



Remarks of Senator Mark Norris on SB 1522 Pursuant to Rule 61

On May 12, on the floor of the Tennessee Senate, the Civil Justice Act of 2011 was debated for more than four hours making it the longest debate of a single bill in Tennessee history. What follows is the concluding “explanation of vote” filed by the prime sponsor, Senate Majority Leader Mark Norris, under Senate Rules after the debate summarizing his position on behalf of Governor Haslam.

Today, we take the next step along the continuum of tort reform which began more than 30 years ago continuing through the medical liability reforms implemented in October 2008. Previously, we focused on access to affordable health care and which changes could lower hidden costs, to eliminate the hidden tax imposed on all Tennesseans by increasing costs and the judicial process itself.

The Civil Justice Act of 2011 opens a new chapter on the continuum of reform. Economic development is no longer only a local or regional concern. The competition is global so it is important to be competitive with all 50 states, 30 of which have adopted caps to some degree. And though the Act includes caps on some damages, the Act is about much more. We believe it is about cost-effective access to justice in a rapidly changing world where the uncertainties of life command that we quantify risk in such a way as to strengthen the judicial system and our state as a whole. We do not legislate by anecdote, nor should we litigate by ambush. Robert Frost said, “A jury consists of 12 persons chosen to decide who has the better lawyer.” We do not wish to see the legal profession held in such low esteem.

Thus, one of the objectives of the Tennessee Civil Justice Act of 2011 is to make Tennessee more competitive with other states for the best jobs by providing predictability, to, and quantifying the risks of, employers, while also providing adequate compensation to injured plaintiffs. As of February 2011, Tennessee’s unemployment rate was 9.6%, the same that it was two years ago despite the Federal Government’s attempt to create jobs with approximately \$800 million in stimulus funds.ⁱ The unemployment rates of various Tennessee counties underscore the dire employment situation: Scott County – 23.2%; Pickett County – 18.5%; Marshall County – 16%; Cocke County – 15.9%; Lauderdale County – 15.8%; Lewis County – 15.5%; Johnson County – 15.2%; Perry County – 15%; Haywood County – 15%; Henderson County 15%.ⁱⁱ In fact, unemployment is greater than 10% in 75 of Tennessee’s 95 counties.ⁱⁱⁱ When the Goodyear plant closes, Lake and Obion counties will lose over 1900 additional jobs.

The costs of an excessive, expensive and inefficient tort liability system extend beyond just employment. Tennessee citizens shoulder the burden through higher prices, lower wages, decreased returns on investments in capital and land, restricted access to health care, high insurance premiums, and less innovation.

The legislature recognizes that it can enact measures to foster an environment that encourages existing employers to expand, attracts other employers to relocate in Tennessee, and ultimately results in the hiring of Tennessee citizens as employees. When executive relocation teams consider expansion and relocation, they weigh a number of factors. A key factor in this consideration is litigation risk and tort liability. Many of Tennessee’s neighboring states have already enacted tort reform legislation. Without the measures introduced by the Tennessee Civil Justice Act of 2011, Tennessee is in a precarious position in competing for businesses.

Tennessee has recently fallen in the rankings of several studies of tort liability. In 2006, Tennessee was considered to have one of the best litigation environments, and by 2010 it dropped to 22nd.^{iv} This drop was due largely to the fact that other states have been more proactive in adopting tort reform. Tennessee is ranked 31st in absolute monetary losses, 37th in medical malpractice losses and 49th in farm-owners’ losses.^v The American Medical Association’s State of Liability report ranks Tennessee among 17 states labeled “crisis states” because of its poor liability standing compared to other states.^{vi} Between Fiscal Years (FY) 2004-2005 and 2009-2010, the number of cases disposed in Tennessee decreased by almost 2000 cases.^{vii} Despite this, the total monetary damages for the same period increased.^{viii} During FY 2009-2010, Tennessee juries awarded a total of approximately \$92 million in civil damages, which marked a 119% increase from FY 2004-2005.^{ix} The average award in personal injury cases increased 35% in 2010 alone.^x

Achieving the objective of making Tennessee more competitive with neighboring states for the best jobs requires a balancing of many interests. Based upon documentary evidence, testimony received at legislative hearings, and other relevant information, the Senate finds that a limitation on the amount of noneconomic damages and punitive damages recoverable by an injured plaintiff, while compensating injured plaintiffs by the availability of unlimited economic damages, ensures that this objective is achieved. Establishing a limitation on noneconomic and punitive damage awards accomplishes the objective by doing all of the following:

1. Attracting new employers and encouraging existing employers to expand and put their capital at risk, which is accomplished by quantifying risk and creating a more predictable business environment. In the construction industry alone, the potential multiplier effects of the reforms made by the Tennessee Civil Justice Act of 2011 are astounding. “Tort Reform Means More Jobs: The Multiplier Effect in the Construction Industry” (based on a \$10 million investment by a new or existing business in Tennessee).
2. Limiting the disincentives of doing business in Tennessee, such as unpredictable or large noneconomic damage awards and the high costs of insurance premiums.
3. Promoting product innovation and availability and fostering entrepreneurship.
4. Reducing the litigation costs for Tennessee employers so that capital may be spent elsewhere by facilitating appeals, narrowing the application of the Tennessee Consumer Protection Act, and protecting innocent sellers.
5. Reducing the barriers to recruiting high quality physicians to Tennessee by expanding the scope of entities covered by 2008 medical malpractice reforms and providing predictability of damage awards.

The Senate further finds that the limitation of \$750,000, or \$1,000,000 in the instances of catastrophic loss or injury, represents an appropriate balance between providing reasonable compensation for noneconomic damages and creating an attractive environment for employers to relocate or expand. Based on studies, documentary evidence, testimony, and the

experience of other states, the legislature concludes that there is a dollar figure so low as to deprive the injured plaintiff of reasonable noneconomic damages, and there is a dollar figure at which the cap number is so high that it fails to accomplish the goal of making Tennessee more competitive with other states for the best jobs. We conclude that the number chosen is neither too high nor too low to accomplish the goal of attracting the best jobs to Tennessee, is a reasonable and rational response to the current unemployment situation, and is reasonably and rationally supported by the legislative record.

In closing, only time will tell whether we strike the right balance by this Act; how well we balance the demands of competition with the state’s historic compulsion for compassion. History will be our judge.

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- 1 Employment Security Division, Research and Statistics, Tennessee Department of Labor and Workforce Development, *Labor Force Estimates – United States & Tennessee*, January, 2011
 - 2 *Id.*
 - 3 *Id.*
 - 4 The Perryman Group, *The Potential Impact of the Proposed Comprehensive Tort Reform Legislation on Business Activity in Tennessee*, 14 (March 2011) (citing Pacific Research Institute, *U.S. Tort Liability Index: 2006 Report*, (May 2006); Pacific Research Institute, *U.S. Tort Liability Index: 2010 Report*, (June 2010))
 - 5 *Id.* at 14 (citing Pacific Research Institute, *U.S. Tort Liability Index: 2010 Report*, (June 2010)).
 - 6 *Id.* at 17 (citing State of Liability, *American Medical News*, American Medical Association, March 5, 2007).
 - 7 *Id.* at 17 (citing Damages and Torts Cases: Fiscal Year 2009-2010 Annual Report of the Tennessee Judiciary).
 - 8 *Id.*
 - 9 *Id.*
 - 10 Tennessee Administrative Office of the Courts, *Annual Report of the Tennessee Judiciary Fiscal Years 2009-2010* (2010).
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The Memphis Medical Society

QUARTERLY

Volume 14, Number 3

Fall 2011

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