

TENNESSEE GOVERNMENT UPDATE

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

May 31, 2011

After much debate and speculation as to whether adjournment before Memorial Day was possible, the 107th Session of the Tennessee General Assembly concluded its business almost a week ahead of schedule and adjourned late Saturday evening, May 21. The leadership and members of both houses of the legislature committed to finishing early and burned the midnight oil (whether Pilot or some other brand was not clear) for several days to achieve that goal.

In the process, the House and Senate:

- unanimously passed the state's \$30.8 billion spending plan (4% decrease from last year's budget);
- replaced collective bargaining for teachers with a new system of "collaborative conferencing" with school boards;
- removed the cap on the number of charter schools allowed in the state;
- adopted a joint resolution to amend the Tennessee Constitution to clarify that the state constitution is neutral on the subject of abortion (to be placed on the November 2014 ballot for ratification by voters in a statewide referendum);
- bid farewell to Speaker Pro Tempore of the Senate, Jamie Woodson (who resigned from office to become the President and Chief Executive Officer of SCORE); and
- randomly welcomed a surprise visit from supermodel Heidi Klum and her husband, the singer Seal.

Two bills of particular importance for most businesses – tort reform and corporate campaign contributions – also passed and are headed to the governor's desk for signature. The details are as follows:

Tort Reform

After concurring in a Senate amendment, the House gave final approval to the Tennessee Civil Justice Act of 2011 on a 68-27 vote. The Senate bill differed from the House version with respect to whether the elimination of noneconomic damage caps would be triggered by: (1) a defendant's felony conviction that caused the plaintiff's injury; or (2) a defendant's intent to harm the plaintiff. The House had previously passed the felony conviction language.

In its final form, the bill places noneconomic damages – such as for pain and loss of enjoyment of life – at \$750,000. In the case of certain catastrophic injuries involving the spinal cord or third-degree burns, the cap is \$1 million. Regarding punitive damages, the bill sets a ceiling of

\$500,000 or twice the amount of compensatory damages, whichever is greater. It also scales down the Tennessee Consumer Protection Act to prevent its use to bring securities fraud lawsuits or consumer class action lawsuits. The bill goes into effect on October 1, 2011 for all injuries accruing after that date. Governor Haslam predicts that this legislation will promote job growth and "remove[] one of the few advantages surrounding states had" in recruiting businesses to Tennessee. More from the governor at: <http://news.tn.gov/node/7209>.

Corporate Contributions to Campaigns No Longer Prohibited

In what could be referred to as her legislative swan song, Senator Jamie Woodson (R-Knoxville), working with House sponsor Glen Casada (R-College Grove), succeeded in passing a bill that will allow direct corporate contributions to Tennessee candidates for the first time. In the House, 20 Democrats voted against the bill, arguing that the bill would disenfranchise the "average voter."

Under the new law, corporate contributions exceeding \$250 will fall under the same campaign-finance laws as political action committees ("PACs"), requiring corporations to register as a PAC and file campaign disclosure reports. Corporate campaign contributions will be allowed to PACs in addition to candidates. The bill also creates an escalator (based on the Consumer Price Index) that will adjust every two years the maximum contributions allowed by law. As a result, the PAC contribution limits for House elections will increase from \$5,000 to \$7,100 and limits for Senate or gubernatorial candidates will increase from \$7,500 to \$10,700.

In addition to the corporate changes, the bill deletes the biennial limit of \$109,100 on an individual's total contributions to state and local candidates and PACs. It creates a new prohibition with respect to PACs controlled by members of the General Assembly. For more information regarding campaign contribution changes, read the [analysis from the Registry of Election Finance](#).

Other Bills of Interest

Much like the month of March, some bills came into this session like a lion and out like a lamb. After much publicity and opposition from various businesses and groups, such as the ACLU and Tennessee Muslims, an anti-terrorism bill that originally sought to make it a felony to follow some versions of the Islamic code known as Shariah passed, but only after being stripped of religious references. [Bob Smietana with *The Tennessean*](#) provides background on the bill and a perspective on how the bill divided the Tennessee Tea Party. Similarly, a bill that initially required Tennessee employers to use the federal E-Verify system to make sure their employees are in the country legally passed, but only after an amendment was added that would exempt employees who can present a valid driver's license.

Amazon Averts the Collection of Sales Tax

A bill that would require Amazon to collect sales tax on its transactions in Tennessee was deferred until next year. Amazon has broken ground on two distribution centers in Chattanooga and Bradley County with the understanding from the Bredesen administration (and a commitment from Governor Haslam to honor that understanding) that the company would not have to collect sales tax on Internet transactions. Amazon had warned that passage of the bill would cause the company to abandon the building of those warehouses, along with its plans to build three additional centers in Knoxville and Nashville. The sponsors of the bill, who admittedly were unsure of the vote count, have indicated that the deferral would allow the

Attorney General's office to weigh in on the sales tax collection issue before the issue was raised again when the legislature reconvenes next January. [Tennessee Report has an in-depth story.](#)

Legislative wrap-up stories include observations by [Chas Sisk of The Tennessean](#), [Jeff Woods of The Nashville City Paper](#) and [Andy Sher of the Chattanooga Times Free Press](#). [Tennessee Report](#) looks forward to the second session of the 107th General Assembly that convenes January 10, 2012.



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