

Amendment No. 1 to HB1358

Watson
Signature of Sponsor

AMEND Senate Bill No. 1114

House Bill No. 1358*

by deleting the language after the enacting clause and by substituting instead the following:

WHEREAS, the Tennessee Supreme Court announced a summary judgment standard in *Hannan v. Alltel Publishing Co.*, 270 S.W. 3d 1 (Tenn. 2008) for a party who does not bear the burden of proof at trial to obtain summary judgment; and

WHEREAS, this standard differs from the standard applied by Tennessee federal courts in cases in which the federal summary judgment standard applies; and

WHEREAS, this higher *Hannan* standard results in fewer cases being resolved by summary judgment in state court, increasing the litigation costs of litigants in Tennessee state courts and encouraging forum shopping; and

WHEREAS, the purpose of this legislation is to overrule the summary judgment standard for parties who do not bear the burden of proof at trial set forth in *Hannan v. Alltel Publishing Co.*, its progeny, and the cases relied on in *Hannan*;

THEREFORE, be it hereby enacted as follows:

SECTION 1. Tennessee Code Annotated, Title 20, is amended by adding the following as a new chapter 16:

20-16-101. In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:

(1) Submits affirmative evidence that negates an essential element of the nonmoving party's claim; or

(2) Demonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

SECTION 2. Except as set forth herein, Rule 56 of the Tennessee Rules of Civil Procedure remains unchanged.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it, and shall apply to actions filed on or after that date.