

TENNESSEE GOVERNMENT UPDATE

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

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Governor Bill Haslam announced his legislative priorities for 2011 yesterday. He asked the Tennessee General Assembly to reform Tennessee's civil justice system, also known as tort reform; recast Tennessee's K-12 teacher tenure law; open charter schools to more students; and eliminate one of the four members of the Tennessee Regulatory Authority.

The tort reform measure proposes to:

- (a) cap non-economic damage awards at \$750,000 per occurrence
- (b) cap punitive damage awards at \$500,000 per case and
- (c) categorize all cases arising from the providing of healthcare, including nursing home cases, as medical malpractice cases and, therefore, subject to the special rules of medical malpractice cases, to be known hereafter as "healthcare liability actions."

The proposal also reforms the provisions of Tennessee law relative to appeal bonds and the basis and procedure for awarding punitive damages. The bill would make a product liability lawsuit more difficult against a seller of a product who is not the manufacturer. In addition, the recommendation provides automatic appeals of class action certification or denial of certification by a state trial court and would eliminate punitive damages and class action status in cases brought under the Tennessee Consumer Protection Act. The Tennessee Consumer Protection Act reform also would prohibit bringing a case under that statute involving the marketing of securities. The bill is [SB 1522/HB 2008](#).

The [Knoxville News Sentinel reports](#) that the Association for Justice (Tennessee Trial Lawyers) had a somewhat negative reaction to the tort reform proposal.

Tennessee's teachers have had a particularly difficult week politically. In addition to the governor's tenure reform proposals, the Senate Education Committee voted to repeal the statute under which local teacher groups may bargain collectively with local boards of education. [The Tennessean writes about that effort and the reaction to the committee's action.](#)

The governor's tenure reform proposal will result in a five-year initial probationary period rather than the current three-year period and would create a process in which a tenured

teacher could revert to probationary status if a teacher did not maintain sufficiently high standards as measured by the new evaluation system adopted in 2010 and embedded in Tennessee's \$500 million Race to the Top Award. [The Commercial Appeal has an overview.](#)

Also, in the educational arena, the governor proposed eliminating the cap on the number of charter schools in Tennessee (90, at present) and opening enrollment at charter schools to more students.

As a footnote to the education recommendations, the governor still has not appointed a permanent commissioner of education to lead the reforms he seeks and implementation of the Race to the Top Award. He requested yesterday that the legislature change the statutory credential for the job from "qualified to teach" in Tennessee to "a baccalaureate degree." In other words, an undergraduate degree would still be required but not a Tennessee teaching certificate.

Finally, the Tennessee Regulatory Authority, to which the legislature added a fourth director several years ago, would be reduced to three directors, the historic number for the TRA and its predecessor agency, the Public Service Commission. Two of the four positions are to be re-appointed under the current statute by July 1, 2011. The governor's proposal would eliminate one of the two, that one being an appointment made jointly by the governor and both speakers.



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