



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

New Litigation Tax Will Threaten Wisconsin's Economy

Wisconsin is currently mired in the most severe recession in a generation. The state is facing a budget deficit exceeding \$5 billion. Unemployment is soaring. On top of this, the non-partisan Wisconsin Legislative Fiscal Bureau recently released an analysis finding that the proposed two-year budget will add \$1.7 billion in new taxes and fees.

Yet, not included in the analysis is a hidden tax being proposed by the trial lawyers. This "litigation tax" is the result of three policy provisions buried deep in the budget that will shift costs to consumers and negatively affect Wisconsin's economy.

The changes include: 1) amending Wisconsin's joint and several liability law so that a person as little as 1% at fault can be forced to pay 100% of a plaintiff's damages; 2) allowing a person to file a lawsuit and collect damages even if that person is more at fault than the individual co-defendants; and 3) requiring courts to inform the jury on how its findings of fault affect responsibility for damages—that is, allowing the jury to adjust fault determinations to maximize awards for plaintiffs.

These hidden taxes will have a real impact on Wisconsin's economic development and business climate. Already, lawsuits negatively impact our economy. For example, tort costs are equivalent to an annual "litigation tax" of \$845 per U.S. citizen. One study found that in 2006, this litigation tax was \$1000 per capita, compared to just \$94 (adjusted for inflation) in 1950.

Since 1990, litigation taxes have consumed on average 2% of Gross Domestic Product. Tort costs are now more than total U.S. manufacturing profits. These policies not only affect businesses, they negatively impact society as a whole.

The proposed budget provisions pose a major threat to Wisconsin's business climate and negatively affect economic development. Businesses contemplating whether to relocate or expand their business to Wisconsin will think twice if these provisions are enacted. If it will cost more to purchase insurance to stave off frivolous lawsuits, the business is likely to go elsewhere, or raise prices on consumers. Moreover, if a business owner is faced with the possibility of losing everything in one lawsuit, that company may forego doing business in this state altogether.

During this economic downturn, one must question why we would want to impose a new litigation tax that rewards trial lawyers and harms our economy.

Wisconsin is headed in the wrong direction with these budget proposals. If enacted, Wisconsin will have the dubious distinction of having the most expansive joint and several liability law in the Midwest, joining just a handful of other states with such a law.

During these tough economic times Wisconsin can ill-afford impediments to the state's business climate. Instead of enriching a few trial lawyers, we should promote Wisconsin as a place to live and do business for all its citizens.

At the very least, these non-fiscal policy provisions should be removed from the budget bill. They should be introduced instead as separate bills and be fully vetted by the entire Legislature.

Write or call (800-362-9472) your state representative and senator. Tell them you want the joint and several liability and other trial lawyer provisions removed from the budget.