

Missouri Senate Bill 591: Overview of Why It Is *Bad* Law

- SB 591, as well as its predecessors in spirit, **favours BIG business, not small**. Small businesses, unless they are genuinely bad actors, have not and will not draw outsized litigation under the Missouri Merchandising Practices Act (“MMPA”).
- The MMPA is **geared towards curbing common abuses**—for example, **unlawful lending, failure to disclose fees, and selling automobiles under fraudulent terms**—that *actually* cause a deadweight loss to the economy. The offenders behind such practices would have you believe that, if they could simply absolve themselves of accountability for such, then they would create more *jobs*—there is **NO evidence** of this.
- SB 591 attempts to infuse the MMPA with constraining language that would both **unduly hinder its efficacy and burden already disadvantaged groups** (e.g., the elderly, the illiterate).¹
- The heyday of consumer-protection litigation, as well as tort litigation generally, **actually occurred DECADES ago**. The reports cited by those behind SB 591 willfully ignore this fact.²
- Punitive damages in Missouri require a showing, backed by powerful evidence, that the underlying behavior was “outrageous” because of “**evil motive or reckless indifference**.” One does not simply show up before a jury and implore them to award punitive damages—a convincing demonstration must be made that the defendant was a bad actor.
- **Ultimately, SB 591 is the brainchild of Washington lobbyists**—not ordinary Missourians. As has been typical with these efforts, those behind it cite large numbers produced by **completely unsubstantiated** reports.³
- At the root of SB 591 and similar bills are, in particular, the American Tort Reform Association (“ATRA”) and the U.S. Chamber Institute for Legal Reform (“ILR”). These are **professional lobbying organizations** working at the behest of **large insurance and corporate defense firms**.
- Generally, the studies and conclusions proffered by these “non-partisan” lobbyists suffer from an obvious logical flaw: they presume that upward variations in tort costs (which have

¹ *E.g.*, proving “reliance” would be both very difficult and inapposite in many consumer scenarios.

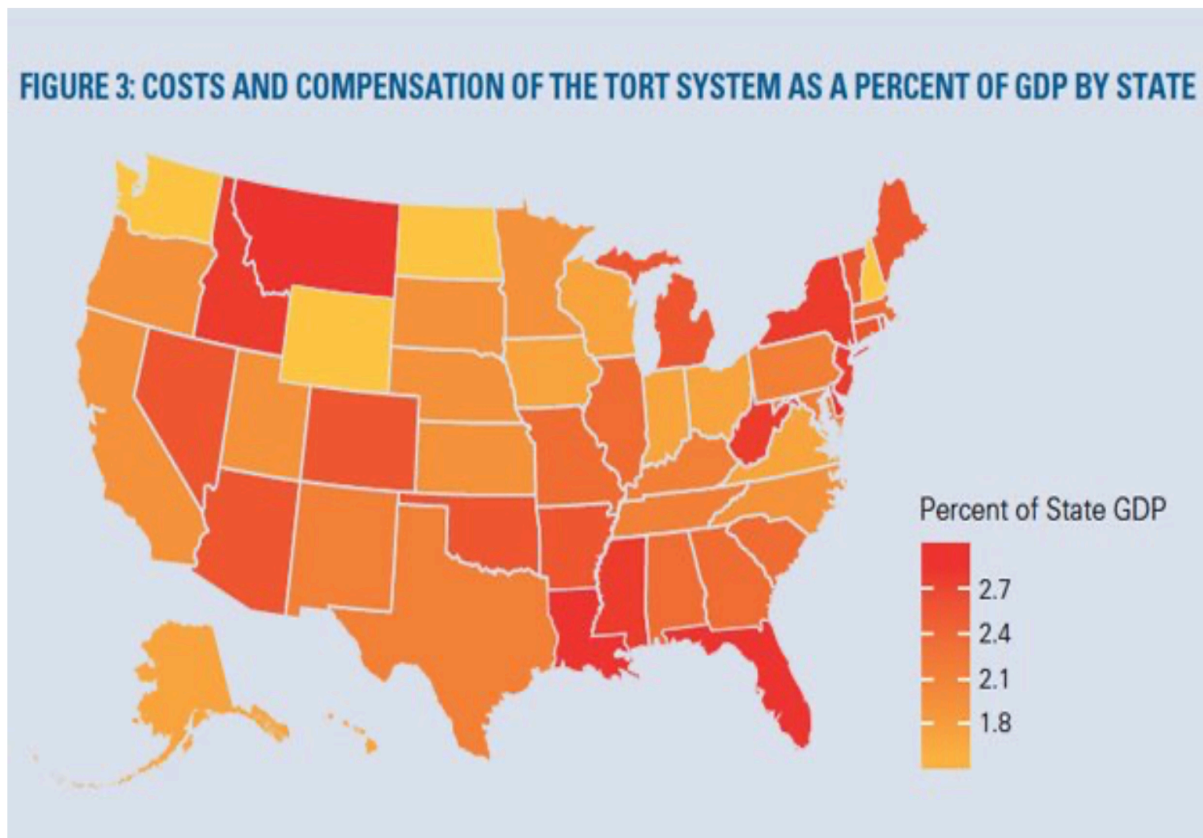
² *See, in particular*, Joanna Shepherd’s ATRA report and the Perryman Report discussed *infra* in **Appendix A**.

³ *See, in particular*, the analysis of the Perryman Report, which is inaccurate, irresponsible, and simply paid-for propaganda.

actually slowed, even decreased, in aggregate over the decades *as a percentage of GDP*) are not a result of marginally increasing bad behavior by defendants but rather some flaw in the legal frameworks that have generally been in place for *decades*.

Even according to the ILR, a right-wing lobbying organization, Missouri's tort costs are actually middle-of-the-road. The states with the highest tort costs as a percentage of GDP included *Montana, Idaho, Louisiana, Mississippi, and West Virginia*, none of which is known as a plaintiff-friendly venue. The lobbyists behind SB 591 have simply **manufactured a sense of tort crisis in Missouri at the behest of large corporations**:⁴

WHY MISSOURI?



Source: U.S. Chamber of Commerce Institute for Legal Reform report "Costs and Compensation of the U.S. Tort System."

⁴ This graphic is but one graph taken from a far more comprehensive study. It can be found, *e.g.*, at LAW.COM, <https://www.law.com/2018/10/25/us-tort-system-costs-429b-but-plaintiffs-get-just-57-percent-of-that-report-says/> (last visited Mar. 9, 2020). The underlying data were reportedly from 2016.

Here is a somewhat dated but useful overview graphic from a study, performed by ostensibly neutral consulting firm Towers Watson. According to the Towers Watson study, national tort costs, as a percentage of GDP, *have been decreasing at the margin since 2002 and, more definitively, since the 1980s generally*.⁵

National Tort Costs Have Actually Been *Declining*
Relative to GDP Over Time!

Years	Average annual increase in tort costs	Average annual increase in GDP
1951 – 1960	11.6%	6.0%
1961 – 1970	9.8	7.0
1971 – 1980	11.9	10.4
1981 – 1990	11.8	7.6
1991 – 2000	3.2	5.5
2001	14.7	3.4
2002	13.4	3.5
2003	5.5	4.7
2004	6.0	6.5
2005	0.4	6.5
2006	-5.6	6.0
2007	2.1	4.9
2008	1.1	1.9
2009	-1.2	-2.5
2010	5.1	4.2
60 Years (1951 – 2010)	8.7	6.7

⁵ TOWERS WATSON, *U.S. Tort Cost Trends (2011 Update)*, at 3. Available at <https://www.casact.org/library/studynotes/Towers-Watson-Tort-Cost-Trends.pdf> (last visited Mar. 9, 2020). The author maintains that more recent data are desirable but this graphic is nonetheless useful in depicting how disingenuous various actors have been in manufacturing a sense of tort-cost crisis.