HOUSE BILL 1152
By Dennis

SENATE BILL 938

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8; Title 20; Title 22; Title 24; Title 28; Title 29; Title 47; Title 50; Title 63 and Title 68 relative to tort reform.

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

SECTION 1. 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 and 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) As to the noneconomic damages limitations established in this section, the fixed sums of two hundred fifty thousand dollars ($250,000) and five hundred thousand dollars ($500,000) shall be adjusted as of January 1, 2012, and at three-year intervals thereafter, in accordance with the Consumer Price Index rate for the previous year as determined by the administrative office of the courts.

(c) 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) In any civil action, punitive damages shall be permitted only if the plaintiff proves by clear and convincing evidence that the defendant's conduct demonstrated actual malice with respect to the plaintiff.

(b) 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-times the amount of compensatory damages awarded to the plaintiff from a 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-times the amount of the

compensatory damages awarded to the plaintiff from a defendant, or two hundred fifty thousand dollars ($250,000), whichever is less.

(3) Any attorneys' 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.

(4) This subsection (b) 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 intentionally 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 intentionally or knowingly, and that is the basis of the tort action.

(5) As to the punitive damages limitations established in this subsection (b), the fixed sums of two hundred fifty thousand dollars ($250,000) shall be adjusted as of January 1, 2012, and at three-year intervals thereafter, in accordance with the Consumer Price Index rate for the previous year as determined by the administrative office of the courts.

(c)

(1) Except as provided in subdivision (c)(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, as amended, or the Federal Public Health Service Act, as amended; or

(B) Was an over-the-counter drug marketed pursuant to federal regulations, was generally recognized as safe and effective and as not being misbranded pursuant to the applicable federal regulations, and 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 (c)(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 such type.

(3) For purposes this subsection,

(A) "Drug" has the same meaning as in 21 U.S.C. § 321(g)(1); and

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

SECTION 2. Tennessee Code Annotated Title 50, Chapter 1, is hereby amended by adding the following new part thereto:

50-1-701.

(a) The general assembly hereby finds:

(1) The laws of this state protect individuals from certain prohibited employment actions, including discrimination in employment and retaliatory discharge;

(2) It is in the public interest to provide uniform standards for causes of action involving allegations of discrimination in employment or retaliatory discharge, whether the causes of action are based upon the statutes or the common law of this state;

(3) It is in the public interest to provide uniform standards for defenses available to employers in cases alleging discrimination in employment or retaliatory discharge; and

(4) The uniform standards should apply to all causes of action for discrimination in employment or retaliatory discharge, whether the causes of action arise under the statutes or the common law of this state.

(b) The standards set forth in this part shall apply to causes of action arising under the statutes and the common law of this state. This part shall supersede all existing statutes and common law principles that are inconsistent with the uniform standards set forth in this part.

50-1-702.

(a) At every stage of the proceedings in actions asserting claims for discrimination in employment or retaliatory discharge, whether such claims are based upon statutes of this state or the common law of this state, the individual asserting such a claim shall have the burden of proving:

(1) In the case of a civil cause of action brought pursuant to title 4, chapter 21, or § 8-50-103, that the challenged employment action and the injury or harm alleged was due solely to an act prohibited by such chapter or section;

(2) In the case of a civil cause of action brought pursuant to § 50-1-304, that the discharge or termination was solely because of an act prohibited by such section; and

(3) In the case of a civil cause of action brought under the common law for retaliatory discharge or discharge in violation of public policy, including, but not limited to, a discharge in retaliation for the exercise of rights under the workers' compensation laws, that the sole reason for the discharge was:

(A) The employee's exercise or attempted exercise of a statutory or constitutional right; or

(B) Another reason which violates a clear public policy evidenced by an unambiguous constitutional, statutory or regulatory provision.

(b) Notwithstanding any statute or common law principle to the contrary, at every stage of the proceedings in actions asserting claims for discrimination in employment or retaliatory discharge, whether such claims are based upon statutes of this state or the common law of this state, the employer shall prevail if the employer shows that the challenged employment action was based upon a legitimate business purpose.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it.