
**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**

REPLY BRIEF OF PLAINTIFFS/APPELLANTS

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ARGUMENT

Rather than address the issues head-on, the State ignores most of the Hospitals' arguments as well as the law and merely recites the erroneous reasoning of the trial court in a confusing patchwork of unsupported conclusions.

After attempting to sift through the State's brief, which intermingles the three alleged constitutional violations in a dizzying array of arguments, what remains clear is that this Court's affirmance of the trial court judgment will set two dangerous precedents. First, it will mean that a court can evaluate the constitutionality of a bill by viewing one provision in isolation from all the other provisions of a challenged bill. Second, it will mean that the long-rejected "entity theory" – that a bill can embrace any subject so long as a connection to a common entity is found – will be available to the State to uphold every piece of legislation no matter how egregious the constitutional violation.

Standard of Review

On a preliminary note, the standard of review proposed by the State (State's Brief at 9) is not a standard of review, but merely principles of constitutional interpretation and burden of proof standards. See Witte v. Director of Revenue, 829 S.W.2d 436, 439 (Mo. 1992). This Court's standard of review for the trial court's entry of summary judgment remains de novo, with the Court's review of the record to be in the light most favorable to the non-moving party. ITT

Commercial Fin. Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. 1993) (en banc). Although legislative acts carry a strong presumption of constitutionality, the Legislature does not have an unfettered right to enact legislation that steps beyond the boundaries of the Constitution, as it did in this case. See Hammerschmidt v. Boone County, 877 S.W.2d 98, 101 (Mo. 1994) (en banc).

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 State bases its argument on the same faulty reasoning employed by the trial court. That faulty reasoning is based on two erroneous conclusions, one of fact and one of law: (1) that the Hospitals challenged only the Hospital Lien Law

amendments, and (2) that this Court must view a challenged portion of a bill in isolation from the rest of the bill in which it was contained.

A. The Hospitals Challenged the Entire Bill.

Regardless of how the State tries to portray the challenge in this case, this Court need only look to the Petition to see that the Hospitals challenged the bill in its entirety. (LF Vol. I 16 at ¶ 30; LF 18 at ¶ 41; LF 20 at ¶ 48.) For example, one paragraph of the Hospitals' Petition alleges that

H.B. 343, as finally passed, . . . added a definition to a statute governing enforcement of contracts for private design or construction work, strengthened a law prohibiting health carriers from discriminating between eye care providers, regulated the emergency transportation of patients in vehicles other than ambulances, and made changes concerning the sale and storage of fireworks.

(LF Vol. I at 16 ¶ 30.) Another alleges that

H.B. 343, which, as amended, includes provisions relating to, among other things, hospitals liens, design or construction work contracts, discrimination by health carriers, emergency services, fireworks, and professional licensees, violates the prohibition against a bill containing more than one subject by combining a number of unrelated subjects covering incongruous and unconnected topics.

(LF Vol. I 18 at ¶ 41.) Yet another allegation states that

The May 14, 1999, title for H.B. 343 was too amorphous and broad to inform Plaintiffs or legislators of the true contents of H.B. 343 which included amendments regulating the debtor-creditor relationship between hospitals and other health care providers and their patients, design or construction work contracts, discrimination by health carriers, emergency services, fireworks, and professional licensees. Accordingly, H.B. 343 violates the title requirement contained in Article III, Section 23, of the Missouri Constitution.

(LF Vol. I 20 at ¶ 48.) Based on these allegations and the others in the Petition, the Hospitals are challenging the enactment of House Bill 343, a fact which the State cannot dispute. In fact, the State stipulated as such. (LF Vol. II 249 at ¶ 32) (“Plaintiffs’ challenge to H.B. 343 alleges procedural defects in the enactment of the law. . . .”) (emphasis added).

Ignoring these allegations and stipulations, the State chooses instead to focus only on the relief sought by the Hospitals, that is, the severance of the Hospital Lien Law amendments from the bill. However, what the State fails to address is the fact that, in Missouri, a petition’s prayer for relief is not considered part of the petition. See, e.g., State ex rel. Hammerstein v. Hess, 472 S.W.2d 362, 364 (Mo. 1971). A court of equity can grant any relief warranted by the pleaded issues

whether or not that relief was specifically included in the prayer for relief. Id. Therefore, contrary to the trial court's holding, the Hospitals challenged the entire bill.

B. The Court Must Examine The Entire Bill.

More importantly, the State completely ignores the long-standing precedent of this Court 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) (en banc). The State fails to explain how, in the confines of this Court's precedent, a court could examine the constitutionality of the procedural enactment of a bill without looking at the bill as a whole. Like the trial court, the State disregards this precedent and provides no case law support for its position.

The State is making the same argument in this case that it did with the same-sex marriage provision contained in the bill challenged in St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998) (en banc). That case was discussed in the Hospitals' Opening Brief at page 43 and ignored by the State, perhaps because the argument failed in that case. There, plaintiffs challenged the bill on the basis that the same-sex marriage provision, along with a venue provision, were added to a bill in violation of the constitutional mandates of single subject, clear title and original purpose. The State's arguments as to the constitutionality of the statute were all based on ignoring the same-sex marriage provisions. This Court

found the bill unconstitutional because the title failed to express clearly a single subject. Id. at 149.

The State's argument here would overturn this Court's long line of cases about how to analyze whether a bill is constitutional. The very essence of the constitutional analysis that this Court employs relies on an examination of the enactment of the bill in its entirety. See Missouri Health Care Association v. Attorney General, 953 S.W.2d 617, 622 (Mo. 1997) (en banc). Therefore, this Court cannot view the Hospital Lien Law amendments in isolation from the rest of the bill, but must examine H.B. 343 in its entirety. The trial court erred by failing to examine the bill in its entirety.

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

The only support the State provides for its position that the trial court can ignore provisions of a challenged bill is the statute of limitations for challenges to the enactment of a bill, Mo. Rev. Stat. § 516.500 (Cum. Supp. 2001). (LF Vol. IV 561 at ¶ 21.) The trial court, as well as the State, ignored the plain language of the statute, which sets a statute of limitations for actions alleging procedural defects in “the enactment of a bill.” Mo. Rev. Stat. § 516.500. (Appendix 1.) The State does not dispute the Hospitals' contention that 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. (Hospitals' Brief at 46.)

The State argues that it would have been inappropriate for it to raise the statute as an affirmative defense because the Hospitals did not allege that other provisions of H.B. 343 violated the Constitution or that H.B. 343 as introduced was flawed. This again is based on the inaccurate statement that the Hospitals did not allege in their Petition that other provisions of the bill violated the Constitution, which they did as discussed above and in their opening Brief at 41. Because the Hospitals pointed to these other provisions, the State at the very least had notice of them in the Petition, so the appropriate time to raise the affirmative defense of statute of limitations would have been in the State's Answer to the Petition, which it failed to do. (LF Vol. II 234-242.) Furthermore, in the Joint Stipulation of Facts, the State stipulated that H.B. 343 contained these other provisions. (LF Vol. II 246 at ¶ 16.) The alleged unconstitutionality of the enactment of H.B. 343 was raised in the Petition. At that time, the State had notice that the Hospitals were claiming that the enactment of the bill – including those provisions relating to design and construction contract causes of action, eye care provider discrimination, emergency transportation of patients, and firework sales and storage – was unconstitutional.

For these reasons, the trial court erred in examining only those provisions of H.B. 343 relating to the Hospital Lien Law amendments.

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.

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

Faced with the trial court's error of considering only one provision of H.B. 343, the State for the first time in this case attempts to reconcile the numerous unrelated subjects of H.B. 343. The State argues that H.B. 343 has a single subject because all of the amendments relate to individuals or entities licensed by the state of Missouri. (State's Brief at 18.) However, the test is not whether the amendments relate to individuals or entities who get a license from the state for one reason or another. The test is whether the amendments fairly relate to the same subject, have a natural connection with the same subject, or are incidents or

means to accomplish its purpose. See Westin Crown Plaza Hotel v. King, 664 S.W.2d 2, 6 (Mo. 1984) (en banc).

Nowhere does the State explain how the five unrelated subjects inserted into H.B. 343 have anything to do with the procedure and qualifications for licensing of professions licensed by the division of professional registration, which was the core purpose of the bill, or how they are incidents or means to accomplish that purpose. That is because they do not have any natural connection. Merely adding several classes of health care practitioners to the list of those who can use the Hospital Lien Law has nothing to do with the licensure or qualifications for professions under the division of professional registration. Likewise, none of the other unrelated amendments had any connection to that purpose. For example, a person who wants to apply for a permit from the state fire marshal to sell fireworks for the 4th of July is not a “profession” regulated by the division of professional registration. Furthermore, none of these subjects have any connection with professional licensing, nor are they incidents or means to accomplish professional licensing. The State does not even attempt to address the issue of what “professional licensing” means. The State’s theory means that anything that could possibly affect a person or entity who has a license, professional or otherwise, could be inserted into the bill.

The fallacy of the State’s argument is demonstrated by the contents of H.B. 343. The provision of H.B. 343 relating to the scope of a cause of action for payment on a design or construction contract made the following change: It added the word “design” to expand the type of work for which persons can sue for payment, in addition to construction work. Mo. Rev. Stat. § 431.180.1. (LF Vol. III 453.) It then went on to define design or construction work, which happens to include engineering and architectural work, among other things. Mo. Rev. Stat. § 431.180.4. (LF Vol. III 453.) The fact that “design work is provided by engineers and architects” (State’s Brief at 18) is too tenuous a connection to professional licensing. See Missouri Health Care Association, 953 S.W.2d at 622.

The State’s reliance on Corvera Abatement Technologies, Inc. v. Air Conservation Comm’n, 973 S.W.2d 851, 861 (Mo. 1998) (en banc), is not on point. In that case, this Court identified the subject of the bill as “environmental control,” after finding the common and ordinary meaning to be regulating the environment. Id. at 861. The three parts of the bill created an agency to prevent or minimize damage from the release of hazardous substances; regulated ownership and use of underground storage tanks, thereby protecting the environment from spills; and regulated asbestos abatement projects and provided for the regulation of the manner in which those projects are conducted. Id. at 862. Because all of those provisions regulated potential environment hazards, this Court concluded that they

fairly related to, had a natural connection with, and were a means of accomplishing environmental control. Id. at 862. In this case, the provisions of H.B. 343 do not fairly relate to, have a natural connection with, or a means of accomplishing 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 obtains a license from the state for any purpose.

The bill at issue in the other case relied upon by the State, Missouri State Medical Association v. Missouri Department of Health, 39 S.W.3d 837 (Mo. 2001) (en banc), is distinguishable from H.B. 343. In that case, the original bill was titled an act “relating to insurance coverage for cancer early detection” and it would have enacted a new section of law requiring that health insurers cover—for a minimal copayment—pelvic, prostate, and colorectal examinations, and other cancer screenings. Id. at 839. As enacted, the bill was titled an act “relating to health services.” In addition to mandating insurance coverage for cancer early detection, it required (1) confidentiality of HIV-related information, (2) insurance for mental illness and chemical dependency, (3) standard “explanation of benefits” by health insurers, (4) standard “referral” information by health insurers and providers, (5) standard (pre-operation) information on the advantages, disadvantages, and risks,

including cancer, of breast implantation, and (6) establishment of a health insurance advisory committee. Id.

This Court found that the three different subjects identified by the plaintiffs—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 and therefore the bill had one subject. Id. at 841 (emphasis added).

In this case, to the contrary, giving certain health care practitioners the right to file a lien is not a necessary incident or means to accomplish “professional licensing.” Neither are the other unrelated provisions that are raised by the Hospitals (defining the scope of a statute creating a cause of action for failure to pay on contracts for private design or construction work, strengthening a law prohibiting health carriers from discriminating between eye care providers for enrollment in the health carriers’ networks, regulating the emergency transportation of patients in vehicles other than ambulances, and making changes to laws concerning the sale and storage of fireworks). These amendments have absolutely no connection to “professional licensing.”

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

The State does not dispute that the Hospital Lien Law amendments do not in any way change the process or qualifications for getting or keeping a license for professionals. The contorted explanation offered by the State for the Hospital Lien Law amendments is that those provisions apply to health care practitioners licensed by the professional boards within the division of professional registration. The State argues that those health care practitioners are subject to discipline for submitting a fraudulent claim for payment and submitting a lien is a form of false billing. As a result, so the argument goes, the Hospital Lien Law amendments are connected with the division of professional registration because, hypothetically, a practitioner could possibly be disciplined for submitting a false lien under the Hospital Lien Law.¹ (State's Brief at 12-13.)

This convoluted explanation is the long discredited "entity theory" that the Hospitals discussed at length in their opening brief. (Hospitals' Brief at 53-57.) The State ignored this discussion and, by doing so, asks this Court to overturn its earlier precedent established in Missouri Health Care Association v. Attorney General, 953 S.W.2d 617 (Mo. 1997) (en banc). The State fails to even address

¹ A lien is not a bill. A lien is merely a method of collecting a bill. Therefore, the patient billing is when the falsity would occur.

that case.² There, this Court rejected the notion that a bill dealing with an entity can embrace anything dealing with that entity. This Court held that the contents of the bill, not the entities affected by the bill, must fairly relate to the subject expressed in the title. Id. at 623. The fact that the State can conceive of some attenuated connection to professional licensing does not mean that the bill passes constitutional muster. Based on the State's theory, the Legislature could take any bill that is pending and call it "relating to professional licensing." If this Court affirms the trial court's judgment, this Court will pave the way for the Legislature to engage in the tactics of logrolling and surreptitious amendments to bills that the constitutional limitations on a bill's enactment were designed to prevent.

For these reasons, H.B. 343 violates the single subject requirement of Article III, Section 23.

² The State also failed to distinguish Hammerschmidt, a case that is on point with this case and was discussed at length in the Hospitals' Opening Brief at 58-59.

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.

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

The State fails to address the plain and ordinary meaning of “professional licensing” as found in the title of H.B. 343, which is the standard to be applied. See Corvera Abatement Technologies, Inc., 973 S.W.2d at 861; 508 Chestnut, Inc., v. City of St. Louis, 389 S.W.2d 823, 829 & n.4 (Mo. 1965). The State ignores the case law where Missouri courts have found that “professional licensing” statutes are those that set out the process and qualifications to get and keep a license for certain learned professions. (Hospital’s Brief at 64.)

Rather, the State argues that the title “relating to professional licensing” is constitutional because all of the amendments relate to “licensing” or to people or entities licensed by the State. (State’s Brief at 18, 21.) This argument ignores the word “professional” in the title that serves as a limitation on the kind of licensing

involved. If the phrase “professional licensing” were given such a broad and generalized meaning as that proposed by the State, it would include virtually everything in any bill that has some effect upon a person who gets a license or a permit from the State. Virtually every bill passed by the Legislature has some effect on someone or something that is licensed by the State. This would render meaningless the constitutional requirement that a bill be limited to one subject. See Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 831 (Mo. 1990) (en banc) (“If multiple matters may be lumped together under excessively general headings, the single subject restriction . . . would be rendered meaningless.”) The title of H.B. 343 specifies that the contents of the act relate to the process of issuing licenses to persons in professions. The five objectionable amendments to H.B. 343 have no relation to the licensing of persons in professions.

Although it is true that the mere generality of a title does not prevent an act from being invalid, this is true only if the title does not tend to cover up or obscure legislation which is in itself incongruous and has no necessary or proper connection. St. Louis Health Care Network, 968 S.W.2d at 147. The State claims that the title of H.B. “does not hide the contents of the bill,” but it offers no explanation to support this assertion.

The State attempts to distinguish Carmack v. Director, Missouri Department of Agriculture on the basis that the decision turned on a single subject challenge rather than a title challenge. However, as the Hospitals explained in their Opening Brief, although the plaintiff in Carmack did not allege a title violation, this Court found that the title violated the Constitution because the State’s proposed definition of the bill’s title, “relating to economic development”—any activity that promotes and protects an important sector of the Missouri economy—was too broad and amorphous to describe the subject of a pending bill precisely enough to provide the proper notice of its content. Carmack, 945 S.W.2d 956, 959-960 (Mo. 1997) (en banc). Likewise here, the definition offered by the State is too broad and amorphous to describe the contents of the bill with constitutional precision.

B. H.B. 343 Violates the Clear Title Requirement Based On The Hospital Lien Law Amendments Alone.

The State cannot argue that H.B. 343’s title “relating to professional licensing” alerts the public that the bill contains a provision that adds several health care practitioners to the list of those who can use the Hospital Lien Law. Instead, the State argues that the title indicates the general contents of the bill because the Hospital Lien Law amendments involve the duties and responsibilities of medical professionals regarding their filing of liens against patients to recover payment for services rendered by those professionals. (State’s Brief at 14.) The State argues

that the title reflects the contents of the bill because the Hospital Lien Law amendments involve individuals and corporations with professional licenses that can now make claims under the Hospital Lien Law provisions and are limited like hospitals to recovery under that procedure. (State’s Brief at 17.) Even assuming such a tangential relationship exists, this does not show how the amendments relate to “professional licensing” (emphasis added). The title of the bill is not “relating to professional licensees.”³

The State ignored the similarities cited between the title of H.B. 343 and the title “certain incorporated and unincorporated entities” found unconstitutional in St. Louis Health Care Network v. State, 968 S.W.2d at 148, the textbook example of a broad and amorphous title. Instead, the State relies on the distinguishable case of Missouri State Medical Association, 39 S.W.2d 837. In that case, this Court concluded that the title “relating to health services” was not broad and amorphous because it did not describe most, if not all, legislation enacted as did the unconstitutional title of “relating to certain incorporated and non-incorporated entities” in St. Louis Health Care Network v. State, 39 S.W.3d at 841. The Court

³ The Legislature’s own staff described the bill as one that “changes regulations of cemeteries, fireworks, emergency services and professional licensees.” (Appendix A2) (found at <<http://www.senate.state.mo.us/99info/hbsumms/HB343.htm>>). The Hospital Lien Law amendments were thrown into a catch-all category at the end called “Miscellaneous.”) (Appendix A3-A4.)

concluded that the contents of the bill fell within the category of “health services.”
Id.

In this case, the contents of H.B. 343 do not in any way fall within the broad category of “professional licensing,” which under the State’s theory could describe any legislation that in any way touched on a person who is licensed in Missouri. Almost any piece of legislation could be linked to a person who has a license. The objectionable amendments have nothing to do with the procedure or qualifications for licensing of professionals. Instead, what the State is arguing, in effect, is that the Hospital Lien Law amendments are “close enough” to professional licensing to be constitutional. The dishonesty in this title, indeed the very “evil to be avoided,” see St. Louis County Water Co. v. Public Service Commission, 579 S.W.2d 633, 635 (Mo. Ct. App. 1979), is proven by the lengths to which the State must go to try to connect the Hospital Lien Law amendments, and the other amendments as well, to professional licensing. For these reasons, H.B. 343 violates the clear title requirement of 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.

It is undisputed that the original and core purpose of H.B. 343 as introduced was to change or repeal certain provisions regarding the procedure and qualifications to get or obtain a license for certain well-defined professions regulated by the division of professional registration. (LF Vol. II 244 at ¶ 7.) The State now claims that the purpose of the bill was to impose certain obligations on those who have professional licenses issued by the State, and that purpose never changed. (State's Brief at 17.) The State argues that H.B. 343 was not amended beyond that core purpose because the amendments later added to the bill involved licensing and the original bill related to licensing with the division of professional registration. (State's Brief at 23.)

First, the State's argument that the amendments to H.B. 343 all involve "licensing" is incorrect. None of the objectionable amendments, including the

Hospital Lien Law amendments, had anything to do with licensing, as has been exhaustively explained.

Second, the State never defines what it means by “professional,” nor does it dispute the definition given by the Hospitals that it means people who are in “a calling requiring specialized knowledge and often long and intensive academic preparation.” (Hospitals’ Brief at 63.)

Third, the issue is not whether the amendments made to the bill could in some way relate tangentially to the bill’s original subject, but whether they were germane to the object of the legislation such that changes made to H.B. 343 subsequent to its introduction were designed to accomplish the original purpose of the bill. See Westin, 664 S.W.2d at 6. None of the unrelated amendments to H.B. 343 in any way related to the bill’s original purpose of changing or repealing provisions regarding the procedure and qualifications for certain well-defined classes of professionals.

The State’s reliance on Stroh Brewery Co. v. State is inapplicable. Tellingly, in relying on that case, the State conveniently failed to mention the complete title of the bill. As introduced, the bill was “an act to amend chapter 311, RSMo, by adding one new section relating to the auction of vintage wine, with penalty provisions.” Stroh, 954 S.W.2d at 326. All subsequent versions of the bill amended chapter 311 of the Missouri Revised Statutes. Id. As a result, the

amendments were germane to “an act to amend chapter 311.” Id. In this case, none of the unrelated amendments to H.B. 343 amended the professional licensing statutes that were the core purpose of the original bill.

The State contends that the Legislature and the public were not surprised or misled during the adoption of H.B. 343, whose passage was “no more spectacular” than that in Stroh or Missouri State Medical Association. Those cases are distinguishable.

In Stroh, as noted above, all of the statutes that were amended by a bill titled “relating to intoxicating beverages” were in Chapter 311, Missouri’s Liquor Control Law. As this Court noted, the bill’s original title, “an act to amend chapter 311, RS Mo,” gave notice to the public that the purpose of the bill was the amendment of Missouri’s liquor control law, chapter 311. Stroh, 954 S.W.2d at 326. In the instant case, the original title of H.B. 343, “relating to the division of professional registration,” could not have given notice to the public that the bill, as passed, amended 29 chapters in the Missouri Revised Statutes as diverse as the Hospital Lien Law, which was in Chapter 430 called “Statutory Liens Against Personality—Preferred Claims,” or the expansion of a contract cause of action in Chapter 431 called “General Provisions as to Contracts.”

In Missouri State Medical Association, this Court noted that germane amendments were made to the bill as it worked its way through the Legislature, id.

at 840, unlike what happened in this case. On the question of whether the original purpose of the bill was changed as it progressed through the Legislature, this Court found that the original purpose of the bill was to mandate health services for serious illnesses, including cancer. Missouri State Med. Association, 39 S.W.3d at 840. As enacted, the bill required that physicians tell patients about the advantages, disadvantages, and risks, including cancer, of breast implantation. Id. Therefore, the original purpose logically related to mandating pre-operation information about the risks of breast implantation, including cancer. Id.

In this case, the original purpose of H.B. 343 was to change laws regarding the process and qualifications for obtaining and keeping a license for professions under the division of professional registration. As enacted, the Hospital Lien Law amendments (and the other challenged provisions) changed that original purpose because they do not in any way alter or affect the process and qualifications for obtaining and keeping a license for professions under the division of professional registration.

The Hospitals have not taken an “incongruous position” with respect to the original bill as compared to the bill with its Hospital Lien Law amendments. (State’s Brief at 13.) The original purpose of the bill was to amend laws relating to the procedure and qualifications for obtaining and keeping a license for certain well-defined professions. The Hospital Lien Law amendments changed that

purpose. Furthermore, the fact that the original provisions of H.B. 343 remained in the bill as enacted does not, in and of itself, give the Legislature permission to add numerous unrelated subjects to a bill to change its original purpose to avoid an Missouri Constitution, Article III, Section 21, challenge. See Missouri State Medical Ass'n, 39 S.W.3d at 840 (noting that the content of an introduced bill that remains substantially intact will usually survive a purpose challenge if *germane* amendments are added). The appropriate inquiry in a Section 21 challenge is whether amendments during a bill's passage changed the bill's original purpose. Allied Mut. Insur. Co. v. Bell, 185 S.W.2d 4, 6, 8 (Mo. 1945). This Court must examine the effect of the bill as it was introduced in order to determine the bill's original purpose. Allied, 185 S.W.2d at 6. In this case, the only effect of H.B. 343, had it been passed as originally introduced, would have been to repeal or amend laws relating to the procedures and qualifications for licensing of certain well-defined professions regulated by the division of professional registration. The Hospital Lien Law amendments, as well as the other objectionable amendments, changed the original purpose of the bill, thereby violating Article III, Section 21.

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 6,301 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' Reply 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 Federal Express overnight delivery to said attorney, on the _____ day of November, 2001.

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