

Comprehensive Civil Justice Reforms

Issue

West Virginia has made progress in recent years in adopting civil justice reforms. Since 2005, Governor Manchin and lawmakers have passed several meaningful reform bills, including eliminating third-party suits against insurance companies, clarifying grounds for a deliberate intent suit, and most recently placing a cap on appeals bond amounts.

However, additional reforms still must be passed to bring West Virginia into step with the rest of the nation. These include modifying collateral source restrictions, limiting punitive damages, and placing higher limitations on joint and several liability.

West Virginia's system of largely uncontrolled lawsuits and a small cadre of activist judges have hindered business investment opportunities and has hurt employers in their ability to conduct business, employ people and grow in our state. Without enactment of additional meaningful civil justice – or “tort” – reforms, West Virginia will be at a continued disadvantage in the ability to promote itself as being truly “open for business.”

Background

West Virginia has an unflattering reputation outside of West Virginia when it comes to the state's civil justice and lawsuit environment. West Virginia is one of a small number of states that has not responded fully to this issue by enacting comprehensive civil justice reforms that give injured parties legitimate access to the courts while curbing unnecessarily high costs on employers. The current environment in West Virginia continues to have a negative effect on our employers' ability to maintain and create jobs in a competitive environment.

Moreover, an in-state study indicates just how problematic the situation has become. “The empirical evidence is overwhelming that West Virginia's civil justice system results in significant negative impacts on the economic health of the state,” according to a Civil Justice Committee Report of the Defense Trial Counsel of West Virginia. “While the studies reviewed acknowledged that civil justice is not the most significant factor affecting the continuous economic problems faced by West Virginia, it is clear that West Virginia's civil justice [system] is a consistent drag on economic growth and is a factor contributing to economic woes.”

West Virginia's litigious environment has weakened the state's economic base and continues to undermine its business climate. This situation has caused employers to examine how West Virginia's costly civil justice system affects their ability to do business, employ people and grow in our state.

As employers determine that the risks and costs of actual and potential liability litigation are greater in West Virginia than in other states, they still are deciding that doing business in West Virginia is not worth the costs, lawsuits and hassles that result. Without enactment of comprehensive civil justice – or “tort” – reforms, West Virginia will stay an increasingly more unattractive place to invest and do business.

The Chamber's Position

Provided are the components necessary to enact additional civil justice reforms that will eliminate risks and impediments on West Virginia employers and revitalize the state so it truly can be "open for business."

- 📖 **Comparative fault** – Enact additional legislation that would require a person or entity to be held liable only for his or her degree of fault as determined by a jury.
- 📖 **Collateral source** – Allow courts to consider amounts that plaintiffs have received as compensation from other, non-family sources to cover costs in determining damages. When juries are trying to determine how much economic loss a plaintiff has suffered for compensation, they should consider all sources, which offset that economic loss in determining a just verdict and avoid unfair double-dipping by jury award winners.
- 📖 **Punitive damage distribution and caps** – Punitive damages are designed to punish those who are found liable for wrong-doing. Many states have limited these damages or have redirected their use for a public benefit instead of an additional reward for plaintiffs.
- 📖 **Other non-economic damages** – Establish a uniform standard for non-economic awards, taking into consideration whether the claim causing situations caused severe physical injury. If so, the maximum should bear some relationship to a standard formula beyond just compensation for damages determined by the verdict.
- 📖 **Statute of repose** – Define the period of liability for an unaltered produced product to be eighteen years.
- 📖 **Medical monitoring** — In 1999, the West Virginia Supreme Court established a new cause of action, which allows an individual who has been exposed to a proven hazardous substance to recover damages for future medical monitoring when the individual has no physical injuries. This new cause of action exposes many of West Virginia's businesses to potential liability even though there is no actual injury associated with the exposure. The Legislature should enact legislation to correct the Court's decision.

Obviously, other proposals have been employed in many other states. This list of recommended provisions is not offered as a suggestion that these, and only these, will work. Rather, this list contains concepts that have been enacted in many states and that would have a significant impact for improving the situation for many West Virginia employers.