

Missouri Tort Reform 2020

By [Stephen Moore](#)

Missouri's legislative session runs from early January until mid-May. Following is a brief summary of some of the most important tort reform measures that have been introduced this year. We will continue to track the progress of these bills, and we will let you know which measures become law and which measures will have to wait until next year.

Statutes of Limitation

SB 633 would reduce Missouri's five-year statute of limitations for most tort claims to two years. As of this writing, the bill has been passed out of committee and is on the Senate calendar for perfection later this month.

Separately, SB 555/HB 1596 would require that product liability actions, with several exceptions, be brought within 15 years of the sale or lease of the product. This measure appears to stand a good chance of becoming law this year.

Joint and Several Liability

SB 845 and its House counterpart, HB 2242, would eliminate joint liability and allow juries to allocate fault to all persons with liability, including non-parties. Currently in Missouri, juries may allocate fault only to parties "at trial," a rule that often results in a party with little liability but plenty of insurance bearing a disproportionate share of a damage award. Both the Senate and House versions of this bill are in committee with no further action scheduled. We have reached out to the bills' sponsors to urge passage of the measure. However, at this point it appears progress is stalled.

Medical Expenses

For several years the Missouri legislature has attempted to craft a rule restricting plaintiffs to recovery of paid (and out-of-pocket) medical expenses only, rather than charged medical expenses that generally far exceed what private insurance, Medicare or Medicaid negotiate as payment in full. Currently, as a result of poor legislative drafting and intervention by the courts, Missouri law allows the parties to submit to the jury both the paid and charged amounts. Jurors choose the number they favor. HB 2384 would, we can hope, once and for all establish that plaintiffs are entitled to recover only the paid amount, and no other

evidence would be admissible. This bill unfortunately has made little progress since it was introduced this year.

R.S. Mo. §537.065

This infamous feature of Missouri law allows plaintiffs to agree with insured tortfeasors to admit liability and craft a judgment for damages that far exceeds the policy limits and sets the stage for a subsequent bad faith action. In 2017, the legislature amended the statute to require that insurers receive notice and the right to intervene before any judgment can be entered. However, the amended statute left much unsettled, including what rights, if any, an insurer should have after intervening. Since 2017, intervening insurers generally have found they could do little or nothing to prevent entry of an outsized judgment. Moreover, creative plaintiff's lawyers have gotten around this right to intervene altogether by agreeing with the insured to arbitrate an award in secret. Insurers would learn of the binding arbitration award against their insured only after it was too late for intervention to be of any use in controlling the judgment. SB 726 and HB 2049 attempt to address this by providing that insurers would not be bound by arbitration unless they have consented in writing. The new statute would also provide that insurers who intervene after an agreement is reached under 537.065 will have the same rights as any other defendant. This would seem to bring the statute into line with the legislature's intent when it passed the 2017 reform. The House version of this bill was approved in the House and has been introduced in the Senate, where it is making progress. We expect this measure will be approved this year.

Punitive Damages

SB 591/HB 1553 would modify the burden of proof for punitive damages, requiring a plaintiff to prove by clear and convincing evidence that defendant "intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others." With respect to health care providers, plaintiffs must prove that the defendant "intentionally caused damage or demonstrated malicious misconduct." These bills would also alter the procedure for pleading punitive damages, requiring a motion and approval by the court before punitive damages can be pled. The Senate version of this measure has passed the Senate and was recently introduced in the House, suggesting there is a good chance the bill will become law this year.