

PUBLIC POLICY COMMENTARY



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Tort Reform 101

By Andrew Fitzgerald, Senior Director, Business Intelligence

With the COVID-19 pandemic essentially shutting down the state and its economy, the state legislature has narrowed its focus to legislation that will jumpstart the economy and help out residents financially. One policy area that is still a priority in this narrowed session is tort reform. **So, what is it, and why should people care?**

The short answer is that people have realized that the legal system in Louisiana is an outlier among states, and its oddities are costing families thousands of dollars every year – funds that are even more vital with high unemployment and future economic uncertainty. In the Baton Rouge Area Chamber’s (BRAC’s) annual business survey, litigation costs are regularly among the top obstacles for businesses in the Capital Region. This reality is verified by national observers – the Institute for Legal Reform ranks Louisiana as the second worst legal climate in the nation, while the state comes in fourth place in the American Tort Reform Foundation’s “Judicial Hellhole” rankings.

What makes Louisiana’s legal system so different?

For one, it discourages cases from being decided by a jury of one’s peers. In over 75 percent of states, litigants have a right to have their cases heard by a jury in any instance. Of the other thirteen states that require cases assert a minimum dollar threshold to reach a jury rather than a judge, \$15,000 is the highest dollar amount set. In Louisiana, there is a \$50,000 threshold; this means that politically connected judges rather than members of the community decide more than half of all claims in Louisiana.

In addition, in Louisiana defendants cannot introduce evidence that the person bringing the lawsuit was not wearing a seatbelt at the time of the accident. Even if the main cause of injury in an accident was a plaintiff’s

unwillingness to wear a seatbelt – which is required by Louisiana law – defendants cannot present that to judges or juries. These are just some of the most glaring ways Louisiana’s legal system is broken.

So why should the average person care? Because an insider system like this has costs that hit the pocketbook of everyone that lives in the state. According to a new study, excessive tort costs have an annual negative impact of \$1.4 billion for the state of Louisiana, and kill nearly 20,000 jobs.¹ From a regional perspective, in 2018, the cost was \$206 million for the Capital Region, with a cost of nearly 3,000 jobs and \$171 million in personal income. On a per capita basis, there was a “tort tax” of \$349 per person.

One might ask, even if the legal system is so flawed, how does it have a negative impact on people that never go to court?

For one, there are costs associated with a legal system that encourages citizens to sue each other. Louisiana has just slightly more annual automobile accidents per capita than the national average; however, there are twice as many bodily injury legal claims per insured vehicle than the national average. One goal of tort reform is to discourage the cottage industry of incentivizing neighbor into suing neighbor.

In addition, businesses that get dragged into litigation have no choice but to pass those costs onto consumers. Louisiana residents pay the second highest auto insurance rates in the nation. In Baton



¹ Economic Benefits of Tort Reform, The Perryman Group, November 2019



Rouge, residents pay nearly \$2,800 annually on average, the seventh highest of any city in the country; the national average is under \$1,500. One would think that if auto insurers could charge such large rates, they

would be flocking to set up shop in Louisiana – but that is dead wrong. Because of a legal environment that encourages litigation and excessive attorney fees, many insurers will not set foot in Louisiana. Those that do provide insurance here are forced to charge high premiums to account for the fact that residents are twice as likely to sue if there is a car accident than residents of the average state. A lack of insurers offering auto policies and large court costs for insurers

that do business in Louisiana create a worse climate for everyone. Even those with a strong driving record pay the “tort tax” in the form of higher insurance rates.

The tricky thing about tort reform is that there is no single silver bullet. Because of its unique history, Louisiana’s legal system is different than others in a multitude of ways – some of which have a direct cost to its residents. This legislative session, there will be a number of good reforms offered at the state Capitol, all of which are designed to remove inefficiencies from the legal system and discourage frivolous litigation, both of which will lead to lower costs for auto insurance and other services in the state. Even if the broken tort system cannot be taken down with a silver bullet, research shows that it is susceptible to a lot of precise cuts that yield better outcomes for us all.