

Threat Looms Over State's Model Drug Liability Law

By Dan Pero

THE STATISTICS ARE ALL TOO FAMILIAR TO ANYONE WHO HAS FOLLOWED THE MICHIGAN ECONOMY OVER THE YEARS.

By just about every business climate measure, Michigan compares poorly to other states. Our taxes are higher than the national average. Depending on the month, our unemployment rate is the highest in the country. Unemployment compensation and workers' compensation costs are relatively high. Our regulatory burden is greater. No doubt about it: Michigan is an expensive place to do business.

Fortunately, there is one silver lining in this very large and dark cloud enveloping our state: Michigan has the best liability laws of any state in the country, and that gives our state one competitive advantage – at least for now.

That's because in 1995, Governor Engler and the Michigan Legislature enacted sweeping reform of our liability laws that provided predictability to our states' business environment and brought some sanity to courtrooms throughout Michigan. This tort reform effort discouraged unwarranted lawsuits, limited non-economic damages and built a fair and reasonable legal reform model for states across the nation to emulate. These reforms struck a careful balance between providing a way for those who have been injured to seek compensation, while significantly reducing unwarranted tort lawsuits that impose harsh costs on all involved and slow down the administration of justice for those truly wronged.

Michigan a Model State

Other states have indeed looked to the Michigan tort reform model as they have enacted reforms to their own laws. Georgia, South Carolina and Missouri this year passed historic legal reform in their states. And Mississippi, under the strong leadership of Governor Haley Barbour, reformed its tort laws last year. Their reforms are closely modeled after Michigan's.

There's a powerful irony to the fact that Mississippi was seeking to model its laws after ours. It goes beyond the fact

a lawyer wanting to file a lawsuit over the prescription drug Vioxx. You don't see that here in Michigan, because our law doesn't permit lawsuits against drug makers if the Federal Drug Administration approved the drugs in question, unless there was fraud in the approval process. In essence, the law "shields" companies that play by the rules from lawsuits.

Again, the authors of the current law struck a careful balance between discouraging meritless lawsuits, while still protecting a citizen's right to sue. The trial lawyers and the Democrats, on the

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that Michigan and Mississippi have been trading places all year as the states with the highest and second-highest unemployment rates. The irony is that Michigan House Democrats, backed by the Michigan Trial Lawyers Association (MTLA), are trying to make Michigan's tort laws look more like Mississippi's before Governor Barbour's initiative.

The MTLA would like nothing better than to repeal the successful 1996 reforms altogether.

The first step in the Democrats' and Trial Lawyers' drive to undo the 1996 reforms is to repeal the effective law dealing with pharmaceutical products. This is also known as the "drug shield law." In other states, you can't turn on a television set without seeing an ad for

other hand, don't even pretend to strike a balance, careful or otherwise. They seek to throw out the rule book. Their bill repeals the 1996 reforms entirely.

One other detail: their proposal repeals the 1996 reforms retroactively to 1996.

Can you imagine what our courts would be like if we uncorked nearly a decade's worth of unwarranted lawsuits all at once? The current asbestos litigation nightmare is an ideal indicator of what business can expect.

Now imagine the reaction of business owners deciding where to invest capital and create jobs. If the plaintiff's attorneys and the House Democrats get their way, Michigan will have thrown away a major competitive advantage, at



a time when our unemployment rate is highest (or second-highest) in the nation.


Current Threat Only the Beginning

Of course, this first bill is only the beginning. This year, Michigan trial lawyers and Democrat politicians are playing politics with our health and our jobs hoping to capitalize on the headlines, involving Vioxx and prescription drugs. But make no mistake: these dangerous allies are working together to undo the best tort reform laws in the country, one piece at a time.

The business community came together in 1995 to promote the successful reforms that make Michigan a leader

today on the liability front. Now the business community must come together again, to defend the law you worked so hard to enact. The trial lawyers can be effective adversaries in the courtroom – and their campaign contributions make them effective in Lansing as well. The business community cannot afford to be complacent and enable the trial lawyers to implement their plan to rewrite the tort laws for their own benefit.

It's indeed a sad commentary to see Michigan and Mississippi trading places each month as the state with the worst economy. It's even worse to see Mississippi taking steps forward, while the Michigan Trial Lawyers and their

Democrat allies in the state legislature try to drag us backward. 

ABOUT THE AUTHOR



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