counties in the Missouri Senate.