



Week of March 7, 2005

Balancing the Scales of Financial and Civil Justice

JEFFERSON CITY – Alongside transportation and budget issues, improving Missouri’s civil liability system is at the top of the General Assembly’s legislative agenda for the third year in a row. This week, the Senate debated, amended and passed a House bill modifying the state’s tort law to prevent juries in civil suit cases, such as medical malpractice, wrongful death and car accidents, from awarding extremely high amounts to plaintiffs. Most everyone can agree that Missouri’s tort law needs to be changed, but finding the best way to fairly distribute liability between culpable parties was at the heart of the debate.

Some of the problems are partially mitigated with a reasonable limit on the amount of awards for non-economic damages, which are allocated for pain and suffering. Missouri’s current law sets the cap at \$579,000, but the Senate’s version of the measure lowers the cap to \$350,000. The legislation also prohibits “venue shopping,” a practice in which trials are moved to jurisdictions known for awarding plaintiffs with very generous amounts.

The debate lasted nearly eight hours and much of the deliberation focused on the “joint and several liability” clause, which holds that a defendant who is found to be only partially at fault for inflicted harm can be required to pay the entire judgment if co-defendants are financially insolvent. The current law requires a wealthy company who is found to be only 2 percent liable for the harm to pay for 100 percent of the judgment if the co-defendants are financially insolvent.

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We understand that we can never establish a system guaranteeing true balance in allowing the plaintiff to fully recover while at the same time proportionately holding defendants liable if their co-defendants can't cover their share of the judgment. So we made it our goal to make the system as equitable as possible.

The House version of the bill nixes the "joint and several liability" clause altogether, but because most of my Senate colleagues feel the age-old legal concept is vital to helping deserving plaintiffs fully recover, we softened the House provision with a compromise. The Senate language now states that defendants can only be responsible for the economic, not non-economic, damages beyond their percentage of liability if the jury determined them to bear 51 percent or more of fault, and the other defendant(s) cannot cover their part. With the new liability threshold at 50 percent, we are closer to a proportionate distribution of liability for the defendant *and* justice for the plaintiff. The Senate passed the legislation with a 22-9 vote, which is a significant step forward in addressing the flaws of Missouri's runaway civil court system.

Differences between the House and Senate language will be ironed out before the tort reform bill goes to the governor, who is expected to sign the measure into law.

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*Sen. Larry Gene Taylor represents the people of Ozark, Stone,
Taney, Lawrence, Barry and McDonald counties.*