



## Testimony

Submitted on behalf of the  
Pennsylvania Chamber of Business and Industry

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### **Public Hearing on Medical Liability**

Before the:

### **House Judiciary Committee**

Presented by:

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Good morning. My name is Sam Denisco. I am Director of Government Affairs for the PA Chamber of Business and Industry. The Pennsylvania Chamber of Business and Industry is the state's largest broad-based business advocacy association. PA Chamber membership comprises nearly 50 percent of the private workforce. PA Chamber membership ranges from Fortune 100 companies to sole proprietors, and crosses all industry sectors. Thank you for giving the Chamber the opportunity to present testimony on the issue of medical liability reform.

The Chamber supports a health care system in the Commonwealth that provides necessary, appropriate, accessible and effective health care to employers and employees at a reasonable cost. Rapidly rising health care costs interfere with the ability of the business community to maintain existing jobs and create new jobs. One well documented phenomenon that greatly contributes to the escalating costs of health care not only in Pennsylvania, but across the nation are liberal liability systems that has spurred providers to err on the side of caution and provide unnecessary services. Not only does this have a serious and immediate impact on patient access to care, but it also has a long-term impact on the economic development of our communities. Without access to high quality medical facilities, physicians, and other health care providers, communities will endure greater difficulties in attracting businesses to their areas and recruiting talented employees for existing businesses.

In the face of a liability crisis that threatens to erode patient access to health care, stall the creation of jobs and job opportunities, and halt business retention, expansion, and attraction, the Chamber recognizes that steps have been taken to address the concerns of Pennsylvania physicians and prevent any disruption in patient coverage. We have seen a sharp decline in

medical liability claims since the enactment of the 2002 medical liability reforms. The business community strongly feels these reforms must be followed by long-term, broad-based systemic changes to the Commonwealth's legal system. We need additional, meaningful changes to our civil justice system to further reduce the costs incurred by business, encourage expansion of existing businesses, and make our State more attractive to new business. Many examples exist where businesses have been adversely affected by the inequities of the current legal system. However, most businesses find it easier and financially advantageous because of the unpredictability of our system, to settle rather than paying the legal costs to defend themselves. In fact, studies have shown large increases in productivity and employment associated with liability reforms. There is little doubt that adopting such reforms in Pennsylvania would produce gains in employment, productivity, and total output.

Numerous studies of the impact of reforms on labor productivity and employment have demonstrated that states which changed their liability laws to decrease levels of liability experienced greater increases in aggregate productivity and employment than states that did not. At the same time, states adopting measures which increase liability often see productivity and employment fall. An unbalanced litigation environment can cause serious dislocations with significant economic implications. If awards are disproportionate to (or irrespective of) actual injury or harm, attorneys and plaintiffs respond to these incentives to pursue excessive litigation and potential defendants divert resources from more productive purposes to invest in avoidance strategies.

That being said, joint and several liability reform is greatly needed in Pennsylvania in order to fairly and proportionately allocate liability based on percentage of fault attributed to each

party's negligence. Under our current scheme, a defendant found to be 1% at fault can be forced to pay 100% of the damages. The repeal of joint and several liability will correct a fundamental unfairness by tailoring the law to have defendants pay only the percentage of fault for which they are responsible and not for the damages attributable to others.

In addition to the repeal of joint and several liability, other changes the business community recommends to help improve the legal climate in the Commonwealth are:

- Amending Pennsylvania's Constitution to provide for caps on non-economic damages;
- Setting strict standards for the imposition of punitive damages and limiting the total amount of punitive damages that may be awarded without taking away the ability to assess punitive damages on those who deserve to be punished;
- Enacting a Statute of Repose for products manufactured long ago that worked without problems or incidents;
- Protecting innocent sellers who are sometimes sued for simply selling a product later claimed to have been defective;
- Requiring plaintiffs filing a product liability action to include with the complaint a certificate of merit containing an expert opinion from a licensed professional that there exists a reasonable probability that the product in question is defective and such defective state, quality or condition was a cause in bringing about harm to the plaintiff; and

- Establishing that a tort action for damages which alleges a personal injury may only be filed in the county in which the cause of action arose, and judgment upon that action may only be entered within the same county.

Most of the above reforms have been enacted in the state of Texas – a state that the *Wall Street Journal* once dubbed the “Lawsuit Capital of the World.” Lawsuit reforms enacted in Texas have helped make their economy one of the strongest in the nation. A variety of measures from the CEO Index to the Bureau of Labor Statistics show that Texas leads other states in job growth, business creation and expansion. A 2008 economic impact study by the nationally recognized Perryman Group determined that lawsuit reforms in Texas have resulted in a \$112.5 billion annual increase in annual tax revenues and 499,000 new and permanent jobs. A comprehensive analysis by the Pacific Research Institute in 2007 concluded that the Texas civil justice reforms had created the best legal model in the nation.

The Pennsylvania Chamber respectfully urges our General Assembly to consider the steps Texas has taken and restore fairness in Pennsylvania’s civil justice system. With unemployment continuing to steadily increase, putting Americans back to work must be our top priority. But the litigation climate threatens to dampen job creation and economic growth just when we need it most. Enacting civil justice reforms will have real world consequences that improve access to health care and make Pennsylvania a more attractive state to do business in.

Thank you for giving the PA Chamber the opportunity to present testimony on this very important matter. I would be happy to answer any questions you may have.