



# WEEKLY REPORT

State Senator Gary Nodler  
District 32



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## *A Matter of Proportionate Liability*

JEFFERSON CITY – Reforming our system of civil liability this year is at the forefront of the General Assembly’s legislative agenda. This week, the Senate debated, amended and passed a House bill altering the state’s civil litigation system so that outrageous jury awards are eradicated in lawsuits dealing with such cases as medical malpractice, wrongful death, product liability and car accidents. The prevailing consensus is that Missouri’s tort law, also known as civil liability law, needs to be changed. However, finding a new way of distributing that liability between culpable parties was the challenge. This is the third year for a bill of this nature to make it this far in the legislature. The past two years, similar legislation went to Governor Holden, who vetoed the bills. Now with Governor Blunt as our head of state, we expect success this time around.

Missouri’s current tort law allows juries to award plaintiffs with excessive amounts of money, which drives insurance premiums up. As a result, businesses move out of state, and doctors stop performing high-risk procedures, relocate to states with lower insurance premiums, or quit their practices altogether. A recent case in Jackson County emphasized the need for drastic reform in the civil court system. A jury awarded the family of a woman who smoked for 50 of her 73 years of life \$20 million in punitive damages in a wrongful death lawsuit against the manufacturers of Kool cigarettes. The woman who died had diabetes and heart problems, yet the tobacco company was still found to be at fault. That line of reasoning led to an unfair amount awarded, which will never happen again once this measure becomes law.

These problems are partially mitigated when a reasonable limit is set on the amount of awards for non-economic damages, which are allocated for pain and suffering. Currently the cap is at \$579,000, but the Senate’s version of the measure lowers the cap to \$350,000.

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The legislation also prohibits “venue shopping,” a practice in which trials are moved to jurisdictions known for awarding plaintiffs with extremely generous amounts.

At the heart of the nearly eight-hour debate was the issue of revising the “joint and several liability” clause. This clause allows one defendant to be held financially liable for the monetary amount that other liable defendants are unable to pay. The current law increases the financial responsibility of defendants who have deeper pockets than the defendants who have less money, regardless of who is the most culpable for the injury.

I favor a system with no joint and several liability clause, where all individuals or corporations are held liable only for the percentage of damage for which they are responsible. We successfully defeated amendments to restore the joint and several liability concept with a 10 or 15 percent threshold for responsibility. The Senate later narrowly accepted an amendment reestablishing the principle of joint and severally liability with a 51 percent responsibility threshold. The provision means that defendants can be responsible for the punitive (economic) damages beyond their percentage of liability if the jury determined them to bear 51 percent or more of fault, and the other defendant(s) cannot cover their share(s). This represents an extraordinary improvement over the current law. Differences between the House and Senate language will be ironed out before the tort reform bill goes to the governor, where it is expected to be signed into law.

Missouri’s current tort law has created a runaway court system, which only harms Missouri’s reputation and economy. We are one step closer to addressing the flaws of our civil liability system with meaningful tort reform to ensure that financial and legal justice prevails.

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