

The second session of the 110th Tennessee General Assembly adjourned sine die at 10:56 pm on April 26, 2018. There were over 1,500 bills filed this year. The Tennessee Trial Lawyers Association (TTLA) fended off the attacks of special interests so that your clients will continue to achieve equity through the civil justice system. Most importantly, we were able to stop 2 collateral source bills from being heard in committee. This was due to the hard work and dedication of the leaders of TTLA, civil justice lobby day attendees, members who served in the Attorney on Duty Program, and the lobbying team.

### TTLA BILLS

This year TTLA introduced proactive legislation, SB2475/HB2304, a bill dealing with workers' compensation. Two bills were left over from last year to use as defense if necessary.

**Workers' Compensation:** SB2475/HB2304 (Sen. Roberts/Rep. Beck) now P.C. 757 (effective 4/18/19) With the passage of the 2013 Workers' Compensation Reform Act, many injured workers found it difficult, if not impossible, to obtain legal representation. T.C.A. 50-6-226(d)(1)(B) was passed in 2016. It permits the Court of Workers' Compensation Claims to award reasonable attorney fees and costs if the court determines the employer "wrongfully" denied a claim or failed to timely furnish appropriate benefits to the injured employee. The legislative intent was to increase the likelihood that injured workers would be able to obtain legal assistance if it was needed. The law was set to sunset in June of this year, so this was a win.

The Public Chapter accomplishes a few things:

- It moves a couple of commas in 50-6-226(d)(1), which was necessary to address a footnote contained in a recent Workers' Compensation Appeals Board opinion over when attorney fees were recoverable. This clarifies that attorney fees are not limited to just depositions and trial, which would have had a chilling effect on those attorneys that represent injured workers with denied claims.
- It defines "wrongfully" as erroneous, incorrect, or otherwise inconsistent with the law or facts which has been a point of contention for litigators and the courts.
- It pushes back the sunset until June 1, 2020.

### PREMIUM THEFT - Bills to eliminate the collateral source rule

**Premium Theft:** The insurance industry filed 2 bills this year trying to overturn the Tennessee Supreme Court's unanimous 2017 *Dedmon* opinion which upheld the collateral source rule in Tennessee. Plaintiffs can continue to use full, undiscounted medical bills to prove their medical expenses instead of the discounted amounts paid by insurance companies.

Due to the hard work of TTLA leadership, TTLA members and the lobbying team, the bills were never discussed or voted on in committee.

- **SB1813/HB1768** (Sen. Ketron/Rep. Sargent) was filed on behalf of State Farm insurance. The State Farm model bill came from ALEC (American Legislative Exchange Council) a conservative group with a focus on tort reform. The model legislation called the "Phantom Damages Elimination Act" would have abolished the collateral source rule.
- **SB1972/HB2008** (Sen. Stevens/Rep. Lamberth) Farm Bureau's insurance arm, Tennessee Farmers Insurance Company, filed a caption bill. (A caption bill is a placeholder bill that opens T.C.A. sections to be amended in the future.)

TTLA members have done an outstanding job educating their legislators about this very important issue. **Please continue to tell them about the harmful effects of this bill because we know the insurance lobby WILL be pushing this issue again next year.** There will be at least 30 new legislators in 2019 along with newly appointed committees and a new House Speaker so it is imperative to meet with your legislators before session begins next year.

### OTHER BILLS TTLA OPPOSED THAT DID NOT PASS

**Employment Law:** SB1811/HB1839 (Sen. Ketron/Rep. Marsh) This bill would have placed a cap on attorney fees to no more than the "total amount of damages" in employment discrimination cases.

**Liability:** SB1940/HB2095 (Sen. Johnson/Rep. Casada) The

bill would have allowed a parent or legal guardian of a minor to waive a claim against a person or entity for personal injury or death resulting from negligence related to an inherent risk of certain activities. A 2017 Tennessee Court of Appeals case affirmed the existing common law rule that preinjury waivers of liability were not enforceable against a child when signed by a parent.

## TTLA COMPROMISED BILLS THAT PASSED

**Abusive Civil Action:** SB1601/HB1793 (Sen. Yager/Rep. Carter) The original bill would have created a new cause of action for an abusive civil action. An abusive civil action is an action filed with intent to harm. It also would have created an abusive civil action offender registry that would have restricted registrants from pursuing civil actions unless permitted by the court.

TTLA was able to work with the bill sponsor, Rep. Mike Carter (the civil justice subcommittee chairman) and amend the bill to take out the language that would have been harmful to your clients.

**P.C. 872 (effective 7/1/18)** The bill as passed removed the “Abusive Civil Action Offender” registry and limits this bill’s application to civil actions filed by a plaintiff against a defendant with whom the plaintiff shares a civil party relationship among other revisions.

- “Civil party relationship” (1) Adults who are current or former spouses; (2) Adults who live together or have lived together; (3) Adults who are dating or who have dated or who have had a sexual relationship. The terms “dating” and “dated” do not include fraternization between two individuals in a business or social context; (4) Adults related by blood or adoption; (5) Adults who are related or were formerly related by marriage; or (6) Adult children of a person in a relationship in the above-described categories.

## OTHER BILLS OF INTEREST

**Peer Review:** SB1718/HB1795 (Sen. Stevens/Rep. Farmer) now P.C. 593 (effective 3/22/18) This bill adds community mental health centers to the definition of healthcare organization so that they are included in quality improvement committees.

**General Sessions:** SB1789/HB2199 (Sen. Yarbro/Rep. Beck) now P.C. 809 (effective 7/1/18) The law authorizes general sessions courts, by local rule, to allow papers to be filed, signed, or verified by electronic means. SB2383/HB2202 (Sen. Lundberg/Rep. Lamberth) now P.C. 858 (effective) The law provides that if one or more of the parties before the general sessions court in a civil action perfects an appeal of a decision of the general sessions court to the circuit court, then cross appeals and separate appeals are not required, and upon the filing of a notice of appeal by any party, issues may be brought up for review by any party.

**Employment Law:** SB1967/HB1978 (Sen. Watson/Rep. Marsh) now P.C. 648 (effective 7/1/18) Is a bill that was filed across the country dealing with the “gig” economy and employment relationships of “marketplace contractors” for example; Handys, Angie’s List, TAKL among others. The bill establishes that a marketplace contractor is an independent contractor, and not an employee of the marketplace platform. The bill does not apply to ridesharing platforms or construction service providers. It was originally opposed by the Department of Labor and then amended in the House to address some of their concerns.

## GOING FORWARD

TTLA will continue to fight for the rights of Tennesseans and to protect the civil justice system from the attacks of special interest groups. There will never be a time when we don’t have a battle before us.

We want to thank all members of TTLA for their support, dedication and hard work throughout the year. You truly are helping preserve the civil justice system.

Our Association would not be able to have a meaningful presence in the general assembly without trial lawyers being involved. Thanks again to all members that served as attorney on duty, our leadership and our lobbying team.

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