

# TENNESSEE GOVERNMENT

## Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

---

*March 21, 2008*

### **Tort Reform**

The much debated and revised medical malpractice legislation from last year made its appearance in the House Civil Practice Subcommittee this week. Representative Doug Overbey (R-Maryville) presented the Senate version, sponsored by Senator Mark Norris (R-Collierville). The bill, which aims to reduce meritless claims, contains provisions requiring pre-filing notifications to medical providers who might be named in a complaint, ensures that all parties are entitled to copies of a plaintiff's medical records within 30 days of a request and requires a certification filed by the plaintiff's attorney that a medical expert competent to testify in Tennessee has reviewed the records and facts of the case and declares there is a good-faith basis for maintaining a medical malpractice action. The bill no longer includes a "locality rule" that would require experts to be located in the region in which the alleged malpractice occurred, nor caps on damages. The subcommittee approved the measure after assurances by Representative Overbey that he would not accept an amendment establishing such caps.

### **Lawyers and Nursing Homes**

Representatives of nursing homes claim that frivolous lawsuits are hampering their ability to provide services in the state. Aon Risk Consultants calculated that legal costs for nursing home operators averaged just under \$5,000 per bed – about \$500,000 per nursing home – in 2006, the second highest in the nation. They are promoting House Bill 4053 sponsored by Representative Randy Rinks (D-Savannah) that would cap damages in certain cases. The Tennessee Association for Justice (formerly Tennessee Trial Lawyers), however, insists that nursing homes are very profitable, in part because they provide poor quality care. The association cited data from 2007 during which 22 Tennessee nursing homes had to suspend admissions at the direction of state officials due to serious violations of health regulations. Ten nursing homes had to suspend admissions in 2006, and six in 2005.

The legislation backed by the nursing homes would:

- a. Impose a \$300,000 cap on "non-economic" damages in most cases;
- b. Authorize nursing homes to require residents to sign an agreement upon admission that requires settlement of any subsequent dispute through arbitration rather than a lawsuit; and
- c. Place nursing home lawsuits under the same legal restrictions that now govern medical malpractice lawsuits, including limits on attorney fees.

The bill is scheduled for debate before the Civil Practice Subcommittee of the House Judiciary Committee on Tuesday, March 25. It is pending in the Senate Judiciary Committee.

### **Long-term Care**

Tennessee ranks last in the percentage of funds spent on long-term care that is spent via home and community-based care. Ninety-eight percent (98%) of TennCare's \$1.2 billion long-term care budget goes to nursing homes. "I think, obviously, the nursing home industry is a very powerful industry in the state and has done a good job of keeping people focused on that piece of the industry," Governor Bredesen explained. It has "just been a tradition" in Tennessee related Senate Speaker Ron Ramsey (R-Blountville). Governor Bredesen wants to "restructure" long-term care in Tennessee by expanding home-based care and simplifying access to care.

### **Pre-K**

Last year the legislature passed BEP 2.0, the modified Basic Education Program that was promoted by Governor Bredesen and increases the state's share of K-12 funding. This year Governor Bredesen wants to spend \$25 million to expand pre-K by 245 classrooms. However, key Republican senators are saying that it is more important to fully fund BEP 2.0 (the budgeted amount of \$100 million this year) than to shortchange it by spending money on pre-K expansion. The Governor's proposed budget only allocates \$86 million for BEP 2.0. "When one compares pre-K with BEP 2.0, I think BEP 2.0 comes out ahead," Senator Randy McNally (R-Oak Ridge) said. "You know, it's going to be a matter of choices this year." Senate Education Chair Jamie Woodson (R-Knoxville) added that she is concerned with keeping "the promise we made to Tennessee students" last year regarding BEP 2.0. Thus far, revenues are off by about \$212 million for the year. Governor Bredesen has sent strong signals suggesting that making pre-K universal is very important to him and something he is intent on accomplishing. Lieutenant Governor Ron Ramsey has questioned the importance of subsidizing pre-K for middle and upper income children.

### **Bredesen Signs Energy Policy Executive Order**

An executive order signed by the Governor is an attempt to develop a comprehensive energy policy at the state level. Governor Bredesen wants state agencies to provide an example for the private sector regarding energy efficiency and alternative fuels. A 16-member task force will be appointed by the Governor and charged with offering recommendations in the fall. The National Governors Association met in Washington last month and highlighted energy policy. At that time, Governor Bredesen said, "You can talk all you want about solar and wind and alternative fuels — the reality is for the rest of my lifetime, half of the energy in this country is going to come from coal, and what we ought to do is concentrate on technologies to burn it cleanly."

### **Transitions**

Former Lieutenant Governor John Wilder (D-Mason) announced this week that he will not seek another term. Wilder, who served 44 years in the Senate (36 of which were as the Speaker and Lieutenant Governor) urged senators "to be statesmen. To do what is good and right for this state and leave partisan politics out of it." As Speaker Wilder practiced power sharing, the Democrat regularly appointed Republicans to chair committees. He ended his retirement comments by saying, "Now, if I don't change my mind, that's what I'm going to do."

Former Republican, now Independent, Senator Mike Williams of Maynardville told the full Senate that he was still undecided regarding his future plans. He was responding to print media reports that said that he had decided not to seek re-election.

The Associated Press reported that Senator Ophelia Ford (D-Memphis) is expected to take part in senate proceedings on Monday. She has been absent due to an unspecified illness for the entire session thus far.

*The materials contained herein have been abridged from the statutory sources and should not be construed or relied upon for legal advice.  
Readers are urged to consult legal counsel concerning particular situations and specific legal questions.  
To ensure compliance with requirements imposed by the IRS, we inform you that this message is not intended to be used, and cannot be used,  
by the addressee or any other person for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.*

**J. Richard Lodge, Jr.**

PHONE: (615) 742-6254

FAX: (615) 742-2754

E-MAIL: [dlodge@bassberry.com](mailto:dlodge@bassberry.com)



**Leslie K. Hafner**

PHONE: (615) 259-6342

FAX: (615) 742-2801

E-MAIL: [lhafner@bassberry.com](mailto:lhafner@bassberry.com)