

House Judiciary Committee  
Hearing on HB 1552  
Monday, October 24, 2011

David W. Patti  
President & CEO  
Pennsylvania Business Council

Good morning. I would like to thank Chairman Marsico and the members of the Committee for devoting time today to study "venue shopping," a very real threat to Pennsylvania's economic competitiveness.

I am David Patti, President & CEO of the Pennsylvania Business Council. It is my pleasure and honor this morning to testify not only for PBC, but on behalf of a very broad coalition of business, non-profit, and local government organizations especially, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Manufacturers Association, the National Federation of Independent Business/Pennsylvania, and the Insurance Federation of Pennsylvania.

Hearsay evidence may be inadmissible in a courtroom, but in business decision-making reputation is everything. Pennsylvania's reputation as a state with the nation's top "judicial hellhole" is legendary. Big jury awards and permissive courtrooms – especially in Philadelphia – lure lawsuit filings. Business leaders make conscious decisions to avoid locating facilities or making transactions that will bring them into such a venue – or forum – if they can help it.

Rules that allow attorneys to bring actions on behalf of their clients in a venue regardless of the proximity to the alleged injury or loss destroy the economic competitiveness of that region. It's the legal equivalent of "nice people" avoiding "bad neighborhoods" after dark. You don't go there if you don't want to get mugged. One reason job creators avoid doing business in Pennsylvania is our legal climate and the ability to "shop" for venues is a major part of the problem.

My colleague Mark Behrens provided you with an outstanding overview of the very clear legal issues which HB 1552 addresses. I will help you to understand the economic context. When I first came to Harrisburg as a Senate staffer in 1985, I was employed as a research analyst for economic development. I spent 18 years as a Board member of the Berks County Industrial Development Authority; four years as the Chairman. I served in the Ridge Administration as a Deputy Secretary of the Department of Community and Economic Development and Chief Operating Officer of Team Pennsylvania. It was my honor to be appointed by Governor Corbett to his DCED Transition Team. And, of course, I have 19 years as the CEO of business associations. I have spent my professional life trying to create and protect jobs in Pennsylvania.

With more than a quarter century of work in this area, I can sum-up in one word the business community's most desired characteristic of public policy: predictability.

In taxation, regulation, employment law, infrastructure, and legal climate – business leaders want to be able to predict with certainty the outcome of a particular situation. They need a reasonable expectation that rules of law will be uniform throughout a state. There are so many things business persons cannot predict: market fluctuations, demand for goods, prices, weather and natural disasters, and more – that the desire for fair, consistent, uniform, predictable public policy is acute.

A legal system in which litigation outcomes are perceived as random results swinging between wild extremes is frightening to business decision-makers. The ability to "shop" for a friendly venue in Pennsylvania is one more factor that makes our litigation outcomes unpredictable, and our state less desirable as a business location.

In 2007, the Pennsylvania Business Council undertook an effort to aggregate and analyze many of the various comparative studies of state business climates and competitive advantages. We updated that research in 2010. What it told us was that Pennsylvania's legal climate was an attribute which ranked very poorly among the other states. Across studies, Pennsylvania was consistently in the bottom third among states. This did not come as a surprise to us. We knew this was important and made fixing Pennsylvania's legal climate a major policy goal of PBC.

In a few weeks we will be announcing the first results of a project undertaken with the cooperation and support of the Pennsylvania Chamber to build a model of Pennsylvania's competitive position that will allow us to rank ourselves annually against other states and benchmark the performance of Pennsylvania policy-makers year-over-year with simple and consistent measures. To build this model, our team selected variables used by site selection professionals when they make their recommendations to clients for new business locations. We validated this list by surveying senior executives to understand the weight they gave to factors as they compared Pennsylvania to other business location opportunities. Given dozens of factors that included elements of business tax policy, environmental regulations, health care cost, workforce education and training, infrastructure, and proximity to customers – "legal climate" was a highly weighted factor with "joint and several liability thresholds," "caps on non-economic damages," "statute of repose for product liability," and "venue shopping" being specific decision factors in business locations.

This is no surprise. In 2007, a McKinsey & Company report found that, among executives surveyed, "litigation risks" were second only to the availability of qualified workers in determining where to establish operations.

As I said, in business decision-making, reputation matters and Pennsylvania's legal climate reputation is not good. Mark Behrens explained the Commonwealth's ranking among states for so-called "judicial hellholes."

The Pacific Research Institute compared legal climates of the states in research done in 2010. They aggregated 13 different variables to form an index of the states. Pennsylvania ranked 46<sup>th</sup> with only Florida, Illinois, New York, and New Jersey ranked worse. Not surprisingly, judicial hellholes are one of the 13 variables. The 2010 PRI numbers are based on 2009 hellhole rankings, so Pennsylvania's overall score is falling as a result of subsequently earning the distinction of America's top judicial hellhole – not getting better. This is thanks to our venue shopping problem.

The top states in PRI's 2010 index were Alaska, Hawaii, North Carolina, South Dakota and North Dakota. Virginia, an emerging economic powerhouse, was ranked 8<sup>th</sup>.

Texas was not ranked as highly as we might think, but I suspect you have heard about the reputation for a great legal climate in Texas. Studies show that doctors have moved to Texas in droves because of the better legal climate.

Texas' overall business climate has consistently been ranked among the best over the last 10 years. And, as we know, Texas has added tens of thousands of jobs to its state through the last decade. Statistics credit Texas for creating 129,000 jobs in 2010 alone. Frankly, I do not believe that Texas and Governor Rick Perry created new jobs. I do think Texas government officials and Governor Rick Perry masterfully created a perception that Texas is a great place to do business and so tens of thousands of jobs were moved to Texas from other states including Pennsylvania. A Tax Foundation study showed that 32,000 people moved from California to Texas in 2008 chasing jobs that had moved there.

I was in Austin three weeks ago and spent a little time with Aaron Demerson, Executive Director of Economic Development in the Office of the Governor – the equivalent to being the Director of our Governor's Action Team. Aaron shared with me how well he does with the receptions he holds annually at the US Tennis Open in New York City courting east coast firms to relocate to Texas. One of his selling points, he told me, is "Texas' great legal climate."

Perception is reality. Texas, North Carolina, and Virginia are among the states perceived to have good legal climates. Add to this their low business taxes, right-to-work laws, and competitive environmental regulations and it is clear why they are increasing in population and employment while Pennsylvania still struggles in the doldrums.

Pennsylvania took a major step forward this year when it adopted the Fair Share Act joint and several reforms. That will help the perception of Pennsylvania's legal climate immeasurably. Now this Committee has the opportunity to take another giant step forward. End the perception that plaintiffs can shop for venues denying defendants justice, fairness, and predictability.

As Mark detailed for you, we know that ending venue shopping in medical malpractice cases had a profound impact in stabilizing our medical legal climate and instilling greater fairness, uniformity of law, and predictability. The plaintiffs' bar and former Governor Rendell often acknowledged these facts. We can do the same for Pennsylvania's business, nonprofit, and local government communities by extending those reforms to all civil litigation.

In the last two decades, 11 of the 50 states have made statutory reforms to limit or end venue shopping. This includes highly competitive states such as Texas, South Carolina, Mississippi, Georgia, and Tennessee. Since 1993, Texas implemented six statutory changes dealing with the venue shopping issue.

Derek Bok, president emeritus of Harvard University and the former law school dean commented: "Lawsuits often have their greatest effect on people who are neither parties to the litigation nor even aware that it is going on."

Bok was right. The six million Pennsylvanians that make-up the Commonwealth's workforce are counting on you to improve our state's legal climate so that you can protect their jobs.

In summation:

- Venue or forum shopping is a problem: Suits should be brought where the damage or loss allegedly occurred, because decisions should be made by those with the greatest connection to the case.

- Cases should be heard in the fairest and most appropriate forum – not the most favorable one for either the plaintiff or the defendant.
- Pennsylvania needs a liability system that is grounded on uniformity and predictability; including where cases are brought and how damages are assessed.

On behalf of Pennsylvania's business, nonprofit, and local government communities – but most importantly – on behalf of our nearly 13 million citizens who seek economic opportunity and security – I urge the House Judiciary Committee to approve HB 1552 and send it to the floor for consideration by the full House.

Thank you.