

SENATE BILL 250

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 20;
Title 22; Title 29 and Title 63, relative to tort
reform.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 20-4-101(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) In all civil actions of a transitory nature, unless venue is otherwise expressly provided for, the action may be brought in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred or in the county where the defendant resides or is found, or if a corporation, in the county of its principle place of business.

SECTION 2. Tennessee Code Annotated, Section 20-4-101(b), is amended by deleting the language “the cause of action arose” and substituting instead the language “a substantial event that caused the injury occurred.”

SECTION 3. Tennessee Code Annotated, Section 20-4-101(b), is amended by deleting the language “of their residence” and substituting instead the language “where the defendant or plaintiff resides or is found, or if a corporation, in the county of its principle place of business”.

SECTION 4. Tennessee Code Annotated, Section 20-4-101(c), is amended by deleting the language “Where the action is brought either in the county where the cause of action arose or in the county where the defendant resides,” and substituting instead the language “Where the action is brought either in the county where a substantial event that caused the injury occurred or where the defendant resides, or if a corporation, in the county of its principle place of business.”

SECTION 5. Tennessee Code Annotated, Section 20-4-104, is amended by deleting the language “corporation,”.

SECTION 6. Tennessee Code Annotated, Title 20, Chapter 4, Part 1, is amended by adding the following new sections thereto:

20-4-108.

In a civil action where more than one (1) plaintiff is joined, each plaintiff shall independently establish proper venue; it is not sufficient that venue is proper for any other plaintiff joined in the civil action.

20-4-109.

(a) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties and witnesses, a claim or action would be properly heard in a forum outside this state or in a different county of proper venue within this state, the court shall decline to adjudicate the matter under the doctrine of forum non conveniens. As to a claim or action that would be more properly heard in a forum outside this state, the court shall dismiss the claim or action. As to a claim or action that would be more properly heard in a different county of proper venue within this state, the venue shall be transferred to the appropriate county. In determining whether to grant a motion to dismiss an action or to transfer venue under the doctrine of forum non conveniens, the court shall give consideration to § 20-15-104, if applicable, and to the following factors:

- (1) Relative ease of access to sources of proof;
- (2) Availability and cost of compulsory process for attendance of unwilling witnesses;
- (3) Possibility of viewing of the premises, if viewing would be appropriate to the action;
- (4) Unnecessary expense or trouble to the defendant not necessary to the plaintiff's own right to pursue his remedy;

- (5) Administrative difficulties for the forum courts;
- (6) Existence of local interests in deciding the case at home; and
- (7) The traditional deference given to a plaintiff's choice of forum.

(b) A court may not dismiss a claim under this section until the defendant files with the court or with the clerk of the court a written stipulation that, with respect to a new action on the claim commenced by the plaintiff, all the defendants waive the right to assert a statute of limitations defense in all other states of the United States in which the claim was not barred by limitations at the time the claim was filed in this state as necessary to effect a tolling of the limitations periods in those states beginning on the date the claim was filed in this state and ending on the date the claim is dismissed.

SECTION 7. Tennessee Code Annotated, Section 22-4-106, is amended by adding the following new subsection (e) and redesignating existing subsections accordingly:

(e)

(1) It is an offense for any employer or any other person to persuade or attempt to persuade any juror to avoid jury service or to intimidate or to threaten any juror to avoid jury service.

(2) It is an offense for an employer to require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or time spent actually serving on a jury. Nothing in this subdivision (e)(2) shall be construed to require an employer to provide annual, vacation or sick leave to employees who otherwise are not entitled to such benefits.

SECTION 8. Tennessee Code Annotated, Title 29, Chapter 11, Part 1, is amended by deleting the part in its entirety and substituting instead the following:

29-11-101.

(a) As used in this section, "fault" means an act or omission of a person which is a proximate cause of injury or death to another person or persons; damages to property, tangible or intangible; or economic injury; including, but not limited to, negligence, malpractice, strict liability, absolute liability or failure to warn. "Fault" does not include any tort that results from an act or omission committed with a specific wrongful intent.

(b) Except as otherwise provided in subsection (c), in any civil action based on fault, the liability for damages caused by two (2) or more persons shall be several only, and not joint and several, and a joint tort-feasor shall be liable only for the amount of damages allocated to such tort-feasor in direct proportion to the tort-feasor's percentage of fault. In assessing percentages of fault, an employer and the employer's employee or a principal and the principal's agent shall be considered as one (1) defendant when the liability of such employer or principal has been caused by the wrongful or negligent act or omission of the employee or agent.

(c) Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it. Any person held jointly and severally liable under this section shall have a right of contribution from his fellow defendants acting in concert.

(d) In actions involving joint tort-feasors, the trier of fact shall determine the percentage of fault for each party alleged to be at fault without regard to whether the joint tort-feasor is immune from damages. Fault allocated under this subsection (d) to an immune tort-feasor or a tort-feasor whose liability is limited by law shall not be reallocated to any other tort-feasor.

29-11-102.

Nothing in this part shall be construed to create a cause of action. Nothing in this section shall be construed, in any way, to alter the immunity of any person that exists under current law.

SECTION 9. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following new sections thereto:

29-26-123.

Notwithstanding any other law to the contrary, malpractice action shall be brought only in the county in which the alleged act or omission occurred.

29-26-124.

(a) For purposes of this section, "noneconomic damages" means subjective, nonpecuniary damages arising from death, pain, suffering, inconvenience, mental anguish, worry, emotional distress, loss of society and companionship, loss of consortium, bystander injury, physical impairment, disfigurement, injury to reputation, humiliation, embarrassment, loss of the enjoyment of life, hedonic damages, other nonpecuniary damages, and any other theory of damages such as fear of loss, illness or injury. "Noneconomic damages" does not include punitive or exemplary damages.

(b) In any malpractice action filed on or after July 1, 2011, in the event the trier of fact finds the defendant liable, the trier of fact shall not award the plaintiff more than five hundred thousand dollars (\$500,000) for noneconomic damages.

(c) The trier of fact shall not be advised of the limitations imposed by this section and the judge shall appropriately reduce any award of noneconomic damages that exceeds the limitation set out in subsection (b).

SECTION 10. Tennessee Code Annotated, Section 29-28-105, is amended by deleting the section in its entirety and substituting instead the following:

29-28-105.

(a) This section shall apply to any action for damages caused by a product except for commercial damage to the product itself.

(b) The manufacturer or seller of the product shall not be liable if the claimant does not prove by a preponderance of the evidence that at the time the product left the control of the manufacturer or seller:

(1) The product was defective because it deviated in a material way from the manufacturer's specifications or from otherwise identical units manufactured to the same manufacturing specifications;

(2) The product was defective because it failed to contain adequate warnings or instructions;

(3) The product was designed in a defective manner; or

(4) The product breached an express warranty or failed to conform to other express factual representations upon which the claimant justifiably relied in electing to use the product.

(c) In addition to the proof required pursuant to subsection (b), the manufacturer or seller of the product shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer or seller:

(1) The defective condition rendered the product unreasonably dangerous to the user or consumer; and

(2) The defective and unreasonably dangerous condition of the product proximately caused the damages for which recovery is sought.

(d) A product is not defective in design or formulation or unreasonably dangerous if the harm for which the claimant seeks to recover compensatory damages was caused by an inherent characteristic of the product that is a generic aspect of the

product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

(e)

(1) In any action alleging that a product is defective because it failed to contain adequate warnings or instructions pursuant to subdivision (b)(2) or is unreasonably dangerous, the manufacturer or seller shall not be liable if the claimant does not prove by a preponderance of the evidence that at the time the product left the control of the manufacturer or seller, the manufacturer or seller knew, or in light of reasonably available knowledge should have known, about the danger that caused the damage for which recovery is sought and that the ordinary user or consumer would not realize its dangerous condition.

(2) An adequate product warning or instruction is one that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger and that communicates sufficient information on the dangers and safe use of the product, taking into account the characteristics of, and the ordinary knowledge common to an ordinary consumer who purchases the product; or in the case of a prescription drug, medical device or other product that is intended to be used only under the supervision of a physician or other licensed professional person, taking into account the characteristics of, and the ordinary knowledge common to, a physician or other licensed professional who prescribes the drug, device or other product.

(f) In any action alleging that a product is defective pursuant to subsection (b) or is unreasonably dangerous, the manufacturer or seller shall not be liable if the claimant:

(1) Had knowledge of a condition of the product that was inconsistent with the claimant's safety;

(2) Appreciated the danger in the condition; and

(3) Deliberately and voluntarily chose to expose the claimant to the danger in such a manner to register assent to the continuance of the dangerous condition.

(g) In any action alleging that a product is defective pursuant to subdivision (b)(2) or is unreasonably dangerous, the manufacturer or seller shall not be liable if the danger posed by the product is known or is open and obvious to the user or consumer of the product, or should have been known or open and obvious to the user or consumer of the product, taking into account the characteristics of, and the ordinary knowledge common to, the persons who ordinarily use or consume the product.

(h) In any action alleging that a product is defective because of its design pursuant to subdivision (b)(3) or is unreasonably dangerous, the manufacturer or product seller shall not be liable if the claimant does not prove by a preponderance of the evidence that at the time the product left the control of the manufacturer or seller:

(1) The manufacturer or seller knew, or in light of reasonably available knowledge or in the exercise of reasonable care should have known, about the danger that caused the damage for which recovery is sought; and

(2) The product failed to function as expected and there existed a feasible design alternative that would have, within a reasonable probability, prevented the harm. A feasible design alternative is a design that would, within a reasonable probability, have prevented the harm without impairing the utility, usefulness, practicality or desirability of the product to users or consumers.

(i)

(1) The manufacturer of a product who is found liable for a defective product pursuant to subsection (b) shall indemnify a product seller for the costs of litigation, any reasonable expenses, reasonable attorney's fees and any damages awarded by the trier of fact, unless the seller:

(A) 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;

(B) 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;

(C) Had actual knowledge of the defective condition of the product at the time he supplied the product; or

(D) Made an express factual representation about the aspect of the product which caused the harm for which recovery of damages is sought.

(2) This subsection (i) shall not apply unless the seller has given prompt notice of the suit to the manufacturer within ninety (90) days of the service of the complaint against the seller.

(j)

(1) In any action alleging that a product is defective pursuant to subsection (b) or is unreasonably dangerous, the seller of a product, other than the manufacturer, shall not be liable unless the seller:

(A) 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;

(B) 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

(C) Had actual or constructive knowledge of the defective condition of the product at the time he supplied the product.

(2) It is the intent of this section to immunize innocent sellers who are not actively negligent, but instead are mere conduits of a product.

(k) Nothing in this section shall be construed to eliminate any common law defense to an action for damages caused by a product.

SECTION 11. Tennessee Code Annotated, Title 29, Chapter 34, Part 2, is amended by adding the following new section thereto:

29-34-208.

(a) For purposes of this section, "noneconomic damages" means subjective, nonpecuniary damages arising from death, pain, suffering, inconvenience, mental anguish, worry, emotional distress, loss of society and companionship, loss of consortium, bystander injury, physical impairment, disfigurement, injury to reputation, humiliation, embarrassment, loss of the enjoyment of life, hedonic damages, other nonpecuniary damages, and any other theory of damages such as fear of loss, illness or injury. "Noneconomic damages" does not include punitive or exemplary damages.

(b) Except as provided in § 29-26-124, in any civil action filed on or after July 1, 2011, in the event the trier of fact finds the defendant liable, the trier of fact shall not award the plaintiff more than one million dollars (\$1,000,000) for noneconomic damages.

(c) The trier of fact shall not be advised of the limitations imposed by this section and the judge shall appropriately reduce any award of noneconomic damages that exceeds the limitation set out in subsection (b).

29-34-209.

No owner, occupant, lessee or managing agent of property shall be liable for the death or injury of an independent contractor or the independent contractor's employees resulting from dangers of which the independent contractor knew or reasonably should have known.

SECTION 12. Tennessee Code Annotated, Title 29, is amended by adding the following as a new chapter 39 thereto:

29-39-101.

(a) In any action in which punitive damages are sought, punitive damages may not be awarded if the claimant does not prove by clear and convincing evidence that the defendant against whom punitive damages are sought acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud.

(b) In any action in which punitive damages are sought, the trier of fact shall first determine whether compensatory damages are to be awarded, and in what amount, before addressing any issues related to punitive damages.

(c) If, but only if, an award of compensatory damages has been made against a party, the court shall promptly commence an evidentiary hearing to determine whether punitive damages may be considered by the same trier of fact.

(d) In any action in which punitive damages are sought, the court shall determine whether the issue of punitive damages may be submitted to the trier of fact; and, if so, the trier of fact shall determine whether to award punitive damages and in what amount.

(e) In all cases involving an award of punitive damages, the fact finder, in determining the amount of punitive damages, shall consider, to the extent relevant, the following:

(1) The defendant's financial condition and net worth;

(2) The nature and reprehensibility of the defendant's wrongdoing, for example, the impact of the defendant's conduct on the plaintiff, or the relationship of the defendant to the plaintiff;

(3) The defendant's awareness of the amount of harm being caused and the defendant's motivation in causing such harm;

(4) The duration of the defendant's misconduct and whether the defendant attempted to conceal such misconduct; and

(5) Any other circumstances shown by the evidence that bear on determining a proper amount of punitive damages.

(f) The trier of fact shall be instructed that the primary purpose of punitive damages is to punish the wrongdoer and to deter similar misconduct in the future by the defendant and others while the purpose of compensatory damages is to make the plaintiff whole.

(g)

(1) Before entering judgment for an award of punitive damages the trial court shall ascertain that the award is reasonable in its amount and rationally related to the purpose to punish what occurred giving rise to the award and to deter its repetition by the defendant and others.

(2) In determining whether the award is excessive, the court shall take into consideration the following factors:

(A) Whether there is a reasonable relationship between the punitive damage award and the harm likely to result from the defendant's conduct as well as the harm that actually occurred;

(B) The degree of reprehensibility of the defendant's conduct, the duration of that conduct, the defendant's awareness, any concealment, and the existence and frequency of similar past conduct;

(C) The financial condition and net worth of the defendant; and

(D) The imposition of criminal sanctions on the defendant for its conduct and the existence of other civil awards against the defendant for the same conduct.

29-39-102.

The seller of a product other than the manufacturer shall 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 the supplier supplied the product.

29-39-103.

(a) In any civil action where an entitlement to punitive damages has been established under applicable laws, no award of punitive damages shall exceed the following:

(1) Twenty million dollars (\$20,000,000) for a defendant with a net worth of more than one billion dollars (\$1,000,000,000);

(2) Fifteen million dollars (\$15,000,000) for a defendant with a net worth of more than seven hundred fifty million dollars (\$750,000,000) but not more than one billion dollars (\$1,000,000,000);

(3) Five million dollars (\$5,000,000) for a defendant with a net worth of more than five hundred million dollars (\$500,000,000) but not more than seven hundred fifty million dollars (\$750,000,000);

(4) Three million seven hundred fifty thousand dollars (\$3,750,000) for a defendant with a net worth of more than one hundred million dollars (\$100,000,000) but not more than five hundred million dollars (\$500,000,000);

(5) Two million five hundred thousand dollars (\$2,500,000) for a defendant with a net worth of more than fifty million dollars (\$50,000,000) but not more than one hundred million dollars (\$100,000,000); or

(6) Two percent (2%) of the defendant's net worth for a defendant with a net worth of fifty million dollars (\$50,000,000) or less.

(b) For purposes of subsection (a), net worth shall be determined in accordance with generally accepted accounting principles.

(c) The limitation on the amount of punitive damages imposed by this section shall not be disclosed to the trier of fact, but shall be applied by the court to any punitive damages verdict.

(d) The limitation on the amount of punitive damages imposed by this section shall not apply to actions brought for damages or an injury resulting from an act or failure to act by the defendant:

(1) If the defendant was convicted of a felony under the laws of this state or under federal law which caused the damages or injury; or

(2) While the defendant was under the influence of alcohol or under the influence of drugs other than lawfully prescribed drugs administered in accordance with a prescription.

(e) Nothing in this section shall be construed as creating a right to an award of punitive damages or to limit the duty of the court, or the appellate courts, to scrutinize all punitive damage awards, to ensure that all punitive damage awards comply with applicable procedural, evidentiary and constitutional requirements; and to order remittitur where appropriate.

SECTION 13. Tennessee Code Annotated, Section 63-6-214, is amended by adding the following new subsection thereto:

(o) Any patient or the representative of the patient who has both filed a complaint with the board and suffered harm that is alleged in the complaint shall have the right, subject to reasonable restrictions imposed by the board, to attend any proceedings that determine substantive rights of a licensee conducted by the board for disciplinary purposes regarding the licensee as to that patient's treatment. Notice shall be provided to the patient or the patient's representative at the same time and in the same manner as the notice is made to the licensee. Whether a patient has suffered harm shall be decided by the board.

SECTION 14. In any medical malpractice action with multiple defendants, the medical privilege shall be considered waived by and between all defendants.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect January 1, 2012, the public welfare requiring it.