



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

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TO: Members, Wisconsin State Legislature
FROM: Board Members, Wisconsin Civil Justice Council, Inc.
RE: **Liability Provisions in State Budget (AB 75)**
DATE: May 14, 2009

Wisconsin is facing daunting economic challenges and budget deficits that only a year ago were unfathomable. Advancing controversial and far-reaching policies in the budget only serve to detract from the matter at hand – our economy and state fiscal predicament.

One such policy initiative in Gov. Doyle's budget relates collectively to joint and several liability, combined fault, and jury instructions. These provisions make fundamental changes to our civil justice system and will have a profound impact on litigation risks and related costs. If enacted, there will be more lawsuits targeting more people, businesses, charities, and anyone with money or insurance.

Before a single suit is filed, these provisions will cause serious damage. Insurance rates will go up and availability of coverage for some will be more difficult to obtain. Of most concern to our members, this litigation leverage provided to the trial lawyers will hurt the entire state and our efforts to be competitive in business attraction and retention.

Take, for example, the provision that allows someone as little as one percent at fault to pay for 100 percent of damages. Decoupling liability from fault in this way is not seen anywhere in the Midwest, and will surely make Wisconsin a less desirable place in which to locate or expand. By any measure, no state in the region will have such an expansive litigation climate.¹

To say this doesn't matter when companies evaluate our business climate ignores the realities of how businesses assess competitive advantages or disadvantages. That is, litigation risks and costs are a material factor in these decisions.² Having the worst litigation climate in the region will make

¹ Michigan, Indiana, Kansas and North Dakota have no joint and several mandates (you pay only that percentage at fault). Iowa, Minnesota, Ohio, Missouri, Nebraska, and South Dakota all require the defendant be at least 50% at fault before imposing joint and several liability. Only Illinois triggers full liability when less than 50% at fault, with a 25% threshold.

² Three-quarters of all small business owners in America are concerned they might be the target of a frivolous or unfair lawsuit. Of those who are most concerned, six in ten say the fear of lawsuits makes them feel more constrained in making business decisions generally, and 54 percent say lawsuits or the threat of lawsuits forced them to make decisions they otherwise would not have made. U.S. Chamber Institute for Legal Reform (Nov. 4, 2008).

Wisconsin less competitive. This self-imposed handicap could not come at a worse possible time.

Beyond the costs and competitive disadvantages, one recurring theme comes from our members: These provisions are patently unfair. It gives the trial lawyers such an advantage that costly settlements not remotely proportional to fault may often be their only recourse.

The public and editorial boards across the state agree. Our bipartisan poll has found nearly two-and-a-half times as many voters opposed to the lawsuit changes buried in Gov. Doyle's budget as in support.³ They simply found these provisions unfair. We have attached editorials from across the state that support our position that these provisions should come out of the budget.

We are also dismayed over the process the Legislature is invoking to advance these policies. Unlike the bipartisan reforms passed in 1995, these provisions are part of a budget that Wisconsin citizens expect to be focusing on the economy and our fiscal challenges. As such, our members and the public at large are not being afforded any meaningful opportunity to provide input. For that matter, legislators who will be asked to vote for these provisions in the context of the budget will not be given a reasonable chance to consider how these sweeping changes impact their constituents.

Virtually all business, along with members of each association represented by the Council, will be significantly harmed by these provisions. At a minimum, these provisions should be removed from the budget and allowed to be debated as separate legislation, with public hearings and the full deliberation of elected officials.

³ The poll was conducted from March 22-23 and surveyed 500 "likely" voters in Wisconsin.

Wisconsin Editorial Boards Agree

Remove Liability Provisions from State Budget

MILWAUKEE • WISCONSIN
JOURNAL SENTINEL

Uncivil fault finding – The Joint Finance Committee should strip joint and several liability issues from the budget. Existing law already compromises in favor of injured parties. . . This is simple unfair. *April 24, 2009*

The **Janesville**
Gazette

Liability change could doom companies – The change would be yet another blow dealt out by Democrats in Madison to companies-perhaps even your employer-trying to survive in the economic downturn. *May 5, 2009*

Wisconsin State Journal

Block the return of lawsuit abuse – Legislators should strip from the state budget Gov. Jim Doyle's sneaky attempt to sweep away an important piece of liability law reform. At stake is who pays for damages when plaintiffs win lawsuits. Doyle's proposal risks costly consequences for businesses, consumers and taxpayers. *April 28, 2009*

The Sheboygan Press

Keep policy issues out of state budget – Change in how negligence is assigned to parties in a civil damage suit . . . we don't think it should be part of the state budget bill. . . Whether a policy becomes state law should be determined by a separate vote of the Legislature, not because it was part of a state budget. *April 7, 2009*

LA CROSSE
Tribune

Get non-budget items out of the budget – They're important enough to the future of our state to be debated separately and openly, not as add-ons to a state budget that's being debated in the most economically challenging time in decades. In the case of joint and several liability standards, we're talking about changes that could have a significant impact on the business climate of Wisconsin. *March 25, 2009*

GREEN BAY PRESS-GAZETTE

Boot out budget's nonfiscal matters – Democratic leaders should remove nonfiscal policy items from the budget bill and send them as separate legislation to the appropriate committees. . . The budget is a big enough task for now; these other matters can wait a little longer. *April 10, 2009*