

[back to article](#)

GoUpstate.com

Printed on page A13

Tort Reform legislation: This has dealt a blow to the safety of S.C.'s families

*PAT KNIE
For the Herald-Journal*

Published: Sunday, June 12, 2005 at 3:15 a.m.

Large trucks kill more than 100 people a year in South Carolina, according to the S.C. Trucking Association's Web site. Thousands of South Carolinians have discovered their stucco homes were defective many years after they purchased the homes. Many other serious construction defects do not appear for decades. Medical malpractice is the seventh largest killer of Americans. Our court dockets are more jammed than ever.

Given these serious problems, we would expect the Legislature to be looking into trucking safety issues on our dangerous highways, asking how we can require the construction industry to build better homes and how we can improve the quality of care in our hospitals.

Instead, a well-financed coalition, which includes the S.C. Chamber of Commerce, trucking industry, construction industry and health care industry, has successfully lobbied the Legislature for "tort reform." Hiding behind the well-planned strategy of arguing that we must reduce frivolous lawsuits and protect the "business climate" in this state, these forces have perpetrated a large hoax both on the Legislature and our citizens.

Instead, we now have legislation that will severely clog the court system and do nothing to make South Carolina a safer place for our families.

To most South Carolinians, the words tort reform are synonymous with eliminating frivolous lawsuits. While the legislation passed makes a weak attempt at addressing such cases, it was no more than a smoke screen to claim attacking frivolous lawsuits was a cornerstone of the legislation.

Trial lawyers, like the rest you, despise frivolous lawsuits. They damage our image,

and rightly so. Thankfully, they are all but nonexistent in South Carolina. Nonetheless, the business community and its allies have used this theme song to justify their legislative efforts in other areas. Bombarded with misrepresentations and, in many instances, outright lies by certain special interests, our Legislature passed what it believed to be "tort reform," and our governor eagerly signed it into law.

What does this new legislation mean for us and our families? In many cases, nothing. If no one in your family is ever in an automobile accident -- or worse, if it is one with a large truck -- and if your family members never need to be hospitalized and if you are not a homeowner or never plan to be, you probably do not need the rest of this column. On the other hand, if one of these categories applies to you, read on.

House Bill 3008, which Gov. Mark Sanford signed, provides for three basic changes in our current law. The statute of repose is reduced from 13 to eight years. If you are like most Americans, your home is the most expensive investment of your life. If the roof starts buckling or sagging nine years after it was built, talk to your legislator, because you are out of luck. The same holds true if your kitchen floor starts collapsing or if moisture because of bad stucco rots your home from the inside out.

By the way, if you happen to be a NASCAR fan or a football fan and a faulty-built pedestrian bridge collapses as it did in Charlotte or the upper deck of stadium collapses during the excitement of the Carolina-Clemson game, call your legislator.

Another important part of this misguided legislation is a significant change to an important right known as "joint and several liability." Under the existing law, if there were three companies polluting your property, you could sue all three, and if a jury of ordinary citizens found all three of them guilty, you would not have to prove the percentage that each was polluting. You could collect the full verdict against any one of the three guilty parties, and that polluter would have the right to collect some of the money paid from the other two.

This legal theory is known as "contribution," however, it was not explained to the Legislature by those pushing "reform." Under the new law, you will have to prove the percentage of each polluter and collect against each. How is that "reform"?

If that's not bad enough at a time when some insurance rates are increasing at an alarming rate, whether it's our automobile insurance or health insurance, our Legislature has allegedly acted to protect one segment of the population from rising insurance rates, the medical profession. What has the Legislature done to lower your car insurance premiums?

In the end, insurance premiums are based on risk, and when they go up, it's because the risk is increasing. Doctor's premiums are increasing because our hospitals have become more dangerous. The claim that emergency rooms are

closing is a scare tactic. But if the emergency room is more dangerous than the emergency, maybe it should close. It is claimed that doctors may leave this state. According to the Budget and Control Board statistics, doctors are moving into South Carolina at an ever increasing rate.

Instead of making our hospitals and medical care safer, the Legislature has attempted to insulate doctors by placing an artificial and historic cap on damage awards so that, unlike the rest of us who get sued, the doctors are treated uniquely differently.

These "tort reformers," like Michael Fields of the National Federation of Independent Businesses and Cam Crawford of South Carolinians for Tort Reform, are not satisfied with the recent legislation that protects their clients and takes away your rights. These special interest lobbyists want to intimidate the judges of our state. Fields said, "We must hold judges more responsible." Crawford added, "Getting good judges is the next step." Those thinly veiled threats imply that judges better rule in favor of the trucking companies and construction industry or face opposition in their next election.

A quick look at South Carolinians for Tort Reform tells the rest of the story. The leadership advisory board includes Bank of America, National Bank of South Carolina, Michelin, Southeastern Freight Lines, BellSouth, Timken, 16 real estate and development companies, three insurance agencies and two hospitals. Are these companies trying to make South Carolina a safer place to live and protect our legal rights or their own selfish interests?

In the end, these industries want to eliminate your access to the court system and do away with your right to trial by jury. They have started by winning one battle. Whether they win the war will be decided in the voting booth over the course of the next several elections.

If you want the civil justice system protected, start telling your legislators now that enough is enough.

Pat Knie, a Spartanburg

attorney, serves on the board

of governors for the S.C. Trial Lawyers Association.

This story appeared in print on page A13
