

SENATE BILL 249

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 20;  
Title 24; Title 29; Title 47 and Title 63, relative to  
tort reform.

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

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

**20-16-101.** This chapter shall be known and may be cited as the “Private Attorney  
Retention Sunshine Act”.

**20-16-102.**

(a) For purposes of this chapter, “a contract in excess of one million dollars  
(\$1,000,000)” means a contract in which the fee paid to an attorney or group of  
attorneys, either in the form of a flat, hourly, or contingent fee, including, but not limited  
to, the amount paid to an attorney or group of attorneys for expenses or costs, exceeds  
or can be reasonably expected to exceed one million dollars (\$1,000,000).

(b) Any state agency or state agent that retains or otherwise hires a lawyer or  
law firm to perform legal services on behalf of the state of Tennessee shall not retain or  
otherwise hire a lawyer or law firm until an open and competitive bidding process has  
been undertaken by the state agency or agent.

(c) In addition to the requirements of subsection (b), no state agency or state  
agent shall enter into a contract for legal services exceeding one million dollars  
(\$1,000,000) without a hearing before the general assembly held in accordance with §  
20-16-103 on the terms of the legal contract.

**20-16-103.**

(a) Any state agency or state agent entering into a contract for legal services in excess of one million dollars (\$1,000,000) shall file a copy of such proposed contract with the clerk of the house of representatives and the clerk of the senate, who shall refer such contract to the judiciary committees, or other appropriate standing committees, as determined by the respective clerk.

(b) Within thirty (30) days after such referral, the committee to which the proposed contract was referred may hold a public hearing on such proposed contract and shall issue a report to the referring state agency or agent. Such report shall include any proposed changes to the proposed contract voted upon by the committee. The state agency or state agent shall review such report and adopt a final contract as deemed appropriate in view of such report. Once a final contract has been adopted, the state agency or agent shall file with the clerk of the house of representatives and the clerk of the senate the final contract.

(c) If the adopted contract does not contain the changes proposed by such committee, the referring state agency or agent shall send a letter with the adopted contract to the clerk of the house of representatives and the clerk of the senate stating the reasons why such proposed changes were not adopted. The clerk of each house shall refer such letter and adopted contract to the appropriate committees.

(d) No earlier than forty-five (45) days after the filing of such letter and adopted contract with such committees, and if no changes are made to the contract by the committees, the state agency or agent may enter into the final contract.

(e) Nothing in this part shall be construed to expand the authority of any state agency or agent to enter into contracts where no such authority previously existed.

(f) In the event that the general assembly is not in session and a state agency or agent wishes to execute a contract for legal services, the governor, with the unanimous consent of the speaker of the house of representatives and the speaker of the senate may establish a five-member joint committee consisting of five (5) state legislators, one (1) each to be appointed by the governor, the speaker of the house of representatives, the speaker of the senate, the minority leader of the house of representatives and the minority leader of the senate. The joint committee shall execute the duties set out in subsections (b)-(e). Identical deadlines and reporting responsibilities shall apply to the state agency or agent and the joint committee, as would apply to a committee of the general assembly executing its duties set out in subsections (b)-(e).

**20-16-104.**

(a) At the conclusion of any legal proceeding for which a state agency or agent retained outside counsel on a contingent fee basis, the state agency or agent shall receive from counsel a statement of the hours worked on the case, expenses incurred, the aggregate fee amount, and a breakdown as to the hourly rate, based on the number of hours worked divided into the fee paid but minus the expenses.

(b) In no case shall the state incur fees and expenses in excess of one thousand dollars (\$1,000) per hour for legal services. In cases where a disclosure submitted in accordance with subsection (a) indicates an hourly rate in excess of one thousand dollars (\$1,000) per hour, the fee amount shall be reduced to an amount equivalent to one thousand dollars (\$1,000) per hour.

**SECTION 2.** Tennessee Code Annotated, Title 24, Chapter 7, is amended by adding the following new section thereto:

**24-7-125.**

(a) For purposes of this section, unless the context otherwise requires:

(1) "Health care provider" means any person licensed or certified pursuant to title 63 or title 68 to deliver health care and any clinic, health dispensary, or health facility licensed by the state of Tennessee pursuant to title 68. "Health care provider" includes any professional corporation or other professional entity comprised of health care providers as permitted by the laws of this state;

(2) "Relative" means the spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents of a recipient alleging an unanticipated outcome of health care, including but not limited to, any such relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a recipient;

(3) "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a health care power of attorney or advance directive, or any person recognized by law as a recipient's agent; and

(4) "Unanticipated health care outcome" means the outcome of a medical treatment, service, or procedure that differs from an expected result.

(b) This section applies to:

(1) Any civil action brought by a recipient alleging an unanticipated outcome of health care for themselves, their relative, or a person for whom they are the legal representative of, or in any mediation or arbitration proceeding, or other alternative dispute resolution proceeding related to such civil action; and

(2) Any proceeding conducted by a public or private entity that is related to an unanticipated health care outcome, including, but not limited to, disciplinary

proceedings, licensure proceedings, credentialing proceedings, peer review proceedings, and certification or recertification proceedings.

(c) In any action or proceeding described in subsection (b), any of the following that are made by a health care provider or an employee or agent of a health care provider to the recipient of healthcare services, a relative of the recipient of healthcare services, or a representative of the recipient of healthcare services and which relate to the discomfort, pain, suffering, injury, or death of the recipient as the result of the alleged, unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest, or for any other purpose, including impeachment:

(1) Statements, affirmations, writings, gestures, or conduct expressing apology, fault, sympathy, commiseration, regret, condolence, compassion, error, or a general sense of benevolence; or

(2) Offers to provide corrective or remedial treatment or gratuitous acts to help the recipient alleging an unanticipated outcome of health care.

**SECTION 3.** Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following new section thereto:

**29-26-101.** As used in this part, unless the context otherwise requires:

(1) "Health care liability action" means any civil action against a health care provider or providers in which the claimant alleges injury related to the provision of or failure to provide health care services, regardless of the theory of liability on which the action is based. Any such civil action is subject to this part, regardless of any other claims, causes of action, or theories of liability alleged in the complaint; and

(2) "Health care provider" means a health care practitioner licensed, certified, or registered under any chapter of titles 63 or 68, a nongovernmental health care facility

licensed under title 68, chapter 11, a nongovernmental health facility licensed under title 33, chapter 2, part 4, the employee of a health care provider involved in the provision of health care or a professional corporation or professional limited liability company as established pursuant to title 48.

**SECTION 4.** Tennessee Code Annotated, Section 29-26-115, is amended by deleting the language “malpractice action” everywhere it appears and substituting instead the language “health care liability action”.

**SECTION 5.** Tennessee Code Annotated, Section 29-26-115, is amended by deleting the last two sentences in subsection (b) and substituting instead the following:

As to the facts that must be established pursuant to subdivisions (a)(1) and (2), the expert witness shall also have been practicing the same specialty as the defendant. This rule shall also apply to expert witnesses testifying on behalf of the defendant. The court may waive this subsection (b) when a party establishes that, despite diligent efforts to locate such a witness, the appropriate witnesses otherwise would not be available.

**SECTION 6.** Tennessee Code Annotated, Section 29-26-116, is amended by deleting the language “malpractice actions” and substituting instead the language “health care liability actions”.

**SECTION 7.** Tennessee Code Annotated, Section 29-26-117, is amended by deleting the section in its entirety and substituting instead the following:

**29-26-117.** In a health care liability action, the initial complaint filed by the plaintiff shall state a demand for a specific sum, but such demand shall not be disclosed to the jury during a trial of the case, notwithstanding the provisions of § 20-9-302 to the contrary. An action against an attorney for legal malpractice shall not arise based solely on the fact that the damages awarded in the underlying health care liability action exceeded the amount sought in the ad damnum of the complaint filed in such underlying action. The plaintiff may not attempt to seek

recovery on any such difference from the attorney, unless the attorney's conduct in the underlying action constituted fraud or willful misconduct.

**SECTION 8.** Tennessee Code Annotated, Section 29-26-118, is amended by deleting the language “malpractice action” and substituting instead the language “health care liability action”.

**SECTION 9.** Tennessee Code Annotated, Section 29-26-119, is amended by deleting the section in its entirety and substituting instead the following:

**29-26-119.**

(a) As used in this section:

(1) “Future damages” includes damages for future actual economic losses incurred by the judgment creditor and noneconomic damages awarded to the judgment creditor; and

(2) “Periodic payments” means the payment of money or delivery of other property to the judgment creditor at regular intervals.

(b) In any health care liability action in which liability is admitted or established, the damages awarded may include, in addition to other elements of damages authorized by law, actual economic losses incurred by the claimant by reason of the injury. Actual economic losses 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. Evidence of such damages is admissible and such damages are recoverable only to the extent that such losses are not paid, payable, replaced, or indemnified by insurance provided by a governmental or private employer, by social security benefits, service benefit programs, unemployment benefits, or any other source, except the assets of the claimant or of the members of the claimant’s immediate family or insurance to the extent that it was purchased, in whole or in part, privately and

individually. Such recoverable damages shall not include expenses or charges to the extent that they have been discounted or forgiven for any reason, including but not limited to, without limitation, discounts arising from a relationship with a health insurer or other payor.

(c)

(1) In any health care liability action, at the request of either party, the trial court shall enter a judgment ordering that money damages or its equivalent be paid in whole or in part by periodic payments rather than by a lump sum payment if the award equals or exceeds seventy-five thousand dollars (\$75,000) in future damages. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require the judgment debtor who is not adequately insured to post security adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of such security, or so much as remains, to the judgment debtor.

(2)

(A) The judgment ordering payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Such payments shall only be subject to modification in the event of the death of the judgment creditor.

(B) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the payments, as specified in subdivision (c)(2)(A), then the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including but not limited to, court costs and attorney's fees.

(3) Money damages awarded shall not be reduced, or payments terminated, by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to the judgment creditor's death. In such cases, the court that rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subdivision (c)(3).

(4) Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments shall cease and any security given pursuant to subdivision (c)(1) shall revert to the judgment debtor.

(d) Nothing in this section shall preclude the parties to a health care liability action, in a settlement, from agreeing to the satisfaction of the award by future periodic payments subject to approval by the court.

(e) In the event of an appeal of a judgment entered against a health care provider, the health care provider shall not be required to post a bond or other security in the amount of more than one million dollars (\$1,000,000) in order to stay execution pending the appeal.

**SECTION 10.** Tennessee Code Annotated, Section 29-26-120, is amended by deleting the section in its entirety and substituting instead the following:

**29-26-120.**

(a) Compensation for reasonable attorney's fees in the event an employment contract exists between the claimant and claimant's attorney on a contingent fee arrangement shall be awarded to the claimant's attorney in a health care liability action in an amount to be determined by the court on the basis of time and effort devoted to the litigation by the claimant's attorney, complexity of the claim, and other pertinent matters in connection with the health care liability action, not to exceed the following limitations:

- (1) Forty percent (40%) of the first fifty thousand dollars (\$50,000) of damages recovered;
- (2) Thirty-three and one-third percent (33 1/3%) of the next fifty thousand dollars (\$50,000) of damages recovered;
- (3) Twenty-five percent (25%) of the next five hundred thousand dollars (\$500,000) of damages recovered; and
- (4) Fifteen percent (15%) of any amount by which the damages recovered exceeds six hundred thousand dollars (\$600,000).

(b) The limitations set out in subsection (a) shall apply regardless of whether the recovery is by means of settlement, arbitration, or judgment, and regardless of whether the person for whom the recovery is made is a responsible adult, infant, or person of unsound mind.

**SECTION 11.** Tennessee Code Annotated, Section 29-26-121, is amended by deleting the language "medical malpractice" and substituting instead the language "health care liability".

**SECTION 12.** Tennessee Code Annotated, Section 29-26-122, is amended by deleting the language "medical malpractice" and substituting instead the language "health care liability".

**SECTION 13.** Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following section thereto:

**29-26-123.**

(a) In any health care liability action the plaintiff shall file, contemporaneously with the filing of the complaint, a HIPAA-compliant medical authorization form. Failure to provide this authorization shall subject the complaint to dismissal.

(b) The authorization shall provide that the attorney representing the defendant is authorized to obtain protected health information, including, but not limited to, mental health and drug and alcohol abuse treatment records, contained in medical records to facilitate the investigation, evaluation, and defense of the claims and allegations set forth in the complaint, which pertain to the plaintiff or, where applicable, the plaintiff's decedent whose treatment is at issue in the complaint. The authorization shall include the defendant's attorney's right to interview, outside the presence of the plaintiff or the plaintiff's counsel, the plaintiff's or decedent's treating health care provider or health care providers with regard to the care and treatment of the plaintiff or, where applicable, the plaintiff's decedent.

(c) The authorization shall provide for the release of all health care information, including, but not limited to, mental health and drug and alcohol abuse treatment records, and shall authorize the release of such information by a health care provider maintaining health care records of the plaintiff or the plaintiff's decedent.

**SECTION 14.** Tennessee Code Annotated, Section 29-28-102(6), is amended by deleting the subdivision in its entirety and renumbering accordingly.

**SECTION 15.** Tennessee Code Annotated, Section 29-28-104, is amended by deleting the language "that the product is not" and substituting instead the language "that the product is not defective or".

**SECTION 16.** 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; or

(3) The product was designed in a defective manner.

(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 a 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 which 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 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 could 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 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 on the continuance of the dangerous condition.

(g) In any action alleging that a product is defective pursuant to subsection (b) or 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 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 have, within a reasonable probability, 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 the seller supplied such; 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 such seller.

(j)

(1) In any action alleging that a product is defective pursuant to subsection (b) or 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 the seller supplied the product.

(2) This section shall be construed to immunize innocent sellers who are not actively negligent, but instead are mere conduits of a product.

(k) This section does not apply to an action based on express warranty or misrepresentation regarding the chattel.

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

**SECTION 17.** Tennessee Code Annotated, Section 29-28-106(a), is amended by deleting the language “of the defective” and substituting instead the language “of the defective or unreasonably dangerous”.

**SECTION 18.** Tennessee Code Annotated, Section 29-28-108, is amended by deleting the section in its entirety and substituting instead the following:

If a product is not defective or unreasonably dangerous at the time it leaves the control of the manufacturer or seller but was made defective or unreasonably dangerous by subsequent unforeseeable alteration, change, improper maintenance or abnormal use, the manufacturer or seller is not liable.

**SECTION 19.** Tennessee Code Annotated, Title 29, Chapter 34, Part 2, is amended by adding the following as a new, appropriately designated section thereto:

**29-34-208.** Except as provided in § 29-26-119, in any civil action in which liability is admitted or established, the damages awarded may include, in addition to other elements of damages authorized by law, actual economic losses incurred by the claimant by reason of the

injury. Actual economic losses 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. Evidence of such damages is admissible and such damages are recoverable only to the extent that such losses are not paid, payable, replaced, or indemnified by insurance provided by a governmental or private employer, by social security benefits, service benefit programs, unemployment benefits, or any other source except the assets of the claimant or of the members of the claimant's immediate family and insurance to the extent that it was purchased, in whole or in part, privately and individually. Such recoverable damages shall not include expenses or charges to the extent that they have been discounted or forgiven for any reason, including, without limitation, discounts arising from a relationship with a health insurer or other payor.

**SECTION 20.** Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following new part thereto:

**29-34-401.** This part shall be known and may be cited as the "Innocent Successor Asbestos-Related Liability Fairness Act."

**29-34-402.** As used in this part, unless the context otherwise requires:

(1) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(A) The health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;

(B) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of such person; and

(C) Any claim for damage or loss caused by the installation, presence, or removal of asbestos;

(2) "Corporation" means a corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state;

(3) "Innocent successor" means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of that successor corporation's successors;

(4) "Successor asbestos-related liabilities" means any liability, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under § 29-34-405, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction; and

(5) "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

**29-34-403.**

The limitations in § 29-34-404 shall apply to any innocent successor corporation; provided that such limitations shall not apply to:

(1) Workers' compensation benefits paid by or on behalf of an employer to an employee under title 50, chapter 6, or a comparable workers' compensation law of another jurisdiction;

(2) Any claim against a corporation that does not constitute a successor asbestos-related liability; or

(3) Any obligation under the National Labor Relations Act, 29 U.S.C. § 151, et seq., as amended, or under any collective bargaining agreement.

**29-34-404.**

(a) Except as limited in subsection (b), the cumulative successor asbestos-related liabilities of an innocent successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The innocent successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (a) for purposes of determining the limitation of liability of an innocent successor corporation.

**29-34-405.**

(a) An innocent successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under § 29-34-404 through any method reasonable under the circumstances, including:

(1) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction;  
or

(2) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions and limits of such insurance shall not be affected by this section, nor shall this section otherwise affect the rights and obligations of an insurer, transferor or successor under any insurance contract or any related agreements, including but not limited to, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before July 1, 2011, shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

**29-34-406.**

(a) Except as provided in subsections (b)-(d), the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

(1) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(2) One percent (1%).

(b) The rate found in subsection (a) shall not be compounded.

(c) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (a) until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the innocent successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets, as defined by § 29-34-405.

**29-34-407.**

(a) The courts of this state shall construe the provisions of this part liberally with regard to innocent successors.

(b) This part shall apply to all asbestos claims filed against an innocent successor on or after July 1, 2011. This part shall also apply to any pending asbestos

claims against an innocent successor in which trial has not commenced as of July 1, 2011, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

**SECTION 21.** Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following as a new part thereto:

**29-34-501.** This part shall be known and may be cited as the “Asbestos Claims Priorities Act”.

**29-34-502.** As used in this part, unless the context otherwise requires:

(1) “AMA guides to the evaluation of permanent impairment” has the same meaning as in § 29-34-303(1);

(2) “Asbestos” means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 CFR 1910 at the time an asbestos claim is made;

(3) “Asbestos claim” means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation or ingestion of asbestos, to the extent such claims are recognized, including loss of consortium, personal injury or death, mental or emotional injury, risk or fear of disease or other injury, the costs of medical monitoring or surveillance, and any claim made by or on behalf of any person exposed to asbestos or a representative, spouse, parent, child, or other relative of the exposed person. “Asbestos claim” does not include a claim for compensatory benefits pursuant to a workers’ compensation law or a veterans’ benefits program;

(4) “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers;

(5) “Board-certified” has the same meaning as in § 29-34-303;

(6) “Board-certified in occupational medicine” has the same meaning as in § 29-34-303;

(7) “Board-certified oncologist” has the same meaning as in § 29-34-303;

(8) “Board-certified pathologist” has the same meaning as in § 29-34-303;

(9) “Certified B-reader” has the same meaning as in § 29-34-303;

(10) “Chest X-rays” means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior and lateral views;

(11) “Civil action” has the same meaning as in § 29-34-303;

(12) “Competent medical authority” has the same meaning as in § 29-34-303;

(13) “DLCO” means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood;

(14) “Exposed person” means a person whose exposure to asbestos is the basis for an asbestos claim under the part;

(15) “FEV-1” means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests;

(16) “FVC” means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration;

(17) “ILO scale” has the same meaning as in § 29-34-303;

(18) “Mesothelioma” means a malignant tumor with a primary site of origin in the pleura, peritoneum, or pericardium, diagnosed by a board-certified pathologist or oncologist, using standardized and accepted criteria of microscopic morphology and appropriate immunohistochemical staining techniques;

(19) “Nonmalignant condition” means a condition, other than a diagnosed cancer, that is caused or may be caused by asbestos;

(20) “Official statements of the American Thoracic Society” means lung function testing standards set forth in statements from the American Thoracic Society and, if applicable, the European Respiratory Society, including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung, and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person;

(21) “Pathological evidence of asbestosis” means a statement by a board-certified pathologist that more than one (1) representative section of lung tissue, uninvolved with any other disease process, demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in Asbestos-Associated Diseases, 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or as amended at the time of the exam, and that no other more likely explanation for the presence of the fibrosis exists;

(22) “Physical impairment” means a condition of an exposed person;

(23) “Plethysmography or body plethysmography” means the test for determining lung volume in which the exposed person is enclosed in a chamber equipped to measure pressure, flow, or volume change;

(24) “Predicted lower limit of normal” for any test value means the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height, and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent Impairment;

(25) “Premises owner” has the same meaning as in § 29-34-303;

(26) “Pulmonary function test” means spirometry, lung volume testing, diffusion capacity testing, and exercise testing, including appropriate measurements and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the Official Statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted;

(27) “Radiological evidence of asbestosis” means a quality 1 chest x-ray under the ILO system, or a quality 2 chest x-ray in a death case when no pathology or quality 1 chest x-ray is available, showing bilateral small, irregular opacities (s, t, or u) graded by a certified B-reader as at least 1/1 on the ILO scale;

(28) “Radiological evidence of diffuse bilateral pleural thickening” means an a quality 1 chest x-ray under the ILO system, or a quality 2 chest x-ray in a death case when no pathology or quality 1 chest x-ray is available, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one (1) costophrenic angle as classified by a certified B-reader;

(29) “Spirometry” means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired;

(30)

(A) “Substantial contributing factor” means both of the following:

(i) Exposure to asbestos is the predominate cause of the physical impairment alleged in the asbestos claim; and

(ii) A competent medical authority has determined with a reasonable degree of medical certainty that without the asbestos exposures the physical impairment of the exposed person would not have occurred;

(B) In determining whether exposure to asbestos was a substantial contributing factor in causing the plaintiff's injury or loss, the trier of fact in the action shall consider, without limitation, all of the following:

(i) The manner in which the plaintiff was exposed;

(ii) The proximity of asbestos to the plaintiff when the exposure occurred;

(iii) The frequency and length of the plaintiff's exposure; and

(iv) Any factors that mitigated or enhanced the plaintiff's exposure to asbestos;

(31) "Substantial occupational exposure to asbestos" means employment for a cumulative period of at least five (5) years in an industry and an occupation in which, for a substantial portion of a normal work year for that occupation, the exposed person did any of the following:

(A) Handled asbestos;

(B) Fabricated asbestos-containing products so that the person was exposed to asbestos in the fabrication process;

(C) Altered, repaired, or otherwise worked with an asbestos-containing product in a manner that exposed the person on a regular basis to asbestos; or

(D) Worked in close proximity to workers who experienced substantial occupational exposure to asbestos in a manner that exposed the person on a regular basis to asbestos;

(32) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer;

(33) "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration;

(34) "Veterans' benefit program" has the same meaning as in § 29-34-303; and

(35) "Workers' compensation law" has the same meaning as in § 29-34-303.

**29-34-503.**

(a) No person shall bring or maintain a civil action alleging an asbestos claim based on a nonmalignant condition in the absence of a prima facie showing that, in the opinion of a competent medical authority, the exposed person has a physical impairment, and that the person's exposure to asbestos is a substantial contributing factor to the physical impairment. The prima facie showing shall include:

(1) Evidence that a competent medical authority has taken from the exposed person a detailed medical history, which includes, to the extent necessary to render the opinion referred to in subsection (a), the occupational and exposure history of the exposed person. If the exposed person is deceased, the occupational and exposure history of the exposed person shall be taken from the person or persons who are most knowledgeable about these areas of the exposed person's life;

(2) Evidence sufficient to demonstrate that at least ten (10) years have elapsed between the exposed person's first exposure to asbestos and the date of diagnosis of the exposed person's nonmalignant condition;

(3) A diagnosis by a competent medical authority, based on the detailed medical history, a medical examination, and pulmonary function testing, that the following apply to the exposed person:

(A) The exposed has a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's guides to the evaluation of permanent impairment; and

(B) The exposed person has asbestosis or diffuse bilateral pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening;

(4) Evidence verifying that the exposed person has asbestos-related impairment, rather than chronic obstructive pulmonary disease, as demonstrated by pulmonary function testing showing that, at a minimum, the exposed person has:

(A) Forced vital capacity below the predicted lower limit of normal and FEV1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(B) Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; and

(5) Verification that the competent medical authority has concluded that exposure to asbestos was a substantial contributing factor to the exposed person's impairment. A diagnosis that states the medical findings and

impairment are consistent with or compatible with asbestos exposure does not meet the requirements of this subdivision (a)(5).

(b) No person shall bring or maintain a civil action related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing that, in the opinion of a competent medical authority, the person has a primary cancer, and that the person's exposure to asbestos is a substantial contributing factor to the cancer. The prima facie showing shall include:

(1) Evidence that a competent medical authority has taken from the exposed person a detailed medical history, which includes, to the extent necessary to render the opinion referred to in subsection (b), the occupational and exposure history of the exposed person. If the exposed person is deceased, the occupational and exposure history of the exposed person shall be taken from the person or persons who are most knowledgeable about these areas of the exposed person's life;

(2) Evidence sufficient to demonstrate that at least ten (10) years have elapsed from the date of the exposed person's first exposure to asbestos until the date of diagnosis of the exposed person's primary cancer;

(3) Radiological or pathological evidence of asbestosis;

(4) Evidence of the exposed person's substantial occupational exposure to asbestos; and

(5) Verification that the competent medical authority has concluded that exposure to asbestos was a substantial contributing factor to the exposed person's cancer. A diagnosis that states the cancer is consistent with or compatible with asbestos exposure does not meet the requirements of this subdivision (b)(5).

(c) No person shall bring or maintain a civil action related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium, and that the person's exposure to asbestos is a substantial contributing factor to the mesothelioma.

(d) No person shall bring or maintain a civil action alleging an asbestos claim based on the wrongful death of an exposed person in the absence of a prima facie showing that, in the opinion of a competent medical authority, the death of the exposed person was the result of a physical impairment, and that the person's exposure to asbestos was a substantial contributing factor to the physical impairment causing the person's death. The prima facie showing shall include:

(1) Evidence that a competent medical authority has taken from the exposed person a detailed medical history, which includes, to the extent necessary to render the opinion referred to in subsection (c), the occupational and exposure history of the exposed person. If the exposed person is deceased, the occupational and exposure history of the exposed person shall be taken from the person or persons who are most knowledgeable about these areas of the exposed person's life;

(2) Evidence sufficient to demonstrate that at least ten (10) years have elapsed from the date of the exposed person's first exposure to asbestos until the date of diagnosis;

(3) Radiological or pathological evidence of asbestosis;

(4) Evidence of the exposed person's substantial occupational exposure to asbestos; and

(5) Verification that the competent medical authority has concluded that exposure to asbestos was a substantial contributing factor to the exposed person's death. A diagnosis that states the medical findings, impairment, or cancer are consistent with or compatible with asbestos exposure does not meet the requirements of this subdivision (d)(5).

(e) Evidence relating to any physical impairment under this part, including pulmonary function testing and diffusing studies, shall comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA's guides to the evaluation of permanent impairment and all standards set forth in the official statements of the American Thoracic Society which are in effect on the date of any examination or pulmonary function testing of the exposed person.

(f) Nothing in this part shall be interpreted as authorizing the exhumation of bodies.

**29-34-504.**

(a) The plaintiff in any civil action, alleging an asbestos claim, shall file, within one hundred twenty (120) days after filing the complaint, a written report by a competent medical authority, and any supporting evidence, making out the applicable prima facie case described in § 29-34-502. Any defendant shall have one hundred twenty (120) days from the filing of the plaintiff's proffered prima facie evidence to challenge the adequacy of the proffered prima facie evidence for failure to comply with the minimum applicable requirements set out in § 29-34-502.

(b) If the court finds that no genuine issue of material fact exists with respect to plaintiff's failure to make out a prima facie case as described in § 29-34-502, the court shall dismiss the plaintiff's claim without prejudice as a matter of law. The court shall maintain its jurisdiction over any case that is so dismissed without prejudice. Any

plaintiff whose case has been so dismissed without prejudice may move at any time to reinstate the plaintiff's case, upon a renewed prima facie showing that meets the applicable minimum requirements set out in § 29-34-502.

(c)

(1) The court's findings and decision on the prima facie showing shall not:

(A) Result in any presumption at trial that the exposed person has a physical impairment that is caused by asbestos exposure;

(B) Be conclusive as to the liability of any defendant in the case;

or

(C) Be admissible at trial.

(2) If the trier of fact is a jury:

(A) The court shall not instruct the jury with respect to the court's findings or decision on the prima facie showing; and

(B) Neither counsel for any party nor a witness shall inform the jurors or potential jurors of the prima facie showing.

**29-34-505.**

(a) Notwithstanding any other law, with respect to any asbestos claim that is not barred as of the effective date of this part, the period of limitations shall not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, that the person has a physical impairment resulting from asbestos exposure.

(b) A court may consolidate for trial any number and type of asbestos claims only with the consent of all of the parties. In the absence of such consent, a court may

consolidate for trial any claims relating to the exposed person and members of such person's household.

**29-34-506.** The following shall apply to all civil actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos on the premises owner's property:

(1) A premises owner is not liable for any injury to any individual resulting from asbestos exposure unless that individual's alleged exposure occurred while the individual was on the premises owner's property;

(2) If exposure to asbestos is alleged to have occurred after January 1, 1972, it is presumed that products containing asbestos used on the premises owner's property contained asbestos only at levels below safe levels of exposure. To rebut this presumption, the plaintiff must prove by a preponderance of the evidence that the levels of asbestos in the immediate breathing zone of the plaintiff regularly exceeded the threshold limit values adopted by this state; and

(3)

(A) A premises owner is presumed to not be liable for any injury to any invitee who was engaged to work with, install, or remove products containing asbestos on the premises owner's property if the invitee's employer held itself out as qualified to perform the work. To rebut this presumption, the plaintiff must demonstrate by a preponderance of the evidence that the premises owner had actual knowledge of the potential dangers of the products containing asbestos at the time of the alleged exposure that was superior to the knowledge of both the invitee and the invitee's employer.

(B) A premises owner that hired a contractor before January 1, 1972, to perform the type of work at the premises owner's property that the contractor was

qualified to perform shall not be liable for any injury to any individual resulting from asbestos exposure caused by any of the contractor's employees or agents on the premises owner's property unless the premises owner directed the activity that resulted in the injury or approved the critical acts that led to the individual's injury.

(C) If exposure to asbestos is alleged to have occurred after January 1, 1972, a premises owner is not liable for any injury to any individual resulting from that exposure caused by a contractor's employee or agent on the premises owner's property, unless the plaintiff establishes the premises owner's intentional violation of an established safety standard in effect at the time of the exposure, and that the alleged violation was in the plaintiff's immediate breathing zone and was the proximate cause of the plaintiff's injury.

**29-34-507.**

(a) No civil action alleging an asbestos claim may be filed in the courts of this state after the effective date of this part unless the plaintiff was a resident of this state at the time the claim arose or the plaintiff's claim arose in this state. For purposes of this part, a claim arises in Tennessee if the plaintiff was located in Tennessee at the time the plaintiff alleges to have been exposed to asbestos.

(b) To comply with this section in relation to an action that involves both claims that arose in this state and claims that arose outside this state, a court shall consider each claim individually and shall sever from the action the claims that are subject to this part.

(c) A civil action under this part may be filed only in the venue where the plaintiff resides, or was exposed to asbestos, that was a substantial contributing factor to the physical impairment on which plaintiff's claim is based. If a plaintiff alleges that the

plaintiff was exposed to asbestos in more than one (1) venue, the court shall determine, upon motion of any defendant found outside the venue in which the tort action is pending, which venue is the most appropriate forum for the claim, considering the relative amounts and lengths of the plaintiff's exposure to asbestos in each venue.

**29-34-508.** This part shall apply to all civil actions that allege an asbestos claim that are filed on or after July 1, 2011. This part shall also apply to any pending asbestos claims in which trial has not commenced as of July 1, 2011, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

**SECTION 22.** Tennessee Code Annotated, Title 29, is amended by adding the following as a new chapter 39 thereto:

**29-39-101.**

(a) In any civil action in which liability is admitted or established, the damages awarded may include, in addition to other elements of damages authorized by law, noneconomic losses; provided, however, the damages awarded for such noneconomic losses shall not exceed a total of two hundred fifty thousand dollars (\$250,000) against each defendant or a maximum of five hundred thousand dollars (\$500,000) for each occurrence that is the basis of the action. The limitations of this subsection (a) shall apply in the aggregate to all claims arising from the same injury, act or occurrence, regardless of the number of claims, claimants, plaintiffs, or beneficiaries.

(b) Damages for noneconomic losses shall include, but not be limited to, damages for physical and emotional pain and suffering, inconvenience, discomfort, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, injury to reputation, and all other nonpecuniary losses of any kind or nature. Damages for noneconomic losses shall not include:

- (1) Medical expenses to the extent that they are otherwise recoverable, including rehabilitation and therapy;
- (2) Lost past or future wages or earnings capacity;
- (3) Other loss of income;
- (4) Funeral and burial expenses;
- (5) The economic value of services performed by the injured party but for the injury or death, including the cost of providing those domestic and other necessary services performed by the injured party without compensation; or
- (6) Other similar actual monetary losses.

**29-39-102.**

(a) Except as otherwise provided in subsection (c), the following shall apply to any award of punitive damages:

(1) If the defendant employs more than one hundred (100) full-time employees on a permanent basis, the court shall not enter judgment for punitive damages in excess of two (2) times the amount of compensatory damages awarded to the plaintiff from such defendant, or two hundred fifty thousand dollars (\$250,000), whichever is greater;

(2) If the defendant employs one hundred (100) or fewer full-time employees on a permanent basis or is an individual, the court shall not enter judgment for punitive damages in excess of two (2) times the amount of the compensatory damages awarded to such plaintiff from the defendant, or two hundred fifty thousand dollars (\$250,000), whichever is less.

(b) Any attorney's fees awarded as a result of a claim for punitive or exemplary damages shall not be considered for purposes of determining the cap on punitive damages.

(c) Subsection (d) does not apply to a tort action where the alleged injury, death, or loss to person or property resulted from the defendant acting with one (1) or more of the culpable mental states of purposely or knowingly and when the defendant has been convicted of or pleaded guilty to a criminal offense that is a felony, that had as an element of the offense one (1) or more of the culpable mental states of purposely or knowingly, and that is the basis of the tort action.

(d)

(1) Except as provided in subdivision (d)(2), punitive damages shall not be awarded in a civil action involving a drug or device if the drug or device which allegedly caused the claimant's harm:

(A) Was manufactured and labeled in relevant and material respects in accordance with the terms of an approval or license issued by the federal food and drug administration under the Federal Food, Drug, and Cosmetic Act, compiled in, 21 U.S.C. §§ 301-392, or the Public Health Service Act, compiled in, 42 U.S.C. §§ 201-300cc-15; or

(B) Was an over-the-counter drug marketed pursuant to federal regulations that:

(i) Was generally recognized as safe and effective;

(ii) Was not being misbranded pursuant to the applicable federal regulations; and

(iii) Satisfied in relevant and material respects each of the conditions contained in the applicable regulations and each of the conditions contained in an applicable monograph.

(2) Subdivision (d)(1) shall not apply in an action against a manufacturer of a drug or device if the claimant establishes by clear and convincing evidence

that the manufacturer fraudulently and in violation of applicable regulations of the food and drug administration withheld from the food and drug administration information known to be material and relevant to the harm that the claimant allegedly suffered or misrepresented to the food and drug administration information of that type.

(3) For purposes this subsection (d):

(A) "Device" has the same meaning as in 21 U.S.C. § 321(h); and

(B) "Drug" has the same meaning as in 21 U.S.C. § 321(g)(i).

**SECTION 23.** Tennessee Code Annotated, Section 47-18-109, is amended by adding the following language to the end of subdivision (a)(1):

Each such person seeking to recover damages for an unfair or deceptive act or practice declared to be unlawful by this part shall be required to prove that the deceptive act or practice caused the person to enter into the transaction that resulted in the person's damages. Proof of a violation of this part shall not support an award of damages without proof that the person seeking damages suffered an actual out-of-pocket loss. The term "out-of-pocket loss" means an amount of money equal to the difference between the amount paid by the consumer for the good or service and the actual market value of the good or service that the consumer actually received. The actual market value of the good or service that the consumer actually received shall be the market price of the good or service that is most nearly comparable to what the plaintiff actually received, if evidence of a comparable good or service is presented, with appropriate adjustments to reflect differences between the comparable good or service and the good or service actually received.

**SECTION 24.** Tennessee Code Annotated, Section 47-18-109, is further amended by adding the following new language as subsection (g):

(g) No class action lawsuit may be brought to recover damages for an unfair or deceptive act or practice declared to be unlawful by this part.

**SECTION 25.** Tennessee Code Annotated, 47-18-111(a)(1), is amended by deleting the language “or specifically authorized” and substituting instead the following:

“, specifically authorized, permitted, or regulated.”

**SECTION 26.** Tennessee Code Annotated, Section 63-6-219, is amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c) As used in this section, “medical review committee” or “peer review committee” means any committee of a state or local professional association or society, including but not limited to, impaired physician peer review committees, programs, malpractice support groups and their staff personnel, or a committee of any licensed health care institution, or the medical staff thereof, or a medical group practice, or any committee of a medical care foundation or health maintenance organization, preferred provider organization, individual practice association or similar entity, the function of which, or one (1) of the functions of which, is to evaluate and improve the quality of health care rendered by providers of health care service to provide intervention, support, or rehabilitative referrals or services, or to determine that health care services rendered were professionally indicated, or were performed in compliance with the applicable standard of care, or that the cost of health care rendered was considered reasonable by the providers of professional health care services in the area and includes a committee functioning as a utilization review committee under 42 U.S.C. §§ 1395-1395pp, or as a utilization and quality control peer review organization under the Peer Review Improvement Act of 1982, or a similar committee or a committee of similar purpose, to evaluate or review the diagnosis or treatment or the performance or rendition of medical

or hospital services that are performed under public medical programs of either state or federal design.

**SECTION 27.** 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 28.** This act shall take effect July 1, 2011, the public welfare requiring it.