

Bill Summary of the Tennessee Civil Justice Act of 2011 (SB 1522/HB 2008)

Section 1 - Title. Provides for a short title of the bill as the “Tennessee Civil Justice Act of 2011”

Section 2 - Venue. Sets forth the venue to bring civil actions against a corporation. The section requires claims for all civil actions against a corporation or other business entity to be brought in either 1) the county where the plaintiff resides, 2) the county where all or a substantial part of the events occurred or 3) the county where the defendant’s principal office is located. Out of state defendants can be sued in the county where the defendant’s agent for service of process is located.

Section 3 - Appeal Bond. Lowers the maximum appeal bond in a civil action from \$75 million to \$25 million. Provides an additional limitation that the total amount of the required bond should not exceed 125 percent of the judgment amount, excluding punitive or exemplary damages. An appeal bond is a guarantee of payment of the original judgment. When a judgment is appealed, a bond is usually required to guarantee that if the appeal is unsuccessful, funds are available to pay the original judgment. The intent is to discourage appeals that are for frivolous reasons or merely to stall for time.

Section 4 – Health Care Liability Action Damages. Provides that in any health care liability action the damages awarded may include actual economic losses. Actual economic damages can include but are not limited to the costs of reasonable and necessary medical care, rehabilitation services and custodial care, loss of services and loss of earned income. Charges that are discounted or waived by a provider or insurer are not recoverable damages; only the actual amount paid is included.

Section 5 –Definitions - Health Care Provider & Health Care Liability Action.

- Defines health care provider to include a health care practitioner, health care facility, mental health centers, any employee of a health care provider, and a professional corporation (PC) or limited liability company (LLC).
- Defines a health care liability action as a claim against a health care provider alleging an injury related to the provision or failure to provide health care services. Health care services include not only care by physicians and nurses but also other agents, employees and representatives of the provider.

Section 6 – Damages Definitions and Limits. Creates a new section defining certain types of damages.

- Noneconomic damages are defined as losses from physical and emotional pain, suffering, inconvenience, physical impairment, loss of companionship, loss of enjoyment of life, etc.
- Economic damages are defined as verifiable pecuniary damages arising from medical expenses, loss of earnings and earning capacity, burial costs, losses related to damages to property, etc.
- Limits noneconomic damages to \$750,000 per occurrence in health care liability actions. Limits noneconomic damages in other actions to \$750,000 per plaintiff.
- Provides for the awarding of punitive damages but only if it is proved by clear and convincing evidence that the defendant acted maliciously, intentionally, fraudulently or recklessly. Punitive damages are limited to the greater of two times the total amount of compensatory damages or \$500,000. Limits on punitive damages do not apply if the defendant was convicted of a felony which caused the injury or under the influence of alcohol or drugs.
- Provides that the seller of a product other than the manufacturer is not liable for punitive damages unless the seller exercised substantial control over the design, testing, manufacturing and packaging of the product or altered or modified the product. The seller or manufacturer is not liable for punitive damages if the

product was designed, manufactured and sold in accordance with the terms of approval or licensure of any government agency or federal law.

- Punitive damages may not be awarded in a civil action involving a drug or device if the drug or device was manufactured and labeled in accordance with the provisions of the FDA or was an over-the-counter drug or device that was generally recognized as safe and effective.

Section 7 – Compliance Defense from Punitive Damages. Provides a safe harbor for manufacturers or sellers from punitive damages if it is demonstrated that the product was in substantial compliance with applicable federal and state regulations at the time of the alleged wrongdoing. Punitive damages may be awarded if the manufacturer withheld relevant information.

Section 8 – Limits on Product Liability Actions. Provides that any product liability action must be brought against the manufacturer not the seller unless the seller exercised substantial control over the design, testing, manufacturing or packaging of the product, altered or modified the product, gave an express warranty, or the manufacturer is not subject to service of process in Tennessee or the manufacturer is insolvent.

Section 9 - Class Action Improvements Act of 2011. In class action cases, if the granting of class certification is appealed, an automatic stop of the trial proceedings (including motions and discovery) will occur while there is an appeal. The court of appeals also will hear appeals on the granting or denying of a class action certification if the appeal is filed within 10 days.

Section 10 – No Securities Actions under TCPA. Excludes securities from the definition of “goods” under the Consumer Protection Act.

Section 11– No Securities Actions under TCPA. Excludes “the marketing or sale of securities” from the definition of “services” under the Consumer Protection Act.

Section 12 - TCPA – Going out of Business Sales. Transfers the power to enforce to the state attorney general the provision prohibiting a business from advertising a going out of business sale greater than 90 days before it closes.

Section 13- TCPA – Damages. Provides that if a court finds a deceptive or unfair practice was a violation of the consumer protection act and awards three times actual damages the court cannot also award exemplary or punitive damages for the same unfair or deceptive practice.

Section 14- TCPA – Going out of Business Sales. Provides that notice of appeal must be sent to the Attorney General.

Section 15. TCPA – No Class Actions. Provides that no class action lawsuit may be brought under the Consumer Protection Act.

Section 16. No Securities Actions under TCPA. Exempts the marketing and sale of securities from the Consumer Protection Act.

Section 17. Severability clause.

Section 18. Effective date of July 1, 2011. Applies to any action filed on or after the effective date.