
**IN THE
MISSOURI SUPREME COURT**

NO. SC 83692

**SSM CARDINAL GLENNON CHILDREN'S HOSPITAL, SSM REGIONAL
HEALTH SERVICES, SSM HEALTH CARE ST. LOUIS, ST. JOHN'S
MERCY HEALTH SYSTEM, and ST. LUKE'S EPISCOPAL
PRESBYTERIAN HOSPITALS,**

Plaintiffs/Appellants,

v.

**STATE OF MISSOURI, BOB HOLDEN, GOVERNOR OF THE STATE
OF MISSOURI, IN HIS OFFICIAL CAPACITY, and JEREMIAH
W. (JAY) NIXON, ATTORNEY GENERAL OF THE STATE OF
MISSOURI, IN HIS OFFICIAL CAPACITY,**

Defendants/Respondents.

**APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY
Cause No. 00-CV-323840**

OPENING BRIEF OF PLAINTIFFS/APPELLANTS

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JURISDICTIONAL STATEMENT

This action involves a constitutional challenge, under the Missouri Constitution, to the passage of House Bill 343 of 1999, on the basis that the passage of the bill violated Article III, §§ 21 and 23, of the Missouri Constitution, because the bill contained more than one subject, did not have a clear title, and amendments to the bill changed its original purpose. Based on these constitutional violations, several amendments to the bill, including amendments to Missouri Revised Statute §§ 430.225-430.250, are invalid. Therefore, this case concerns the validity of a statute of the State of Missouri, and the Supreme Court of Missouri has proper jurisdiction to hear this appeal under Article V, Section 3 of the Missouri Constitution. This appeal involves issues over which this Court has exclusive appellate jurisdiction.

SUMMARY OF CASE

The passage of House Bill 343 is a classic example of log-rolling. H.B. 343 started out in the early days of the 1999 legislative session as a bill that made changes to laws regarding the procedure and qualifications for licensing certain well-defined professions that are regulated by the division of professional registration. That division is the state's agency that oversees the boards, commissions and committees responsible for licensing of certain professions. The original bill was titled an act "relating to professional registration."

During the final days of the legislative session, the Legislature made numerous amendments to the bill to include a number of unrelated topics and in the process unconstitutionally changed the original purpose of the bill. These provisions expanded the scope of a lien law for hospitals, defined the scope of a statute creating a cause of action for private design and construction work contracts, strengthened a law prohibiting health carriers from discriminating among eye care providers for enrollment in the health carriers' networks, regulated the emergency transportation of patients in vehicles other than ambulances, and made changes to laws concerning the sale and storage of fireworks. Several of these provisions, including the hospital lien law amendments, were introduced as individual bills during the legislative session but could not garner enough support on their own to pass. In an attempt to accommodate all of these disparate subjects,

the legislature unconstitutionally broadened the title of H.B. 343 to an act “relating to professional licensing.”

In the end, the legislature in H.B. 343 repealed 160 statutory sections in 28 chapters of the Missouri Revised Statutes and enacted 169 new statutory sections in 29 statutory chapters of the Missouri Revised Statutes.

A group of hospitals affected by one of the amendments in H.B. 343, the hospital lien law provisions, filed a petition for declaratory judgment on the grounds that the enactment of H.B. 343 violated Article III, Sections 21 and 23, of the Missouri Constitution because the bill contained more than one subject, did not have a clear title, and its original purpose was changed.

Although H.B. 343 is invalid based on the hospital lien law amendments alone, the Defendants made no attempt to defend H.B. 343 when considering all of its provisions. The trial court fell into this trap, ignoring the numerous provisions of the bill cited by the Plaintiffs and instead evaluating the constitutionality of the bill only as it related to the hospital lien law amendments. This was erroneous, as the trial court therefore examined a bill that was never passed by the Legislature.

When H.B. 343 is properly examined under this Court’s long-established principles for procedural challenges on legislative action, it is clear that the trial court erred in granting summary judgment to Defendants and that this Court should reverse and remand to the trial court for entry of judgment in favor of Plaintiffs.

STATEMENT OF FACTS

I. Introduction.

A group of hospitals in Missouri filed a declaratory judgment action in Cole County Circuit Court, challenging the constitutionality of House Bill 343 (“H.B. 343”). (LF Vol. I 9-24; Vol. I, II 25-233.) Specifically, they allege that H.B. 343 violated Article III, §§ 21 and 23, of the Missouri Constitution, because the bill contained more than one subject, did not have a clear title, and amendments to the bill changed its original purpose. (LF Vol. I 18-23.) Appellants are particularly concerned about those provisions in H.B. 343 that amended Missouri Revised Statute §§ 430.230-430.250 (the “Hospital Lien Law”), a statute relating to liens filed by hospitals to recover payment for their services. (LF Vol. I 11.)

II. The Parties.

The Plaintiffs/Appellants in this case are five not for profit corporations duly formed and existing under the laws of the State of Missouri pursuant to Mo. Rev. Stat. §§ 355.001-355.881 that operate a number of Missouri hospitals. (LF Vol. I 11-13; Vol. II 248-249.) The Plaintiffs/Appellants are SSM Cardinal Glennon Children’s Hospital, formerly known as Cardinal Glennon Children’s Hospital; SSM Regional Health Services, formerly known as St. Francis Hospital & Health Services, Maryville, Missouri, now doing business as St. Marys Health Center, Jefferson City, Missouri, and St. Francis Hospital & Health Services, Maryville,

Missouri; SSM Health Care St. Louis, formerly known as SSM Health Care Central Region, doing business as SSM St. Mary's Health Center, SSM Rehab, SSM St. Joseph Health Center, SSM St. Joseph Hospital West, and SSM St. Joseph Hospital of Kirkwood, and formerly doing business as St. Marys Health Center, Jefferson City, Missouri; St. John's Mercy Health System, doing business as St. John's Mercy Medical Center of St. Louis and St. John's Mercy Medical Center of Washington; and St. Luke's Episcopal Presbyterian Hospitals, doing business as St. Luke's Hospital (collectively referred to as "the Hospitals"). (LF Vol. I 10-11; Vol. II 248-249.)

Each of the Plaintiffs is, or operates, a "privately maintained hospital, clinic or other institution for the care of the sick, which is supported in whole or in part by charity, located in the State of Missouri, or any such hospital duly incorporated under the laws of Missouri providing for the incorporation of eleemosynary institutions" as defined in the Hospital Lien Law, Mo. Rev. Stat. § 430.230, contained within H.B. 343. (LF Vol. I 13; Vol. II 249.)

The Respondents/Defendants are the State of Missouri; Bob Holden, Governor of the State of Missouri, in his official capacity; and Jeremiah W. (Jay) Nixon, Attorney General of the State of Missouri, in his official capacity (collectively referred to as "the State"). (LF Vol. I 13-14.)

III. The Prior Hospital Lien Law.

Prior to the passage of H.B. 343 in 1999, Missouri had a statute that allowed hospitals to file liens against patients and participate in the recovery by the patient in a personal injury claim for which he or she received treatment from the hospital so that the hospital would receive payment for its services. (LF Vol. I 14; Vol. II 243, 251-252; Vol. IV 467.) These statutory provisions relating to liens of hospitals were codified in Chapter 430 of Statutory Liens Against Personality-Preferred Claims, Title XXVII Debtor-Creditor Relations, at §§ 430.230-430.250. (LF Vol. II 243, 251-252; Vol. IV 467.)

The Hospital Lien Law applied to every public hospital or clinic, and every privately maintained hospital, clinic or other institution for the care of the sick, which is supported in whole or in part by charity, located in the state of Missouri, or any such hospital duly incorporated under the laws of Missouri providing for the incorporation of eleemosynary institutions. (LF Vol. II 243, 251; Vol. IV 467.)

The Hospital Lien Law provided that hospitals had a lien on any claims, counterclaims, demands, suits or rights of action of any person admitted to the hospital to recover damages from a tortfeasor for the cost of the treatment or care provided to that person by the hospital for such injuries. (LF Vol. II 243, 251; Vol. IV 467-468.) The purpose of the Hospital Lien Law when it was enacted was to allow hospitals to recover their charges from the proceeds of any action for

damages against the persons causing injury requiring hospitalization. St. Anthony's Med. Ctr. v. Metze, 23 S.W.3d 692, 696 (Mo. Ct. App. 2000) (Blackmar, J., concurring).

Under the Hospital Lien Law, hospitals, including Plaintiffs, were entitled to collect the total amount of their lien or as much as could be satisfied out of fifty (50) percent of the money due to the patient under any final judgment, compromise or settlement agreement after paying the amount of attorneys' liens, federal and Missouri workers' compensation liens, and any prior liens. (LF Vol. II 244, 252; Vol. IV 468.) Under the Hospital Lien Law, if the full amount of the lien was not satisfied within one year from the date of judgment or settlement, the hospitals could pursue a claim for payment of the unpaid charges by filing a suit at law within that year against the person and/or entity which was held liable for the damages. (LF Vol. II 244, 252; Vol. IV 468.)

IV. Legislative Action To Change the Hospital Lien Law.

During the 1999 legislative session, at least three bills were introduced whose sole provision was to create a new Hospital Lien Law: (1) H.B. 140, "relating to liens for the protection of licensed health practitioners," (2) Senate Bill ("S.B.") 409, "relating to liens for the protection of licensed health practitioners," and (3) S.B. 515, "relating to certain health practitioners." (LF Vol. II 244, 294-297; Vol. IV 468-469, 477-484.) All of these bills, if enacted, would have created

a new Hospital Lien Law that would have granted certain defined clinics, health practitioners and other institutions the same rights as hospitals to hold liens on any claims a patient may have against another person for negligently causing the patient's injuries. (LF Vol. II 245; Vol. IV 468-469.) The bills also would have provided that if a lien exceeded fifty (50) percent of the amount due the patient, then the lienholders would share in fifty (50) percent of the amount due the patient in the proportion that each claim bears to the total amount of all other liens of health practitioners, hospitals, clinics or other institutions. (LF Vol. II 245, 294-297; Vol. IV 477-484.)

These three bills creating a new Hospital Lien Law did not garner enough support on their own to pass in either the House or the Senate. (LF Vol. II 245; Vol. IV 477-484.) H.B. 140 was referred to committee and a public hearing was held on February 16, 1999, but no further action was taken. (LF Vol. IV 469, 480.) S.B. 409 was reported out of committee in the Senate on February 24, 1999, but no further action was taken. (LF Vol. II 245; Vol. IV 469.) S.B. 515 was referred to committee, but a hearing was canceled on March 22, 1999, and no further action was taken. (LF Vol. IV 469, 484.)

Another bill introduced during the legislative session was H.B. 906, which made a number of changes to the laws regulating fireworks. (LF Vol. IV 469, 485-

492.) That bill was voted out of committee but no further action was taken. (LF Vol. IV 469, 492.)

V. The Introduction And Passage Of H.B. 343.

On January 13, 1999, in the First Regular Session of the 90th General Assembly, Representative Joseph L. Treadway introduced H.B. 343 entitled:

AN ACT To repeal sections . . . *relating to the division of professional registration*, and to enact in lieu thereof forty-two new sections relating to the same subject.

(LF Vol. II 244, 253-293) (emphasis added). This bill did not include any revisions to the Hospital Lien Law. (LF Vol. II 244, 253-293; Vol. IV 469.)

The original purpose of H.B. 343 was to change or repeal provisions in seven (7) chapters of the Missouri Revised Statutes concerning the procedure and qualifications for licensing certain well-defined professions under the division of professional registration, specifically, endowed care cemeteries (Chapters 193, 214), private employment agencies (Chapter 289), dieticians (Chapter 324), massage therapists (Chapter 324), interior designers (Chapter 324), acupuncturists (Chapter 324), tattoo practitioners (Chapter 324), chiropractors (Chapter 331), respiratory care practitioners (334), and pharmacists (Chapter 338). (LF Vol. II 244, 253-293; Vol. IV 469.)

As H.B. 343 began working its way through the House and Senate, various amendments were made to it. (LF Vol. II 245; Vol. IV 469.) On April 15, 1999, the Senate passed Senate Committee Substitute for House Committee Substitute for H.B. 343 (“SCS HCS HB 343”) and placed a new title on the bill:

AN ACT To repeal sections . . . relating to professional licensing, and to enact in lieu thereof one hundred forty-nine new sections relating to the same subject, with penalty provisions and an expiration date for certain sections.

(LF Vol. II 245.) The bill did not contain any provisions relating to the Hospital Lien Law.

On April 27, 1999, senators offered sixteen (16) amendments to SCS HCS HB 343, including Senate Amendment No. 9. (LF Vol. II 245, 298-299.) Senator Marvin Singleton, M.D. offered Senate Amendment No. 9, which passed, to create a new § 430.225 of the Hospital Lien Law to grant certain clinics, health care practitioners (chiropractors, podiatrists, dentists, physicians, surgeons and optometrists) and other institutions the same rights as hospitals under the Hospital Lien Law and provided that these providers who give notice of their liens shall share in fifty (50) percent of the amount due the patient in the proportion that each claim bears to the total amount of all other liens of health care providers. (LF Vol. II 245-246, 298-299.) These provisions were similar to those contained in H.B.

140, S.B. 409 and S.B. 515, none of which generated enough support to pass on their own. (LF Vol. II 245-246, 294-299; Vol. IV 470, 477-484.)

The House refused to concur with the amendments to H.B. 343 and the Senate refused to recede, so the bill was sent to a conference committee. (LF Vol. II 246; Vol. IV 470.) On May 14, 1999, the last day of the legislative session, H.B. 343 was again amended and the House and Senate adopted the Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for H.B. 343, which was the final version of H.B. 343, with the title:

AN ACT To repeal [160] sections . . . , *relating to professional licensing*, and to enact in lieu thereof one hundred sixty-nine new sections relating to the same subject, with penalty provisions, an expiration date for certain sections and an emergency clause for a certain section.

(LF Vol. II 246; Vol. III 300-463; Vol. IV 470) (emphasis added).

In addition to its original provisions relating to the procedure and qualifications for licensing of endowed care cemeteries, private employment agencies, dieticians, massage therapists, interior designers, acupuncturists, chiropractors, tattoo practitioners, respiratory care practitioners, and pharmacists,

H.B. 343, as finally passed, contained a number of other amendments. (LF Vol. III 300-463.)¹ The bill also:

(1) created a new § 430.225 and amended the Hospital Lien Law to expand the rights of the law beyond hospitals to certain health care providers;

(2) amended Mo. Rev. Stat. § 431.180 to define the scope of a statute that creates a cause of action for failure to pay on contracts for private design or construction work;

(3) strengthened Mo. Rev. Stat. § 354.618, a community-based HMO law prohibiting health carriers from discriminating between eye care providers for enrollment in the health carriers' networks or for payment of their services;

(4) amended Mo. Rev. Stat. § 190.142 to regulate the emergency transportation of patients in vehicles other than ambulances; and

(5) made changes to Mo. Rev. Stat. §§ 320.106-320.151, laws concerning the sale and storage of fireworks.

¹ The full text of House Bill 343 is found in two places in the Legal File. However, the entire bill can most easily be reviewed in one volume, Volume III, at LF 300-463.

(LF Vol. II 246; Vol. III 302-303, 325-332, 450-453, 464-465; Vol. IV 471.) The bill also contained amendments to Mo. Rev. Stat. § 301.142, a statute relating to physically disabled license plates and placards, to allow optometrists to certify that a person is disabled. (LF Vol. III 322-325; Vol. IV 471.)

The provisions of H.B. 906 relating to fireworks, which had died earlier in the session, became the subject of a Senate amendment that was added to H.B. 343 and included in the final version of H.B. 343. (LF Vol. III 325-332; Vol. IV 471.)

VI. The New Hospital Lien Law.

Under the new § 430.225, certain defined clinics, health practitioners (chiropractors, podiatrists, dentists, physicians, surgeons and optometrists) and other institutions that deliver treatment to sick or injured patients are given the same rights as Hospitals under the Hospital Lien Law. (LF Vol. II 246-247; Vol. III 464-465; Vol. IV 471.) In addition, if the liens of the hospitals, clinics, health practitioners, or other institutions exceed fifty (50) percent of the amount due the individual, the lienholders share on a pro rata basis up to fifty (50) percent of the net proceeds due the patient in the proportion that each claim bears to the total amount of liens. (LF Vol. II 247; Vol. III 464-465; Vol. IV 471.) The patient's net proceeds is defined as the amount the patient recovers, less attorney fees and other expenses of recovery. (LF Vol. II 247; Vol. III 464-465; Vol. IV 471-472.)

If any of these health care providers elects to receive payment under the new § 430.225, it must release the claimant from further liability for the cost of services and treatment provided to that point in time. (LF Vol. II 247; Vol. III 465; Vol. IV 472.) Therefore, once the payments are distributed to the lienholders, the health care providers that have elected payment under this provision cannot pursue the patient for the remaining unpaid charges. (LF Vol. II 247; Vol. III 465; Vol. IV 472.) The new § 430.225 also allows for the insurance carrier, if any, to pay the health care providers directly, if authorized by the claimant and the claimant does not challenge either the amount of the customary charges or that the treatment provided was for injuries caused by the tortfeasor. (LF Vol. II 247; Vol. III 465; Vol. IV 472.)

On May 14, 1999, H.B. 343 was passed by the General Assembly with an effective date of August 28, 1999, with the exception of one provision not relevant here. (LF Vol. II 247; Vol. IV 472.) On May 26, 1999, Senator Singleton, the same senator who offered the Hospital Lien Law amendment (Senate Amendment No. 9) to H.B. 343, filed a constitutional objection to H.B. 343. (LF Vol. II 247-248; Vol. IV 472, 496.) He objected that (1) the content of the bill went beyond the scope and title of the original bill because the title addressed professional licensing when in fact the content of the bill addressed ambulances, transportation of patients, fireworks and other subjects, which were not included in the original

bill nor covered by the final bill; (2) the bill was substantially changed by the Senate so as to change its original purpose due to the multiple unrelated issues added to the bill; and (3) the bill contained more than a single subject because it contained a number of unrelated subjects. (LF Vol. II 247-248; Vol. IV 472, 496-497.) The objection was noted but overruled and the House Speaker and President Pro Tem signed the bill that day. (LF Vol. II 248; Vol. IV 472, 496-497.) On July 13, 1999, the governor signed H.B. 343 into law. (LF Vol. II 248; Vol. IV 472.)

VII. The Contents Of H.B. 343 As Finally Passed.

As finally passed, H.B. 343:

covered 164 pages of text;

repealed 160 statutory sections in 28 chapters of the Missouri Revised Statutes; and

enacted 169 new statutory sections in 29 statutory chapters of the Missouri Revised Statutes.

H.B. 343 made changes to laws in the following 29 statutory chapters:

- (1) Chapter 190 Emergency Services
- (2) Chapter 193 Vital Statistics
- (3) Chapter 197 Medical Treatment Facility Licenses
- (4) Chapter 209 Aid to the Blind—Rights of Persons with Visual, Hearing or Physical Disabilities

- (5) Chapter 214 Cemeteries
- (6) Chapter 256 Geology, Water Resources and Geodetic Survey
- (7) Chapter 301 Registration and Licensing of Motor Vehicles
- (8) Chapter 320 Fire Protection
- (9) Chapter 324 Occupations and Professions General Provisions
- (10) Chapter 326 Accountants
- (11) Chapter 327 Architects
- (12) Chapter 328 Barbers
- (13) Chapter 329 Cosmetologists, Hairdressers and Manicurists
- (14) Chapter 330 Podiatrists
- (15) Chapter 331 Chiropractors
- (16) Chapter 332 Dentists
- (17) Chapter 333 Embalmers and Funeral Directors
- (18) Chapter 334 Health Care Providers
- (19) Chapter 335 Nurses
- (20) Chapter 336 Optometrists
- (21) Chapter 337 Psychologists—Professional Counselors—Social
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- (22) Chapter 338 Pharmacists and Pharmacies
- (23) Chapter 339 Real Estate Agents, Appraisers and Escrow Agents

- (24) Chapter 340 Veterinarians
- (25) Chapter 345 Speech Pathologists and Audiologists
- (26) Chapter 354 Health Services Corporations—Health Maintenance Organizations—Prepaid Dental Plans
- (27) Chapter 430 Statutory Liens Against Personalty—Preferred Claims
- (28) Chapter 431 General Provisions as to Contracts
- (29) Chapter 620 Department of Economic Development

(LF Vol. III 300-463.)

VIII. The Procedural History Of The Case.

On May 11, 2000, the Hospitals filed a declaratory judgment action in Cole County Circuit Court, challenging the constitutionality of H.B. 343. (LF Vol. I 9-24.) The Hospitals' challenge to H.B. 343 alleges procedural defects in the enactment of the law. (LF Vol. I 9-24.) Specifically, they allege that (1) H.B. 343, as passed by the General Assembly on May 14, 1999, violates the title requirements of Article III, Section 23, of the Missouri Constitution; (2) H.B. 343 violates the single subject requirements of Article III, Section 23, of the Missouri Constitution; (3) amendments to H.B. 343, which changed its original and primary purpose, violate Article III, Section 21, of the Missouri Constitution; and (4) the provision of H.B. 343 adding a new § 430.225 to Title XXVII, Debtor-Creditor Relations, Chapter 430, Statutory Liens Against Personalty—Preferred Claims,

specifically Liens of Hospitals, Missouri Revised Statutes §§ 430.230-430.250 (1994), is void and should be severed from the remainder of H.B. 343. (LF Vol. I 18-23; Vol. II 249-250; Vol. IV 475-476.)

Plaintiffs or Plaintiffs' hospitals have used the Hospital Lien Law, both before and after H.B. 343 was signed into law, to file liens against claims of their respective hospital patients and participate in the recovery by such patient in a personal injury claim for which he or she received treatment from the Plaintiffs or Plaintiffs' hospitals. (LF Vol. I 13; Vol. II 249; Vol. IV 475.) Plaintiffs or Plaintiffs' hospitals benefited from the Hospital Lien Law before H.B. 343 was signed into law. (LF Vol. II 249; Vol. IV 475.) The enactment of H.B. 343 has injured and will continue to injure Plaintiffs or Plaintiffs' hospitals in that the new Hospital Lien Law has reduced the amount that Plaintiffs or Plaintiffs' hospitals have recovered on liens and claims filed against patients for the recovery of the cost of services provided to patients who have recovered damages from a tortfeasor for their injuries. (LF Vol. II 249; Vol. IV 475.) Furthermore, Plaintiffs must now divide the proceeds of these liens with others and the Plaintiffs lose their right to sue for the balance of the proceeds that is owed to them by the patients. (LF Vol. III 464-465; Vol. IV 475.)

The parties agreed that there were no genuine issues of material fact and that the constitutionality of H.B. 343 could be determined as a matter of law. (LF Vol.

II 243-250; Vol. IV 467, 525.) The parties entered into a Joint Stipulation of Facts, with exhibits, which was filed with the trial court on September 27, 2000. (LF Vol. II 243-250; Vol. II-III 251-465.) The Hospitals filed a Motion for Summary Judgment and a Memorandum in Support. (LF Vol. IV 466-476, 477-498, 499-524.) The State filed an opposition memorandum and cross-motion for summary judgment. (LF Vol. IV 525-526, 527-538.) The Hospitals then filed a memorandum in opposition to the State's motion for summary judgment and in support of Plaintiffs' Motion for Summary Judgment. (LF Vol. IV 539-551.) Following oral argument on the motions, the Circuit Court made Findings of Fact and Conclusions of Law and granted summary judgment to the State. (LF Vol. IV 553-562.) The Hospitals then filed a timely notice of appeal. (LF Vol. IV 563-578.)

POINTS RELIED ON

- I. The Trial Court Erred In Limiting Its Constitutional Inquiry To The Hospital Lien Law Amendments In H.B. 343 In Granting The State’s Motion For Summary Judgment In That (A) The Hospitals Challenged The Enactment Of The Entire Bill; (B) Under Missouri Law, The Court Must Examine The Entire Bill To Determine Whether It Violates Article III, Sections 21 And 23, Of The Missouri Constitution; And (C) A Statute of Limitations That Was Not Raised As An Affirmative Defense Does Not Bar An Inquiry Into The Entire Bill Or Limit The Court’s Ability To Grant Relief Beyond That Requested By The Hospitals.**

Missouri Health Care Ass’n v. Attorney General,

953 S.W.2d 617, 622 (Mo. 1997) (en banc)

Mo. Rev. Stat. § 516.500

Chance v. Public Water Supply Dist. No. 16,

41 S.W.3d 523, 526 (Mo. Ct. App. 2001)

Koerper & Co., Inc. v. Unitel Intern’l, Inc.,

739 S.W.2d 705, 706 (Mo. 1987)

- II. The Trial Court Erred In Granting Summary Judgment To The State Based Upon A Finding That H.B. 343 Did Not Violate The Single**

Subject Requirement Of Article III, Section 23, Of The Missouri Constitution By Focusing Its Inquiry On The Hospital Lien Law Amendments Alone Because H.B. 343 Contained At Least Five Subjects That Are Not Fairly Related To Professional Licensing, Do Not Have A Natural Connection With Professional Licensing, And Are Not Incidents Or Means To Accomplish The Bill's Purpose of Regulating The Procedure and Qualifications For Licensing Professions Under The Division Of Professional Registration.

Missouri Constitution, Article III, Section 23

Missouri Health Care Ass'n v. Attorney General,

953 S.W.2d 617, 622 (Mo. 1997) (en banc)

Carmack v. Director, Missouri Department of Agriculture,

945 S.W.2d 956 (Mo. 1997) (en banc)

Hammerschmidt v. Boone County,

877 S.W.2d 98, 101 n.2 (Mo. 1994) (en banc)

III. The Trial Court Erred In Granting Summary Judgment To The State Based Upon A Finding That H.B. 343 Did Not Violate The Clear Title Requirement of Article III, Section 23, Of The Missouri Constitution Because The Title Of H.B. 343 “Relating to Professional Licensing” Public And The Legislature Of The Subject Of The Bill Which Is The

**Procedure And Qualifications For Licensing Professions Regulated By
The Division of Professional Registration.**

Missouri Constitution, Article III, Section 23

Carmack v. Director, Missouri Department of Agriculture,

945 S.W.2d 956 (Mo. 1997) (en banc)

St. Louis Health Care Network v. State,

968 S.W.2d 145 (Mo. 1998) (en banc)

**IV. The Trial Court Erred In Granting Summary Judgment To The State
Based Upon A Finding That The Amendments To H.B. 343 Did Not
Change The Original Purpose Of H.B. 343 In Violation Of Article III,
Section 21, Of The Missouri Constitution Because The Amendments To
H.B. 343 Introduced Matter That Was Not Germane And Was
Unrelated To H.B. 343's Original Subject Which Was The Procedure
And Qualifications For Licensing Professions Regulated By The
Division Of Professional Registration.**

Missouri Constitution, Article III, Section 23

Allied Mut. Ins. Co. v. Bell,

185 S.W.2d 4, 7-8 (Mo. 1945)

Stroh Brewery Co. v. State,

954 S.W.2d 323, 327 (Mo. 1997)

Westin Crown Plaza Hotel Co. v. King,

664 S.W.2d 2, 5 (Mo. 1984) (en banc)

V. The Trial Court Erred In Granting Summary Judgment To The State Based Upon A Finding That H.B. 343 Did Not Violate Article III, Sections 21 And 23, Of The Missouri Constitution And Then Determining That The Entire Bill Should Not Be Declared Unconstitutional Or The Unconstitutional Provisions Of H.B. 343 Should Not Be Severed In That Those Are The Proper Remedies For Single Subject, Title And Purpose Violations.

Hammerschmidt v. Boone County,

877 S.W.2d 98, 101 n.2 (Mo. 1994) (en banc)

St. Louis Health Care Network v. State,

968 S.W.2d 145 (Mo. 1998) (en banc)

Carmack v. Director, Missouri Department of Agriculture,

945 S.W.2d 956 (Mo. 1997) (en banc)

ARGUMENT

Introduction

What started out as a bill relating to the procedure and qualifications for licensing of well-defined professionals—ranging from chiropractors to tattoo artists—was changed in a classic example of “log-rolling” in the final days of the 1999 legislative session to create not only a new Hospital Lien Law, but to create a of new cause of action for construction and design work, to change rules on fireworks and to add a number of amendments in other unrelated areas. In an attempt to encompass and obscure these unrelated subjects that could not garner support on their own, the title of the bill was impermissibly changed and provided no notice to the public or legislators of its contents.

For these reasons, the trial court improperly granted summary judgment to the State because: (1) H.B. 343, as enacted, contained multiple subjects in violation of Article III, Section 23, of the Missouri Constitution; (2) the title of H.B. 343 violated Article III, Section 23; and (3) the amendments to H.B. 343 changed its original purpose in violation of Article III, Section 21.

Standard of Review

This Court’s review of the trial court’s entry of summary judgment is de novo. ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. 1993) (en banc). This Court reviews the record in the light

most favorable to the Hospitals, according them the benefit of all reasonable inferences from the record. See id. Summary judgment in favor of the Hospitals is proper because the Hospitals have shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Id. at 382; Missouri Supreme Court Rule 74.04.

Missouri Constitutional Limitations on Legislative Action

The Missouri Constitution imposes mandatory procedural limitations on legislative action. These limitations are found in Article III, Sections 21 and 23.

A significant limitation is in Article III, Section 23, which provides:

Limitation on scope of bills - contents of titles - exceptions. No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.

This constitutional provision imposes two distinct limitations on bills passed by the General Assembly: first, a bill must contain only one subject; second, the subject of the bill must be clearly expressed in its title. Hammerschmidt v. Boone County, 877 S.W.2d 98, 101 n.2 (Mo. 1994) (en banc).

The single subject requirement prevents “logrolling” – “the practice of combining a number of unrelated amendments in a bill, none of which alone could

command a majority, but which, taken together, combine the votes of a sufficient number of legislators having a vital interest in one portion of the amended bill to muster a majority for its entirety.” Hammerschmidt, 877 S.W.2d at 101 (citing City of St. Louis v. Tiefel, 42 Mo. 578, 590 (Mo. 1868) and State v. Miller, 45 Mo. 495, 498 (Mo. 1870)). The prohibition on logrolling “is intended to discourage placing . . . legislators in the position of having to vote for some matter which they do not support in order to enact that which they earnestly support.” Hammerschmidt, 877 S.W.2d at 101.

The single subject requirement also maintains appropriate gubernatorial checks on legislative action. Because the governor may not employ a line item veto on any bill except appropriation bills, the effect of the single subject requirement “is to prevent the legislature from forcing the governor into a take-it-or-leave-it choice when a bill addresses one subject in an odious manner and another subject in a way the governor finds meritorious.” Hammerschmidt, 877 S.W.2d at 102.

The clear title requirement seeks to avoid the evil of imposing “upon the members of the legislature and interested people that they be required to painstakingly search through the language of bills to determine whether there is something there adverse to their interest.” St. Louis County Water Co. v. Public Serv. Comm’n, 579 S.W.2d 633, 635 (Mo. Ct. App. 1979). “By requiring an

honest title—one which is not designed as a cover—the legislators will not be misled into overlooking or carelessly or unintentionally voting for vicious and incongruous legislation, and interested people will be notified of the subjects of legislation being considered in order to have an opportunity to be heard thereon.” 508 Chestnut, Inc. v. City of St. Louis, 389 S.W.2d 823, 829 (Mo. 1965).

A further limitation on legislative enactments is the requirement in Article III, Section 21, that “no bill shall be amended in its passage through either house as to change its original purpose.” This constitutional limitation “is designed to prevent the enactment of amendatory statutes in terms so blind” that legislators would be deceived about their effect and the public would be unable to examine them and become apprised of changes in the law. Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 38 (Mo. 1982) (en banc) (quoting State v. Ludwig, 322 S.W.2d 841, 847 (Mo. 1959) (en banc)).

Taken together, these procedural limitations “facilitate orderly legislative procedure” to ensure that the issues presented by each bill are clearly presented for more intelligent debate. Hammerschmidt, 877 S.W.2d at 101. Furthermore, these constitutional limitations “prevent surprise or fraud upon legislators and . . . fairly apprise the public of the pending legislation’s subject matter.” Westin Crown Plaza Hotel Co. v. King, 664 S.W.2d 2, 5 (Mo. 1984 (en banc)). These limitations prevent “a clever legislator from taking advantage of his or her unsuspecting

colleagues by surreptitiously inserting unrelated amendments into the body of a pending bill.” Hammerschmidt, 877 S.W.2d at 101-02 (citing State ex rel. Normandy School Dist. of St. Louis County v. Small, 356 S.W.2d 864, 868 (Mo. 1962) (en banc)).

Although legislative enactments approved by the governor carry with them a strong presumption of constitutionality, the procedural requirements of Article III, Sections 21 and 23, are “mandatory, not directory.” Hammerschmidt, 877 S.W.2d at 102.

In the case of H.B. 343, even a legislator recognized that H.B. 343 violated all three constitutional mandates. Senator Singleton filed a constitutional objection to H.B. 343 on the basis that (1) the content of the bill went beyond the scope and title of the original bill; (2) the bill was substantially changed by the Senate so as to change its original purpose; and (3) the bill contained more than a single subject. (LF 247-48, 472, 496-97.) Although his objections were ignored by his fellow legislators and the governor, a legislator’s objection that a bill’s amendment violates the Constitution is persuasive in determining the constitutionality of a bill. See Allied Mut. Ins. Co. v. Bell, 185 S.W.2d 4, 7-8 (Mo. 1945).

Upon examination of the entire contents of H.B. 343, this Court should conclude that H.B. 343 violates Article III, sections 21 and 23, of the Missouri

Constitution, and therefore reverse the trial court's judgment for the State and remand to the trial court for an entry of judgment in favor of the Hospitals.

I. The Trial Court Erred In Limiting Its Constitutional Inquiry To The Hospital Lien Law Amendments In H.B. 343 In Granting The State's Motion For Summary Judgment In That (A) The Hospitals Challenged The Enactment Of The Entire Bill; (B) Under Missouri Law, The Court Must Examine The Entire Bill To Determine Whether It Violates Article III, Sections 21 And 23, Of The Missouri Constitution; And (C) A Statute of Limitations That Was Not Raised As An Affirmative Defense Does Not Bar An Inquiry Into The Entire Bill Or Limit The Court's Ability To Grant Relief Beyond That Requested By The Hospitals.

The trial court erroneously held that it could only examine the Hospital Lien Law amendments to H.B. 343, and not the other amendments to the bill, because the Hospitals did not seek a declaration that these other provisions of H.B. 343 were unconstitutional. (LF Vol. IV 561-562.) Because Missouri Revised Statute § 516.500 requires that any challenge to a bill be brought by the close of the next legislative session following the bill's effective date, the trial court found that the deadline for such a challenge had passed. (LF Vol. IV 561.) As a result, the trial court limited its constitutional inquiry to the Hospital Lien Law amendments. (LF

Vol. IV 562.) It ignored the other provisions relating to a cause of action for failure to pay for private design or construction work, provisions prohibiting health carriers from discriminating against eye care providers, the regulation of emergency transportation in vehicles other than ambulances, and the sale and storage of fireworks. (LF Vol. IV 561.)

The trial court's holding contains three errors. First, contrary to the court's conclusion, the Hospitals challenged the entire bill. Second, the trial court is required to examine the entire bill, whether one or all provisions are challenged. Third, the trial court incorrectly applied the statute of limitations.

A. The Hospitals Challenged The Entire Bill.

The trial court erroneously held that the Hospitals only challenged the Hospital Lien Law amendments. It is true that the Hospital Lien Law amendments in H.B. 343 are the specific provisions that have caused injury to the Hospitals. However, the Hospitals' challenge in this case is that H.B. 343, *as enacted*, violated the procedural requirements of Article III, Sections 21 and 23, of the Missouri Constitution. In addition to the Hospital Lien Law amendments, the Hospitals did, in fact, complain in their Petition that these other amendments were unconstitutional. (LF Vol. I 16 at ¶ 31; LF 18 at ¶ 41; LF 20 at ¶ 48.) Therefore, contrary to the court's finding, the Hospitals challenged the entire bill.

B. The Court Must Examine The Entire Bill.

The trial court failed to examine the entire bill, as it must. It is the passage of H.B. 343, as enacted, that caused injury to the Hospitals. See Missouri Health Care Ass'n v. Attorney General, 953 S.W.2d 617, 622 (Mo. 1997) (en banc) (finding that, if any provisions of the bill have too tenuous a connection to each other, then the bill violates the single subject requirement). Therefore, the Hospitals have standing to challenge the constitutionality of the bill as enacted, not just one portion of it. See Hammerschmidt, 877 S.W.2d at 104 (striking all of the provisions pertaining to election procedures for adopting a county constitution even though respondent was not aggrieved by the other provisions of the bill).

The trial court, by limiting its inquiry, violated long-established Supreme Court precedent that requires a court to examine a bill as a whole to ascertain its subject and constitutionality. See Stroh Brewery Co. v. State, 954 S.W.2d 323, 327 (Mo. 1997). The trial court cannot simply carve out one section of the bill for examination. This is no more evident than in the test for determining whether a bill has more than one subject. All of the provisions of H.B. 343, as passed, not just the Hospital Lien Law amendments, must fairly relate to, have a natural connection with, or be a means of accomplishing professional licensing. See Missouri Health Care Ass'n, 953 S.W.2d at 622. If *any* of the provisions of H.B. 343, not just the Hospital Lien Law amendments, have too tenuous a connection

with professional licensing, then H.B. 343 violates the single subject requirement. See id. In order to prevail on their constitutional claim, the Hospitals are only required to prove that H.B. 343 contained more than one unrelated subject when passed. Id. The State did not even attempt to reconcile these other provisions of H.B. 343 with the Hospital Lien Law amendments or the remaining provisions of H.B. 343. Without a shred of authority, the State asked the trial court to examine only the Hospital Lien Law amendments when evaluating the constitutionality of H.B. 343. Thus, the State sought to defend a bill that was never passed by the Legislature, i.e., one that did not include the other provisions challenged by the Hospitals.

The State raised this same argument in its briefs in St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998) (en banc) (Case No. 80168). Although this Court did not directly address this issue on appeal, the Court clearly examined the entire bill that was at issue in that case, including a provision prohibiting same-sex marriages that the plaintiffs in that case did not seek to strike from the bill. Id. at 146-147 (noting that plaintiffs challenged a provision that repealed limitation on venue for suits against nonprofit corporations and requested severance of that provision “and any other relief that was just and proper.”).

Therefore, the trial court erred in limiting its inquiry in this case to the Hospital Lien Law amendments.

C. The Trial Court Incorrectly Applied The Statute Of Limitations.

The trial court held that Missouri Revised Statute § 516.500 requires any challenge to legislative action to be brought by the close of the next legislative session following the bill's effective date and that because the deadline for such a challenge had passed in this case, the court was limited to examining only the Hospital Lien Law amendments. (LF Vol. IV 561.) This finding was based on the court's finding that the Hospitals did not ask the trial court to strike the entire bill in their prayer for relief, only to sever the Hospital Lien Law provisions. (LF Vol. IV 561.) However, that is not fatal to their claim.

The statute of limitations for alleging procedural defects in the enactment of legislative bills states in pertinent part as follows:

No action alleging a procedural defect in the *enactment* of a bill into law shall be commenced, had or maintained by any party later than the adjournment of the next full regular legislative session following the effective date of the bill as law, unless it can be shown that there was no party aggrieved who could have raised the claim within that time. . . .

Mo. Rev. Stat. § 516.500 (emphasis added). There is no dispute that this lawsuit, when commenced on May 11, 2000, was within the statute of limitations in § 516.500 because it was commenced before the adjournment of the next full regular

legislative session following the effective date of the bill as law, which was August 28, 1999. (LF Vol. I 9, 17.) As noted above, it was the procedural defects in the *enactment* of H.B. 343 that the Hospitals challenged as unconstitutional, thereby putting them squarely within the statute of limitations.

The fact that the Hospitals did not request in their prayer for relief to sever all the unconstitutional portions of H.B. 343 does not mean that the trial court cannot consider the entirety of the bill in its constitutional analysis. In fact, as shown above, it was error for the trial court not to have done so. It is well settled that a prayer for relief is not considered part of the petition and a court of equity can grant any relief warranted by the pleaded issues whether or not it was specifically included in the prayer for relief. See State ex rel. Hammerstein v. Hess, 472 S.W.2d 362, 364 (Mo. 1971) (“It is well established that the form of an action is determined by the substance of the petition, and that the demand for relief, or the prayer, is no part of the cause of action.”); C.S. v. J.W., 514 S.W.2d 848, 853-854 (Mo. Ct. App. 1974) (“It has long been the rule in the area of pleadings . . . that the prayer of a petition may be and frequently is disregarded in determining what relief, if any, is authorized by the allegations therein, and is technically no part of the petition.”); Caldwell v. Eubanks, 30 S.W.2d 976, 980 (Mo. 1930) (same). Cf. Chance v. Public Water Supply Dist. No. 16, 41 S.W.3d 523, 526 (Mo. Ct. App. 2001) (holding that trial court properly ordered detachment

of two lots of property even though plaintiffs' petition prayed for detachment of only one lot because a court can disregard the petition's prayer in granting relief).

In addition, any corrections in the Petition or prayer for relief would relate back to the original Petition so as to save a cause of action from the statute of limitations bar because it arises "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." See Koerper & Co., Inc. v. Unitel Intern'l, Inc., 739 S.W.2d 705, 706 (Mo. 1987); Missouri Supreme Court Rule 55.33(c).

Furthermore, the State failed to raise this issue as an affirmative defense. The statute of limitations is an affirmative defense that must be raised in the responsive pleadings. Heintz v. Swimmer, 922 S.W.2d 772, 774 (Mo. Ct. App. 1996). In this case, the State did not assert any affirmative defenses to the Petition. (LF Vol. II 234-242.) Nor did the State properly raise this issue in its Motion for Summary Judgment. The extent of the State's argument was that the other provisions that the Hospitals referred to in their pleadings "are not challenged by plaintiffs and are not at issue." (LF Vol. IV 527.) This is insufficient to raise the statute of limitations defense. Missouri courts require a party asserting a statute of limitations defense to not only raise it in responsive pleadings, but to plead the specific statutory section relied upon. Heintz, 922 S.W.2d at 774. Here, the State failed to do so.

However, under either scenario—examining all of H.B. 343 or only the Hospital Lien Law amendments—the bill violates Article III, Sections 21 and 23, of the Missouri Constitution.

II. The Trial Court Erred In Granting Summary Judgment To The State Based Upon A Finding That H.B. 343 Did Not Violate The Single Subject Requirement Of Article III, Section 23, Of The Missouri Constitution By Focusing Its Inquiry On The Hospital Lien Law Amendments Alone Because H.B. 343 Contained At Least Five Subjects That Are Not Fairly Related To Professional Licensing, Do Not Have A Natural Connection With Professional Licensing, And Are Not Incidents Or Means To Accomplish The Bill’s Purpose Of Regulating The Procedure And Qualifications For Licensing Professions Under The Division Of Professional Registration.

H.B. 343 violates the single subject requirement of Article III, Section 23, of the Missouri Constitution because the Legislature inserted at least five unrelated subjects into a bill concerning the procedure and qualifications for licensing of professions regulated by the division of professional registration. Those five additional subjects:

- (1) expanded the rights of the Hospital Lien Law to other health care providers (Mo. Rev. Stat. § 430.225);

- (2) defined the scope of a statute creating a cause of action for failure to pay on contracts for private design or construction work (Mo. Rev. Stat. § 431.180);
- (3) strengthened a law prohibiting health carriers from discriminating between eye care providers for enrollment in the health carriers' networks (Mo. Rev. Stat. § 354.618);
- (4) regulated the emergency transportation of patients in vehicles other than ambulances (Mo. Rev. Stat. § 190.142); and
- (5) made changes to laws concerning the sale and storage of fireworks (Mo. Rev. Stat. § 320.106-320.151).

(LF Vol. I 246; Vol. III 302-303, 325-332, 450-453.) The bill also contained numerous other unrelated topics. For example, the bill contained amendments to Mo. Rev. Stat. § 301.142, a statute relating to physically disabled license plates and placards, to allow optometrists to certify that a person is disabled. (LF Vol. III 322-325; Vol. IV 471.)

A. The Test For Determining A Single Subject Violation.

This Court has held that a bill contains more than one subject if all provisions of the bill are not fairly related to the same subject, do not have a natural connection therewith or are not incidents or means to accomplish its purpose as expressed in the title. Westin, 664 S.W.2d at 6; Fust v. Attorney

General, 947 S.W.2d 424, 428 (Mo. 1997) (en banc). Subject matters in each bill must be “germane, connected and congruous.” Hammerschmidt, 877 S.W.2d at 102. A “subject” that is within the meaning of Section 23 “includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation.” Id. This test does not concern the relationship between individual provisions, but between the individual provision and the subject as expressed in the title. Fust, 947 S.W.2d at 428. The bill as enacted is the only version relevant to the single subject requirement. C.C. Dillon Co. v. City of Eureka, 12 S.W.2d 322, 328-329 (Mo. 2000) (en banc).

This Court looks first at the bill’s title, as finally passed, to determine its subject. Missouri Health Care Ass’n, 953 S.W.2d at 622. However, the bill’s title is the touchstone for the constitutional analysis only if the bill’s title is not too broad or amorphous to identify the single subject of the bill. Id. Where the title to an amorphous bill renders its subject uncertain, this Court may determine the subject of the bill by examining the contents of the bill originally filed to determine its subject. Carmack v. Director, Missouri Department of Agriculture, 945 S.W.2d 956 (Mo. 1997) (en banc).

B. H.B. 343 Violates The Single Subject Requirement.

The description of the subject contained in the title of H.B. 343, as enacted, includes reference to the repeal of 160 statutory sections and the enactment of 169

new sections in 29 statutory chapters and describes the bill as “relating to professional licensing.” This title, like the title of “relating to economic development” in Carmack, is too broad and amorphous to describe the subject of a pending bill with the precision necessary to provide notice of its contents. See Carmack, 945 S.W.2d at 959-60; see also discussion of Carmack, supra at 66-67.

The original and core purpose of H.B. 343 as originally introduced, titled “An Act To repeal sections . . . relating to the division of professional registration, and to enact in lieu thereof forty-two new sections relating to the same subject,” was to change or repeal laws concerning the procedure and qualifications for licensing professions regulated by the division of professional registration. Specifically, those professions are endowed care cemeteries, private employment agencies, dieticians, massage therapists, interior designers, acupuncturists, chiropractors, tattoo practitioners, respiratory care practitioners, and pharmacists. (LF Vol. II 244, 253-293.) The last minute-addition of an amendment to H.B. 343 that expanded the rights of the Hospital Lien Law beyond hospitals to certain health care providers does not “fall within or reasonably relate to the general or core purpose of the proposed legislation.” Hammerschmidt, 877 S.W.2d at 102. The Hospital Lien Law provision had nothing to do with the licensure or qualifications for professions under the division of professional registration. It merely added additional classes of providers to the list of those who can use the

lien law. Nor did any of the other unrelated amendments have anything to do with licensure or qualifications of professions.

Even assuming that the phrase “professional licensing” is not too broad to identify a single subject, every provision of H.B. 343 must fairly relate to, have a natural connection with, or be a means of accomplishing professional licensing. See Missouri Health Care Ass’n, 953 S.W.2d at 622. If *any* of the provisions of H.B. 343 have too tenuous a connection with professional licensing, then H.B. 343 violates the single subject requirement. See id. (emphasis added); Corvera Abatement Technologies, Inc. v. Air Conservation Comm’n, 973 S.W.2d 851, 862 (Mo. 1998) (en banc). In order to prevail on their constitutional claim, the Hospitals are only required to prove that H.B. 343 contained more than *one* unrelated subject when passed. Missouri Health Care Ass’n, 953 S.W.2d at 622.

A review of the contents of H.B. 343 demonstrates that the bill has at least five subjects that do not fall within the subject of professional licensing. This is not surprising, given that H.B. 343, when finally passed in its 164-page form, repealed 160 statutory sections in 28 chapters and enacted 169 new statutory sections in 29 statutory chapters. (LF Vol. III 300-302; Vol. IV 473.) The description of the subject contained in the title of H.B. 343—“relating to professional licensing”—cannot include laws that:

- (1) create a new § 430.225 of the Hospital Lien Law that expands the rights of the law to other health care providers;
- (2) define the scope of a statute creating a cause of action for failure to pay on contracts for private design or construction work (Mo. Rev. Stat. § 431.180);
- (3) strengthen prohibitions on health carriers from discriminating between eye care providers for enrollment in the health carriers' networks (Mo. Rev. Stat. § 354.618);
- (4) regulate the emergency transportation of patients in vehicles other than ambulances (Mo. Rev. Stat. § 190.142); and
- (5) make changes to laws concerning the sale and storage of fireworks (Mo. Rev. Stat. § 320.106-320.151).

These provisions do not fairly relate to, nor are they naturally connected with, professional licensing. Professional licensing relates to the process and qualifications to get and keep a license for the learned professions, not anything in the universe that could conceivably affect a person who has a license (professional or otherwise).

When this Court examines the entirety of the bill, it is clear that the amendments have no connection with professional licensing. Furthermore, the three other bills that introduced a change to the Hospital Lien Law, with no other

provisions attached, went nowhere in either the House or Senate. (LF Vol. II 294-297; Vol. IV 477-480, 481-484.) Similarly, the bill that made changes to the fireworks law died. (LF Vol. IV 485-492.) Those bills were single-subject bills that were unable, on their individual merit, to garner enough support to be passed by the Legislature. The amendments to the Hospital Lien Law (and to the fireworks law) mustered a majority only after they were combined with other unrelated amendments into H.B. 343. This is a textbook example of logrolling, which is one of the evils that the single subject requirement was designed to avoid. See Hammerschmidt, 877 S.W.2d at 101.

C. H.B. 343 Contains More Than One Subject Based On The Hospital Lien Law Amendments Alone.

If this Court concludes that it has to examine the constitutionality of the bill only as it relates to the Hospital Lien Law amendments, H.B. 343 still contains two or more unrelated and distinct subjects in violation of Article III, Section 23.

The trial court held that the Hospital Lien Law amendments apply to health care practitioners licensed by the professional boards within the division of professional registration. (LF Vol. IV 560.) It further found that those health care practitioners are subject to discipline for a variety of reasons, including obtaining a fee by fraud, deceit, or misrepresentation and are also subject to discipline for fraud or dishonesty in the performance of their functions or duties as a licensed

health care practitioner. (LF Vol. IV 560.) The trial court found that the individuals who have been added to those who can make a claim under the Hospital Lien Law are all medical licensees within the division of professional registration. (LF Vol. IV 560-561.) The trial court found that submitting a fraudulent claim under the Hospital Lien Law would subject professionals to discipline, thereby tying the amendment to the original bill, which involved the division of professional registration, thereby having a natural connection with the original bill. (LF Vol. IV 561.)

The theory espoused by the State and erroneously adopted by the trial court in this case is based on the long discredited “entity” theory that this Court rejected in 1997 in Missouri Health Care Ass’n v. Attorney General, 953 S.W.2d 617 (Mo. 1997) (en banc). The entity theory that the State relied upon in that case, as here, is that a bill dealing with an entity can embrace anything dealing with that entity.

In Missouri Health Care Ass’n, the Senate amended a bill that created the division of aging within the department of social services. The amendment added two provisions to an unfair practices statute, making it an unlawful trade practice for certain long-term care facilities that make representations regarding their quality of care to refuse to provide copies of documents that reflect the facilities’ evaluation of the care they provide and creating civil liability for the unlawful

practice. Id. at 619-620. The law, as passed, was titled an act “relating to the department of social services.” Id. at 620.

This Court found that the amendments did not fairly relate to, have a natural connection with, or accomplish the work of the department of social services. Id. at 623. This Court found that the department of social services did not enforce, oversee, or have any significant administrative duties under the amendments. The provisions at issue were part of the “Merchandising Practices” chapter of the Missouri Revised Statutes and were part of the “Trade and Commerce” title. Therefore, the amendments fell outside the subject of “the department of social services.” Id. at 622-23.

Nevertheless, the State argued that the amendments were within the department of social services because the amendments stated that the department could establish the fees that facilities can charge for copying documents that they must disclose under the amendments. This Court rejected that argument, finding that “[t]he ability to set a reasonable charge for copying is far too insignificant to constitute a provision that has a natural connection with the department of social services.” Missouri Health Care Ass’n, 953 S.W.2d at 623. The State also argued that the amendments fairly related to the department of social services because the amendments regulated long-term facilities, which, in turn, are under the

jurisdiction of the department of social services. This Court concluded that the State's argument "misses the point." As the Court found:

The single subject limitation requires that the contents of the bill, not the entities affected by the bill, fairly relate to the subject expressed in the title of the act. As explained above, the amendments to section 407.020 have, at best, only a de minimis connection with the department of social services. The fact that the businesses regulated by amended section 407.020 are regulated in other respects by the department pursuant to other statutes is irrelevant. The construction proffered by the attorney general would define single subject so broadly as to render it meaningless.

Missouri Health Care Ass'n, 953 S.W.2d at 623 (emphasis added).

The connection between the Hospital Lien Law amendments and professional licensing is even more attenuated here and should be rejected for the same reasons as articulated by this Court in Missouri Health Care Ass'n. The fact that the health care practitioners who have been accorded the right to file a lien under the Hospital Lien Law amendments are regulated by the division of professional registration, which, in turn, licenses those health care practitioners pursuant to other statutes, is irrelevant. The Hospital Lien Law amendments have, if anything, a de minimis connection to professional licensing. Furthermore,

neither the Hospital Lien Law amendments—nor any other provision of H.B. 343—address the regulation of billing practices of health care practitioners.

Following this long-rejected argument would mean that the Legislature could amend any law in the State of Missouri that could conceivably affect a person who has a license, all under the rubric of regulating professionals. For example, all of Missouri’s trademark laws could be amended, under the title of “professional licensing,” because the professional licensure statutes regulate physician advertising. Likewise, the Legislature could amend laws concerning prescription drugs, such as those in the HMO laws regulating pharmacy provider agreements, under “professional licensing” because doctors prescribe drugs and are subject to discipline for prescribing drugs to a patient who does not need them or for signing a blank prescription form. The constitutional protections in Article III, Section 23, were designed to prohibit this type of practice of combining a number of unrelated amendments in a bill, none of which could alone command a majority. See Hammerschmidt, 877 S.W.2d at 101.

The lengths to which the State and the trial court went in this case to try to tie the Hospital Lien Law amendments to professional licensing is also similar to that undertaken by the State and rejected by this Court in Carmack. In that case, the State argued that a bill “relating to economic development” was a sufficiently broad subject to include any activity “that promotes and protects an important

sector of the Missouri economy,” directly or indirectly. Carmack, 945 S.W.2d at 959-60. This Court found the bill’s title amorphous, rendering its subject uncertain, and therefore looked to the Constitution and the contents of the bill to determine its subject. Id. at 960-961. The provision sought to be added was administered by the department of agriculture, not the department of economic development, and thus was a different subject. Id. at 961.

Using that analysis here would yield a similar result. The provision sought to be added by the Hospital Lien Law added certain health care practitioners to the list of those who can file a lien against a judgment. Liens or lien laws do not have anything to do with programs administered by the division of professional registration. In fact, the provisions relating to the Hospital Lien Law are not contained in the chapters of the Missouri Revised Statutes having to do with professionals and their licensure requirements. They are found in Chapter 430 titled “Statutory Liens Against Personalty—Preferred Claims.”

This case is also similar to Hammerschmidt. In that case, the single subject of the bill was to amend laws relating to elections. This Court noted that it was true that an amendment to the bill contained provisions requiring voter approval of a proposition through an election, thus the State’s attempt to tie the provision to “relating to elections.” However, this Court held that the subject of the amendment—“*its raison d’être*”—was to authorize a new form of county

governance previously unknown in Missouri. The Court held that the election provisions in the amendment “served no purpose beyond furthering the adoption of this new form of county governance.” Hammerschmidt, 877 S.W.2d at 103. As a result, the amendment authorizing a county to adopt a county constitution did not fairly relate to elections, nor did it have a natural connection to that subject. Id. “Further, provisions of a bill vesting authority in counties to adopt a new form of government are not necessary incidents nor do they provide a means to accomplish the purposes of a bill to amend laws ‘relating to election.’” Id.

Likewise here, the Hospital Lien Law amendments do not fairly relate to professional licensing, nor do they have a natural connection to that subject. Giving certain health care practitioners the right to file a lien is not a necessary incident nor does it provide a means to accomplish “professional licensing.” Cf. Missouri State Med. Ass’n v. Missouri Department of Health, 39 S.W.3d 837, 841 (Mo. 2001) (en banc) (finding that health insurance, medical records and standard pre-operation information on the advantages, disadvantages and risks, including cancer, of breast implantation, were all incidents or means to health services, the subject of the bill).

It cannot be seriously maintained that the Hospital Lien Law amendments are germane, connected or congruous to the general core purpose of H.B. 343, which was to amend laws concerning the procedure and qualifications for licensing

of professions regulated by the division of professional registration. Although the trial court found that the Hospital Lien Law provisions touched in some way on professions regulated by the division, a close examination of the bill as passed reveals that this is far too tenuous a connection with professional licensing. By adopting a bill that contains more than one subject, the Legislature violated Article III, Section 23, of the Missouri Constitution.

III. The Trial Court Erred In Granting Summary Judgment To The State Based Upon A Finding That H.B. 343 Did Not Violate The Clear Title Requirement Of Article III, Section 23, Of The Missouri Constitution Because The Title Of H.B. 343 “Relating To Professional Licensing” Is Too Broad And Amorphous To Inform The Public And The Legislature Of The Subject Of The Bill Which Is The Procedure And Qualifications For Licensing Professions Regulated By The Division Of Professional Registration.

H.B. 343 is also unconstitutional under Article III, Section 23’s second mandatory limitation on legislative enactment, namely, that the title of every bill clearly express the single subject of that bill. Hammerschmidt, 877 S.W.2d at 101-102. The title of H.B. 343 as finally passed was:

AN ACT To repeal [160] sections . . . , *relating to professional licensing*, and to enact in lieu thereof one hundred sixty-nine new

sections relating to the same subject, with penalty provisions, an expiration date for certain sections and an emergency clause for a certain section.

(LF Vol. III 300-301) (emphasis added). The title's failure to refer also to amendments that have no relation to and are outside the scope of professional licensing is a fatal defect. The subject of the bill is not clearly expressed in its title.

A. The Test For Determining A Clear Title Violation.

The standards for evaluating a "clear title" violation are well settled. A bill's title need not give specific details of a bill, but it should indicate generally what the act contains. St. Louis Health Care Network v. State, 968 S.W.2d 145, 147 (Mo. 1998) (en banc). The title cannot, however, be so general that it obscures the contents of the bill nor can it be so broad that it renders the single subject mandate meaningless. Id. If the title of a bill is too broad or amorphous to identify a single subject within the meaning of Article III, Section 23, then the bill's title violates the constitutional mandate that a bill contain a single subject clearly expressed in its title. Id.

On the other hand, "If the title of a bill contains a particular limitation or restriction, a provision that goes beyond the limitation in the title is invalid because such title affirmatively misleads the reader." National Solid Waste Management Ass'n v. Director of Dep't of Natural Resources, 964 S.W.2d 818, 820 (Mo. 1998)

(en banc) (quoting Fust, 947 S.W.2d at 429). Therefore, if the title of an act descends to particulars and details, the act must conform to the title as limited by the particulars and details. Id. (quoting Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 39 (Mo. 1982) (en banc)). A title of a bill cannot be underinclusive. Id.

The issue is not whether all of the *statutes* amended by H.B. 343 are related to professional licensing, but whether the title fairly describes the *changes* that the bill makes to the statutes that are amended. See Blue Cross Hosp. Serv., Inc. v. Frappier, 681 S.W.2d 925, 929 (Mo. 1984) (en banc), vacated on other grounds, 472 U.S. 1014, remanded, 698 S.W.2d 326 (Mo. 1985); Westin, 664 S.W.2d at 7. When the legislature enacts a bill that contains sections from multiple chapters, the title must explain the connection among the changes that are made to those sections. See Westin, 664 S.W.2d at 7.

B. The Title To H.B. 343 Violates The Clear Title Requirement.

The trial court erred when it held that the title of H.B. 343 was constitutional because the statutes amended by the bill relate to professional licensing and, therefore, the title reflects the general contents and the subject of the bill. (LF Vol. IV 559.)

When the amendments to the Hospital Lien Law were first introduced, they were contained in three different bills—S.B. 409, S.B. 515 and H.B. 140—which contained nearly identical language to the hospital lien provision added to H.B.

343. The title of S.B. 409 and H.B. 140 complied with the constitutional mandate for a clear title: “An Act . . . relating to liens for the protection of licensed health practitioners.” That title clearly indicated the single subject of S.B. 409 and H.B. 140, and provided notice that liens were affected. When the provisions of S.B. 409 and H.B. 140 were tacked on to H.B. 343 near the end of the legislative session, however, the title was not amended to provide this clear indication. The title to H.B. 343 obscures the amendment of the Hospital Lien Law, which is unrelated to and incongruous with the bill’s subject and original purpose.

Language in the title of a bill is to be given its plain and ordinary meaning, and not technical or specialized meanings. See 508 Chestnut, Inc., 389 S.W.2d at 829 & n.4. This is consistent with the purpose of requiring that a title to a bill give notice to citizens and legislators based on the plain and ordinary meaning of the words used. See St. Louis Health Care Network, 968 S.W.2d at 147.

The plain and ordinary meaning of “professional” is “of, relating to, or characteristic of a profession” and the plain and ordinary meaning of “licensing” is “to issue a license to.” Merriam-Webster’s Collegiate Dictionary at 671, 930 (10th ed. 1996). Therefore, the ordinary meaning of the phrase “professional licensing” means the process and qualifications to get and keep a license in a profession. A “profession” is “a calling requiring specialized knowledge and often long and intensive academic preparation.” Id. at 930. The title of H.B. 343, therefore,

specifies that the contents of the act relate to the process of issuing licenses to persons in professions. This definition is consistent with the organization of the Missouri Revised Statutes, which includes Title XXII, Occupations and Professions, covering Chapters 324-346. All of the objectionable amendments fall outside those chapters.

In addition, Missouri courts have made it clear that “professional licensing” statutes are those that set out the process and qualifications to get and keep a license for certain learned professions. See Business Men’s Assur. Co. of America v. Graham, 891 S.W.2d 438, 456 (Mo. Ct. App. 1994) (noting that Chapter 327 is a professional licensing statute for architects, engineers and surveyors whose provisions for licensing, registration and discipline seek to protect members of the public who contract for their services by establishing a certain standard of competence); Duncan v. Missouri Bd. for Architects, Professional Engineers and Land Surveyors, 744 S.W.2d 524, 531-532 & n.4 (Mo. Ct. App. 1988) (same and noting a host of professional “licensing” statutes including accountants, barbers, podiatrists, physicians, pharmacists, etc.).

At least five of the amendments made by H.B. 343 have no relation to the licensing of persons in professions:

- (1) creating a new § 430.225 in the Hospital Lien Law that expands the rights of the law to other health care providers (contained in

Chapter 430 titled “Statutory Liens Against Personality—Preferred Claims, which is within Title XXVII, Debtor-Creditor Relations);

- (2) defining the scope of a statute in § 431.180 creating a cause of action for failure to pay on contracts for private design or construction work (contained in Chapter 431 titled General Provisions as to Contracts);
- (3) strengthening prohibitions in § 354.618 on health carriers from discriminating between eye care providers for enrollment in the health carriers’ networks (contained in Chapter 354 titled Health Services Corporations—Health Maintenance Organizations—Prepaid Dental Plans);
- (4) regulating the emergency transportation of patients in vehicles other than ambulances in § 190.142 (contained in Chapter 190 titled Emergency Services); and
- (5) making changes to laws concerning the sale and storage of fireworks in §§ 320.106-320.151 (contained in Chapter 320 titled Fire Protection).

(LF Vol. II 246; Vol. III 302-303, 325-332, 450-453, 464-465; Vol. IV 471.)

Moreover, the title, which indicates that the contents of H.B. 343 relate to “professional licensing,” neither accurately indicates the general contents of the bill nor does it clearly express a single subject of H.B. 343. The Legislature unconstitutionally broadened the title of H.B. 343 to “relating to professional licensing” to try to encompass a number of incongruous amendments as disparate as fireworks, hospital liens, a contract cause of action and other unrelated areas that repealed 160 statutory sections and enacted 169 new sections in 29 statutory chapters. Although the title of an act is not strictly a part of a bill and can properly be changed without violating Article III, Section 23, it is unconstitutional when a bill’s title obscures amendments which are in and of themselves incongruous and unrelated. Westin, 664 S.W.2d at 6; Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 38 (Mo. 1982) (en banc); Brown-Forman Distillers Corp. v. McHenry, 566 S.W.2d 194, 197 (Mo. 1978) (en banc).

H.B. 343’s title is as unconstitutionally broad as the title found infirm by this Court in Carmack, 945 S.W.2d 956. In Carmack, this Court examined a bill that repealed 88 statutory sections “relating to economic development” and enacted 102 new sections in 25 statutory chapters “relating to the same subject.” The bill covered nearly 179 full pages of text. Among the numerous statutory amendments was a provision that changed the indemnification paid to owners of livestock which are destroyed because of infectious diseases. Id. at 957. This Court found

that “economic development includes any activity that indirectly promotes or protects portions of the Missouri economy, nearly every activity the state undertakes falls within the meaning of economic development.” Id. at 960. Because the title could include such a broad range of subjects, this Court held that the title was too broad to provide constitutional notice. Id. Although the plaintiff in Carmack did not allege a title violation, this Court determined that the title violated Section 23. Id. at 960. This Court’s discussion on this issue is controlling because H.B. 343’s title, “relating to professional licensing,” like the “relating to economic development” title in Carmack, is too broad and amorphous to describe the subject of a pending bill with the precision necessary to provide notice of its content. Frappier, 681 S.W.2d at 929. H.B. 343 repealed and enacted many more statutory sections than Carmack and, under the equally broad umbrella title adopted by the Legislature, “relating to professional licensing” could encompass any activity that possibly touches on a professional licensee, as is shown by the wide-ranging and unrelated amendments that the Legislature piled onto the bill in an effort to get it passed when some of the provisions were unable to pass on their own accord. See LF Vol. II 294-297; Vol. IV 477-480, 481-484, 485-492.

Likewise, this Court recently noted in Missouri State Med. Ass’n, 39 S.W.3d at 841, that the “textbook example” of a broad and amorphous title is “certain incorporated and non-incorporated entities,” which this Court found “could define

most, if not all, legislation passed by the General Assembly.” St. Louis Health Care Network v. State, 968 S.W.2d 145, 148 (Mo. 1998) (en banc). Under the trial court’s holding, the title of H.B. 343 could describe most legislation enacted because any piece of legislation could be linked to a person who has a license.

No one reading the title of H.B. 343, “relating to professional licensing,” would be on notice that the bill contains provisions amending the Hospital Lien Law, or any of the other unrelated provisions such as changes in the fireworks laws. The mere fact that the numerous subjects in H.B. 343 might be reconciled as part of a broader subject does not mean that the broader subject has been clearly expressed in the title of the bill. National Solid Waste Management Ass’n, 964 S.W.2d at 821. A title stating that H.B. 343 relates to professional licensing is unclear that the bill also relates to a hospital lien law, a cause of action for breach of contract, an anti-discrimination law for HMOs, the non-ambulance emergency transportation of patients, and the sale and storage of fireworks. Therefore, a title stating that the bill relates to professional licensing is unclear because the bill also relates to numerous other subjects. See National Solid Waste Management Ass’n, 964 S.W.2d at 821-22 (holding that bill’s title “relating to solid waste management” was underinclusive because it did not reflect either the specific subjects contained in the bill, which were both solid waste management and hazardous waste management).

Furthermore, the public had little notice, if any, that H.B. 343, as amended, was pending because the title was affixed to the bill in the waning days of the legislative session. Cf. Frappier, 681 S.W.2d at 929 (noting that respondents had opportunity for notice that the bill was pending because original title on bill applied to them). The Legislature's last-minute attempt to camouflage the unrelated amendments by putting an overbroad and amorphous title on the bill renders the title unconstitutional under Article III, Section 23.

IV. The Trial Court Erred In Granting Summary Judgment To The State Based Upon A Finding That The Amendments To H.B. 343 Did Not Change The Original Purpose Of H.B. 343 In Violation Of Article III, Section 21, Of The Missouri Constitution Because The Amendments To H.B. 343 Introduced Matter That Was Not Germane And Was Unrelated To H.B. 343's Original Subject Which Was The Procedure And Qualifications For Licensing Professions Regulated By The Division Of Professional Registration.

H.B. 343 is also unconstitutional for the reason that the amendments made to the bill changed its original purpose, in violation of Article III, Section 21, of the Constitution.

A. The Test For Determining An Original Purpose Violation.

The original purpose of a bill is measured at the time that the bill is introduced. Stroh Brewery Co. v. State, 954 S.W.2d 323, 326 (Mo. 1997) (en banc). The effect of the bill, as introduced, assists in determining the bill's general purpose. Allied Mut. Ins. Co. v. Bell, 185 S.W.2d at 6 (invalidating statute because its original purpose changed during the legislative session). “[P]urpose means the general purpose of the bill, not the mere details through which that purpose is manifested and effectuated.” Westin, 664 S.W.2d at 5 (citing State ex rel. McCaffery v. Mason, 55 S.W. 636, 640 (Mo.), aff’d, 179 U.S. 328 (1900)). The restriction is against the introduction of matter that is not germane to the object of the legislation or is unrelated to its original subject. Westin, 664 S.W.2d at 6. This Court must look to the changes that were made to the bill to determine whether the addition of new sections was designed to accomplish the original purpose of the bill. Westin, 664 S.W.2d at 6.

B. H.B. 343 Violated The Original Purpose Requirement.

The original and core purpose of H.B. 343 as introduced on January 13, 1999, was to change or repeal certain provisions regarding the procedure and qualifications for licensing of certain well-defined professions regulated by the division of professional registration. Specifically, the professions are endowed care cemeteries, private employment agencies, dieticians, massage therapists,

interior designers, acupuncturists, chiropractors, tattoo practitioners, respiratory care practitioners, and pharmacists. (LF Vol. II 244, 253-293; Vol. IV 469.) To that end, the Legislature introduced the original provisions of H.B. 343, which made changes concerning the procedures and qualifications for licensing professions regulated by the division of professional registration. (LF Vol. II 253-293.)

In addition to its original provisions relating to the procedure and qualifications for licensing of endowed care cemeteries, private employment agencies, dieticians, massage therapists, interior designers, acupuncturists, chiropractors, tattoo practitioners, respiratory care practitioners, and pharmacists, H.B. 343, as finally passed, among other things, created a new Hospital Lien Law, defined the scope of a statute creating a cause of action for failure to pay on contracts for private design or construction work; strengthened a law prohibiting health carriers from discriminating between eye care providers for enrollment in the health carriers' networks; regulated the emergency transportation of patients in vehicles other than ambulances; and made changes to laws concerning the sale and storage of fireworks. (LF Vol. II 246; Vol. III 300-463; Vol. IV 471.)

In this case, the Legislature's insertion of new unrelated provisions that created a new Hospital Lien Law to extend the rights of that law to certain defined clinics, health practitioners and other institutions improperly changed the original

purpose of H.B. 343 in violation of Article III, Section 21, of the Missouri Constitution. This amendment does not relate in any way to the procedure and qualifications for licensing professions regulated by the division of professional registration. The Hospital Lien Law (or its amendments) does not in any way alter or affect the licensing of physicians or their qualifications.

Nor do the other unrelated amendments to H.B. 343 in any way relate to the division of professional registration's licensure process or qualifications for professions. Amendments to Mo. Rev. Stat. § 431.180 merely defined the scope of a contract statute that creates a cause of action for failure to pay on contracts for private design or construction work. Amendments merely strengthened the prohibitions of Mo. Rev. Stat. § 354.618, a community-based HMO law that prohibits health carriers from discriminating between eye care providers for enrollment in the health carriers' networks or for payment of their services. An amendment to Mo. Rev. Stat. § 190.142 regulated the emergency transportation of patients in vehicles other than ambulances and the changes to Mo. Rev. Stat. §§ 320.106-320.151 related to laws concerning the sale and storage of fireworks. None of these amendments were in any way related to the division of professional registration's licensure process for professionals.

V. The Trial Court Erred In Granting Summary Judgment To The State Based Upon A Finding That H.B. 343 Did Not Violate Article III, Sections 21 And 23, Of The Missouri Constitution And Then Determining That The Entire Bill Should Not Be Declared Unconstitutional Or The Unconstitutional Provisions Of H.B. 343 Should Not Be Severed In That Those Are The Proper Remedies For Single Subject, Title And Purpose Violations.

Once this Court concludes that H.B. 343 violates the single subject and title requirements of Article III, Section 23, and the amendments to H.B. 343 changed the original purpose of H.B. 343 in violation of Article III, Section 21, it must decide the proper remedy.

When a court determines that the Legislature has enacted a bill which violates the one-subject mandate, the entire bill is unconstitutional “unless the Court is convinced beyond a reasonable doubt that one of the bill’s multiple subjects is its original, controlling purpose and that the other subject[s] ...[are] not.” Hammerschmidt, 877 S.W.2d at 103. See also Carmack, 945 S.W.2d at 961. In determining whether a provision can be severed from an unconstitutional bill, this Court must consider:

whether the [additional subject(s)]...is essential to the efficacy of the...
[bill], whether it is a provision without which the ... [bill] would be

incomplete and unworkable, and whether the provision is one without which the ... [legislators] would not have adopted the ... [bill].

Hammerschmidt, 877 S.W.2d at 103 (citing Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 832 (Mo. 1990) (en banc)). In ascertaining the original, controlling purpose of the bill for purposes of severance, a title which “clearly” expresses the bill’s single subject is exceedingly important. Hammerschmidt, 877 S.W.2d at 103.

If this Court determines that the title of the bill is unconstitutional, then the entire bill must be struck down as unconstitutional. St. Louis Health Care Network v. State, 968 S.W.2d at 149. If this Court determines that the title of H.B. 343 is constitutional, but that it contains more than one subject, then the Court can sever the unconstitutional provisions. See Carmack, 945 S.W.2d at 961.

As a matter of law, the unconstitutional amendments, specifically the provision relating to the Hospital Lien Law, are not essential to the efficacy of the original purpose of H.B. 343 and, because without this provision, the primary core subject of H.B. 343 can be enforced with its primary subject intact, this provision should be severed. Hammerschmidt, 877 S.W.2d at 103. There is no difficulty in determining the primary and controlling purpose of H.B. 343. The original title, “An Act . . . relating to the division of professional registration . . . ,” clearly expressed H.B. 343's original purpose of furthering the procedure and

qualifications for licensing professions under the division of professional registration. Licensing is the primary purpose of the division of professional registration. Mo. Rev. Stat. § 620.010.15(2). H.B. 343's title was improperly broadened by the Legislature in an effort to encompass and obscure the unrelated subjects inserted on April 27, 1999. Nevertheless, the original purpose of H.B. 343 remained the same.

Because the provision relating to the Hospital Lien Law is not remotely related to, and in no way furthers or effectuates the bill's original purpose of furthering the division of professional registration's licensure of and qualifications for certain professions, this amendment is not essential to the efficacy of H.B. 343. Furthermore, the division of professional registration's provisions are complete and workable without this amendment.

Finally, as in Hammerschmidt, it is clear that the Legislature would have approved the original provisions of H.B. 343 without the April 27, 1999, amendment concerning the Hospital Lien Law because the earlier bills addressing solely the Hospital Lien Law amendments (H.B. 140, S.B. 409 and S.B. 515) did not garner enough support on their own to pass. (LF Vol. II 245; Vol. IV 477-484.) Thus, this amendment may properly be severed from H.B. 343 and the original version of H.B. 343 can remain in effect and enforceable. Hammerschmidt, 877 S.W.2d at 103.

CONCLUSION

For the foregoing reasons and authorities, this Court should reverse the trial court's order granting the State's motion for summary judgment and remand to the trial court for an entry of judgment in favor of the Hospitals declaring that H.B. 343 is unconstitutional because (1) its passage violated the single subject requirement of Article III, Section 23, of the Missouri Constitution; (2) its passage violated the title requirements of Article III, Section 23, of the Missouri Constitution; and (3) the amendments to H.B. 343 changed its original and primary purpose in violation of Article III, Section 21, of the Missouri Constitution. Depending on the violation found, the Court should sever the unconstitutional provisions or strike the entire bill.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH
MISSOURI SUPREME COURT RULE 84.06(b) AND RULE 84.06(g)

The undersigned certifies that the foregoing brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b) and, according to the word count function of Microsoft Word 97 by which it was prepared, contains 15,552 words, exclusive of the cover, the Certificate of Service, this Certificate of Compliance, the signature block and the appendix.

The undersigned further certifies that the diskette filed herewith containing this Appellants' Opening Brief in electronic form complies with Missouri Supreme Court Rule 84.06(g) because it has been scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the foregoing document and a diskette as required by Missouri Supreme Court Rule 84.06 were served on **Curtis F. Thompson, Esq.**, Assistant Attorney General, Missouri Attorney General's Office, 7th Floor, Broadway State Office Bldg., 221 West High Street, P.O. Box 899, Jefferson City, MO 65102, Attorney for Defendants/Respondents, by depositing same in an envelope addressed to said attorney, with postage fully prepaid and by depositing said envelope in a U.S. Post Office mailbox in St. Louis, Missouri, on the 14th day of September, 2001.

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