Model Legislation

Transparency in Lawsuits Protection Act

Summary
On occasion, courts create an "implied" cause of action or a right to sue in regulatory legislation. The principles for when courts will or will not create these "implied" causes of action are vague and uncertain. For that reason, there should be transparency in legislation as to whether any act of the legislature creates a new right to sue. Where the cost of lawsuits may have significant adverse impacts on citizens in the state, the legislature, at the time it acts, should weigh both the risks and benefits of creating a new right to sue. New rights to sue based on state legislation should not be left to random acts of courts. This legislation will reform the existing system to assure this needed transparency regarding the creation of new rights to sue.

Model Legislation

Section 1. {Title}

This Act may be known as the Transparency in Lawsuits Protection Act.

Section 2. {Purpose}

The purpose of this Act is to ensure that any legislative act, regulatory or otherwise, in this State shall not create a private right of action unless such a right is expressly stated in the legislation.

Section 3. {Transparency Required}

Any legislation enacted in this State creating a private right of action shall contain express language providing for such a right. Courts of this state shall not construe a statute to imply a private right of action in the absence of such express language.

Section 4. {Effective Date}

This Act is effective upon enactment and shall apply to any action that has not yet been initiated or is pending on the date of enactment of this Act.

Adopted by the Civil Justice Task Force at the Spring Task Force Summit in April, 2007. Approved by the ALEC Board of Directors, May, 2008.