

## **Tort Reform Advances In Tennessee**

June 27, 2011 by [Sean Wajert](#)

Readers know that tort reform is an important issue we have posted on before, at the [federal](#) and [state](#) level. Latest update: Tennessee recently enacted reform legislation that will, among other things, limit the amount of non-economic damages that plaintiffs can recover in civil lawsuits.

Specifically, the [Tennessee Civil Justice Act of 2011](#) was signed into law by Gov. Bill Haslam earlier this month.

The new law limits venue to the county where the events constituting the cause of action occurred, where the business has its principal office, or where its registered agent of record is located.

Prior law included punitive damages in calculating the bond amount, set a maximum appeal bond at \$75 million, and did not address the possibility that obtaining the bond could render an appellant bankrupt or insolvent. The amended law facilitates the appeal of a trial court verdict by lowering the maximum amount of a bond from \$75 million to the greater of (i) \$25 million or (ii) 125% of the judgment amount. In determining the bond amount, the court will now not consider or include punitive damages, unless there is evidence of the appellee dissipating assets. The law also gives the court discretion to take other actions or set other terms, if obtaining the bond would render the appellant insolvent or bankrupt.

Prior state law had no cap on non-economic damages. The new law places a cap of \$750,000 on the non-economic damages incurred by an injured plaintiff, damages like pain and suffering. A few exceptions are provided, such as no cap in intentional torts, or when the defendant was under the influence of alcohol or illegal drugs and his or her judgment was substantially impaired, or when a defendant intentionally falsified, destroyed or concealed records to avoid liability.

Prior state law did not have caps on punitive damages. Under the new act, punitive damages must be proven by clear and convincing evidence and are capped at 2x compensatory damages or \$500,000, whichever is greater. There are limited instances when the defendant's liability is not limited by the caps: (i) if the defendant intended to injure the plaintiff, (ii) if the defendant was under the influence of alcohol or illegal drugs and his or her judgment was substantially impaired, and (iii) if the defendant intentionally falsified, destroyed or concealed records to avoid liability. Moreover, no punitive damages may be assessed against the manufacturer of a drug or device who was in compliance with applicable laws and regulations, unless the manufacturer withheld material information from regulators or misrepresented that information to the regulators.

The new law provides additional protections for non-manufacturer product sellers. No product liability action may be commenced or maintained against any seller, other than the

manufacturer, unless the seller exercised substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the alleged harm for which recovery of damages is sought, or the seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought; or the seller gave an express warranty which was breached.

Also, the seller of a product other than the manufacturer would not be liable for punitive damages, unless the seller exercised substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the harm for which recovery of damages is sought; the seller altered or modified the product and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought; or the seller had actual knowledge of the defective condition of the product at the time he supplied the same.

Under the new Act, the state court of appeals would hear appeals from orders of trial courts granting or denying class action certification if a notice of appeal is filed within 10 days after entry of the order. All proceedings in the trial court would be automatically stayed pending the appeal of the class certification ruling.