

You are currently viewing the printable version of this article, to return to the normal page, please [click here](#).

# The Washington Times

## RUSSELL & GLEASON: Perry's 'loser pays' is an economic winner

*New Texas law expected to reduce unjustified lawsuits*

[13 Comments and 13 Reactions](#) | [Share](#) [Tweet](#) | [Email](#) | [Print](#) |

[0](#) Like

By Patrick Gleason and Jason Russell

-

The Washington Times

Thursday, September 1, 2011

There isn't much policywise coming out of Europe these days that one would expect a conservative like Texas Gov. Rick Perry to emulate because the Continent typically is the domain of the left. However, Mr. Perry recently imported a reform from across the pond that is sure to make the Lone Star State, already the economic envy of the nation, even more of a job-creating juggernaut.

Under the current American legal system, each side in litigation typically retains financial responsibility for its own legal fees absent a prearranged agreement stating otherwise. Yet under the English rule, adopted by virtually every other legal system in the West, the responsibility for attorneys' fees can be summed up in two words: Loser pays. When two sides enter into litigation, the losing side must pay the winning side any damages awarded, as well as compensation for legal fees incurred by the victor.

Mr. Perry made passage of a modified version of the English loser-pays rule a top priority during this year's biennial session of the Texas Legislature. After emphasizing the need for such tort reform during his State of the State address in February, Mr. Perry made loser pays the law of the land in Texas by signing H.B. 274 in May.

As Mr. Perry remarked in his signing statement, loser pays "provides defendants and judges with a variety of tools that will cut down on frivolous and costly claims in Texas."

The appeal of loser pays is that it mitigates unjustified lawsuits against individuals and businesses. Empirically, it has been shown that the loser-pays system incentivizes two conflicting parties to settle outside of court, meaning savings on attorneys' fees for both sides as well as reduced costs for taxpayers caused by a less congested court system for the state and plaintiffs who have warranted cases.

According to Ryan Brannan, policy analyst for the Texas Public Policy Foundation, loser pays makes the legal system more objective and legitimate. "The procedural protections ... go a long way toward ensuring that our judicial system dispenses justice according to the merits of the case rather than the size of the wallet," Mr. Brannan said.

Unlike the English-style loser-pays rule, the Texas version applies in certain situations and does not apply to class-action suits, an action by or against the government or anything in small claims court.

While more constrained than English-style loser pays, the Texas version allows an impartial judge to determine when a lawsuit has, according to the language of the law, "no basis in law or fact on motion and without evidence," giving the judge the authority to declare an early dismissal when appropriate.

This is not the first time Mr. Perry has tackled necessary pro-growth tort reform. The implementation of loser pays in Texas comes on the heels of Mr. Perry's landmark 2003 medical liability reforms, which established a burden of proof for punitive damages similar to criminal law by requiring a unanimous jury verdict and capped noneconomic damages at \$750,000. A 2008 report by the Perryman Group found those reforms to be directly responsible for an immediate

first-year influx of almost 2,000 new physicians into Texas as well as a 70 percent drop in lawsuits against hospitals. The Texas Public Policy Foundation estimates that the state has netted more than 25,000 doctors since. Following the 2003 reforms, Texas doctors saw medical liability insurance rates decline by an average of more than 21 percent, with some seeing nearly a 50 percent rate cut. Those savings enabled hospitals to expand charity care by 24 percent. Three years after these lawsuit reforms, Texas became the first state ever to be removed from the American Medical Association's list of states experiencing a liability crisis.

Loser pays, which took effect on Thursday, is expected to have a positive impact on the already booming Texas economy once it takes effect. Jeff Moseley, president and chief executive officer of the Greater Houston Partnership, states that "loser pays legislation protects businesses and helps us grow jobs and paychecks."

After Texas was rated as the top state in which to do business for the past seven years by CEO Magazine, it was hard for some to imagine how to make Texas an even more attractive place for employers to create jobs. Yet, with the passage of loser pays, Mr. Perry has found a way to do just that. There is a strong case to be made that Perry-style reforms could help revive the sluggish national economy.

*Patrick Gleason is director of state affairs at Americans for Tax Reform. Jason Russell is the group's state affairs associate.*

**Ads by Google** 

[Obama Muslim Dress](#)

[Obama](#)

[President Obama News](#)

[Jury Duty Law](#)

[Editorial](#)