



American Tort Reform Association

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**2003 STATE TORT REFORM
ENACTMENTS**

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Arizona

Jury Service Reform - H.B. 2520

Required all people to serve on juries unless they experience undue or extreme physical or financial hardship. Established a lengthy trial fund from a modest filing fee to compensate jurors a minimum of \$40 and a maximum of \$300 per juror, per day for trials lasting more than 10 days, starting on the eleventh day of trial. In such circumstances, jurors would also be eligible to retroactively collect at least \$40 but not more than \$100 per day from the fourth day to the tenth day of service. Provided for employee protection by prohibiting an employer to require an employee to use annual or sick leave for the time spent in the jury service process. In addition, it prohibited employers to dismiss or in any other way penalize employees for responding to a jury service summons. Provided for protection of small business owners by requiring the court to postpone the service of an employee if another employee of that business is already serving on a jury. Allowed for one automatic postponement from service. Provided for jurors to serve no more than one day unless selected to serve on a trial. Provided that a willful failure to appear for jury duty is a Class 3 misdemeanor.

Arkansas **Comprehensive Civil Justice Reform – H.B. 1038**

Appeal Bond Reform: Limited the amount a defendant can be required to pay to secure the right to appeal to \$25 million.

Comparative Fault Reform: Modified the rule of comparative fault to include non-parties.

Joint and Several Liability Reform: Provided for a modified repeal of joint and several liability instead of complete repeal, whereby defendants who are found to be 1 percent to 10 percent at fault will only be responsible for the percentage of damage caused, defendants who are 11 percent to 50 percent at fault can be assessed an additional 10 percent if a co-defendant is unable to pay its share of a judgment, and defendants who are 51 percent to 99 percent at fault can be assessed an additional 20 percent if a co-defendant is unable to pay its share of the judgment (this provision does not apply to long-term care facility medical directors).

Medical Liability Reform: Certificate of Merit: Required a certificate of merit to be filed in medical malpractice cases in which expert testimony is required.

Medical Liability Reform: Damage Awards: Required evidence of damages for the cost of medical expenses to be actual or paid expenses.

Medical Liability Reform: Expert Witness Testimony: Required that expert medical negligence testimony come from a physician licensed in the same specialty as the defendant.

Punitive Damages Reform: Raised the standard for the imposition of punitive damages to “clear and convincing evidence” of actual fraud, malice, or willful or wanton conduct and changes. Limited punitive damages to the greater of \$250,000 or three times compensatory damages not to exceed \$1,000,000. Bifurcated proceedings for punitive damages.

Venue Reform: Limited venue to the judicial district in which the action occurred, the plaintiff resides, or the defendant resides.

California

Appeal Bond Reform - AB 1752

Limited the amount a signatory to the Master Settlement Agreement can be required to pay to secure the right to appeal to \$150 million and applies to all judgments in civil litigation regardless of legal theory.

Colorado

Appeal Bond Reform - H.B. 1366

Limited the amount a defendant can be required to pay to secure the right to appeal to \$25 million.

Attorney Retention Sunshine - SB 03-086

Required monthly reports by outside counsel to include number of hours worked, court costs incurred, and to provide such data in aggregate from the effective date of the contingent fee contract. Required, at the conclusion of representation, outside counsel to provide the state with a statement of hours worked and fees recovered through a contract for legal services between the state and outside counsel. Provided that in no instance shall the state pay fees, even on a contingent fee basis, in excess of \$1,000 per hour.

Class Action Reform - HB 03-1027

Provided for the interlocutory appeal of class action certification.

Early Offer of Settlement - H.B. 03-1121

Provided that attorneys' fees and costs would be assessed against plaintiffs who decline an offer of settlement proceed to litigation, and receive a smaller judgment than would have been received if a settlement offer had been accepted.

Medical Malpractice Liability Reform: Medical Professional Corporations – HB 03-1012

Prohibited medical malpractice lawsuits against medical professional corporations including professional service corporations, limited liability companies, and registered limited liability partnerships.

Medical Malpractice Liability Reform: Noneconomic Damages Reform - HB 03-1007

Limited noneconomic damages in medical malpractice liability cases to \$300,000.

Parental Liability Waivers - SB 03-253

Overtaken a 2002 Colorado Supreme Court decision (case number 00SC885, 48 P.3d 1229) which invalidated parental liability waivers signed on behalf of minors.

Product Liability Reform - SB 03-231

Provided that a product liability action may not be taken if the product was improperly used or if the product provided warning or instruction that, if heeded, would have prevented the injury, death, or property damage. An innocent seller provision was included which prohibited product liability actions against parties who were not the manufacturer of the product.

Punitive Damages Reform - H.B. 03-1186

Prohibited a plaintiff from filing a claim for punitive damages unless the plaintiff can show evidence of willful or wanton action that would justify such a claim.

Florida

Appeal Bond Reform - S. 2826

Limited the amount a signatory to the Master Settlement Agreement can be required to pay to secure the right to appeal to \$100 million.

Medical Liability Reform - CS SB 2-D

Provided for emergency room practitioner limits on noneconomic damages of \$150,000 per claimant, with an aggregate of \$300,000. Provided for emergency room facility limits on noneconomic damages of \$750,000 per claimant, with an aggregate of \$1.5 million and full setoffs for practitioner payments. Provided for non-practitioner limits on noneconomic damages of \$750,000 per claimant, with an aggregate for all claimants. Provided for practitioner limits on noneconomic damages of \$500,000 per claimant, with an aggregate limit for all claimants of \$1 million, but no single practitioner shall be liable for more than \$500,000 regardless of the number of claimants.

Georgia **Arbitration, Class Action, Venue, Legal Rate of Interest Reform - HB 792**

Arbitration: Provided criteria to determine when an award in arbitration can be vacated.

Class Action Reform: Updates Georgia class action laws by providing for detailed procedures for class action cases. Specifies factors under which a court may decline to exercise jurisdiction in a cause of action of a nonresident occurring outside the state.

Legal Rate of Interest Reform: Provided that the interest rate on judgments equals the Federal Reserve's prime rate plus 3 percent.

Venue Reform: Provided that Georgia courts may decline jurisdiction of any civil causes of a nonresident by considering the following factors: (1) the place of accrual of the cause of action; (2) the location of witnesses; (3) the residence or residences of the parties; (4) whether a litigant is attempting to circumvent the applicable statute of limitations of another state; and (5) the public factor of the convenience to and burden upon the court.

Idaho **Comprehensive Civil Justice Reform - HB 92**

Appeal bond reform: Limited appeal bonds on punitive damages to only first of \$1,000,000 of any judgment.

Noneconomic damages reform: Limited non-economic damages in personal injury cases to \$250,000.

Punitive damages reform: Provided that no judgment for punitive damages shall exceed the greater of \$250,000 three times compensatory, whichever is greater. Raised the standard for the award of punitive damages to "clear and convincing evidence."

Kansas

Appeal Bond Reform - S.B. 64

Limited the amount a signatory to the Master Settlement Agreement can be required to pay to secure the right to appeal to \$25 million and applies to compensatory and punitive damages awards.

Louisiana

Appeal Bond Reform - H.B. 1819

Limited the amount a signatory to the Master Settlement Agreement can be required to pay to secure the right to appeal to \$50 million.

Food Liability - H.B. 518

Exempted from liability any manufacturer, distributor or seller of a food or nonalcoholic beverage where liability is premised upon the individual's weight gain or obesity. This is the first law enacted at either the state or federal level that specifically addresses liability limits for purveyors of food with respect to obesity lawsuits.

Jury Service Reform - H.B. 2008

Required all people to serve on juries unless they experience undue or extreme physical or financial hardship. Established a lengthy trial fund to compensate jurors up to \$300 per juror, per day for trials lasting more than 10 days, starting on the eleventh day of trial. In such circumstances, jurors would also be eligible to retroactively collect up to \$100 per day from the fourth day to the tenth day of service. The bill did not specify a financing mechanism, but tasked the Louisiana Supreme Court to develop recommendations for the Legislature to consider at some point in the future. Prohibited employers from dismissing or otherwise subjecting employees to any adverse employment action for responding to a jury service summons. Allowed for one automatic postponement from service.

Minnesota

Joint and Several Liability Reform - S.F. 872

Raised the threshold for the imposition of joint and several liability from 15 percent to greater than 50 percent. Parties less than 50 percent responsible are to be held responsible only for their percentage of fault.

Mississippi

Environmental Clean Up Liability - H.B. 1084

Provided civil immunity for parties that clean up EPA Superfund sites.

Community Events Liability - H.B. 1312

Provided immunity to sponsors and advertisers of community events.

Missouri

Appeal Bond Reform - S.B. 242

Limited the amount a signatory to the Master Settlement Agreement can be required to pay to secure the right to appeal to \$50 million.

Montana

Punitive Damages Reform - H.B. 212

Brought Montana statute into conformity with a recent Supreme Court ruling that punitive damages may be awarded by a two-thirds majority verdict rather than the previous requirement that punitive damage awards must be unanimous.

Punitive Damages Reform - S.B. 363

Limited punitive damages, unless otherwise expressed by statute, to \$10 million or 3 percent of a defendant's net worth, whichever is less. Did not limit the amount of punitive damages that may be awarded in class action lawsuits.

New Jersey

Appeal Bond Reform - S. 2738

Limited the amount a signatory to the Master Settlement Agreement can be required to pay to secure the right to appeal to \$50 million.

New York

Structured Settlement Reform - S. 5697

Provided for a fix to the *Desiderio* decision. The *Desiderio* decision resulted from poorly drafted language of a 1986 law designed to address tort liability and resulted in the double-counting of inflation on judgments against hospitals; in one case a \$40 million judgment into an almost \$140 million judgment, which was upheld by the New York State's Court of Appeals. Other provisions were included that were favorable to the trial bar: accelerated payments to plaintiffs; a provision which allows up to \$500,000 in damages for pain and suffering, or 35% of the pain and suffering award, whichever is greater to be awarded as a lump sum, rather than the old limit of \$250,000; and a reduction in the time pain and suffering awards are to be paid from 10 years to 8 years.

North Carolina

Appeal Bond Reform - S. 784

Limited the amount a defendant can be required to pay to secure the right to appeal to \$25 million regardless of legal theory. Provided that foreign judgments cannot be executed in North Carolina if appeal is pending in a foreign jurisdiction or the judgment has been stayed by the court that rendered it and a bond has been posted.

Ohio

Joint and Several Liability Reform - SB 120

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 50% unless the defendant committed an intentional tort. Barred application of the rule of joint and several liability in the recovery of noneconomic damages.

Medical Liability Reform - S.B. 281

Provided for: (1) a cap on non-economic damages of \$350,000, which can rise up to \$1 million depending on the severity of the injury and the number of plaintiffs involved in the suit; (2) a limit on attorney's fees; (3) a statute of repose of 4 years from the time the injury occurred; (4) the establishment of a 9 member commission to study the effects of the new law.

Oklahoma

Medical Liability Reform - S.B. 629

Provided for: (1) a \$350,000 limit on non-economic damages in cases involving pregnancy (labor, delivery, and post partum period) as well as emergency care; (2) a provision to require a certificate of merit to be filed with the petition; (3) a provision to allow collateral source benefits to be introduced into evidence; and (4) prejudgment interest rate reform that ties the prejudgment interest rate to the average U.S. Treasury Rate of the preceding calendar year.

Oregon

Appeal Bond Reform - H.B. 2368

Limited the amount a signatory to the Master Settlement Agreement can be required to pay to secure the right to appeal to \$150 million.

Pennsylvania

Appeal Bond Reform – H.B. 1718

Limited the amount a signatory to the Master Settlement Agreement can be required to pay to secure the right to appeal to \$100 million.

Rhode Island

Vicarious Liability Repeal (auto) - 03S-0668 Sub B

Amended Rhode Island's auto leasing statutes to repeal vicarious liability until July 1, 2004.

Tennessee

Appeal Bond Reform - S.B. 1687

Limited the amount a defendant can be required to pay to secure the right to appeal to \$75 million.

Texas **Comprehensive Civil Justice Reform - H.B. 4**

Appeal Bond Reform: Limited the amount a defendant can be required to pay to secure the right to appeal to the lesser of 50% of a defendant's net worth or \$25 million. Provided that defendants are no longer required to post a bond to appeal punitive damages. Provided that foreign judgments cannot be executed in Texas if appeal is pending in a foreign jurisdiction and a bond has been or will be posted.

Asbestos Liability Reform: Successor Liability: Provided that if a company with liability for mining or sale of asbestos-containing products was merged or acquired by a successor prior to May 13, 1968, the limit of the successor company's liability for asbestos claims as a result of the acquisition is limited to the FMV of the acquired company at the time of acquisition. The limitation applies to "successors of successors," based on the FMV of the initially acquired company at the time of the initial acquisition.

Class Action Reform: Provided for the interlocutory appeal of class action certification. Reformed attorney fees whereby fees are based on time and cost expended rather than a percentage of recovery. Provided for stay on all proceedings during appeal of class certification. Provided for administrative relief which requires a court to consider administrative relief from state agencies before certifying a class.

Early Offer of Settlement: Provided that provisions may only be initiated by defendant, but once initiated, plaintiff may invoke them as well. Provided that if a defendant makes an offer that is rejected, and the plaintiff does not obtain a judgment for at least 80% of the amount, the plaintiff must pay attorney fees and costs incurred after rejection. Provided that if a plaintiff makes an offer that is rejected, and the judgment exceeds 120% of the amount, the defendant must pay attorney fees and costs incurred after rejection. Provided that the amount of fees and costs shifted cannot exceed the sum of noneconomic damages, punitive damages, and 50% of economic damages.

Firefighters Liability Reform: Provided that volunteer fire and EMT personnel are liable only to the extent county employees are liable.

Forum Non Conveniens Doctrine: Provided that the court must decline jurisdiction if there is a better forum for the suit.

Good Samaritan Protection: Provided that volunteer workers for charitable organizations are immune from suit except for intentional torts and gross negligence.

Government Employee Immunity: Provided that government employees acting in course of employment cannot be subject to more than \$100,000 in damages if they are indemnified or insured by the governmental entity for the first \$100,000.

Joint and Several Liability Reform: Provided that defendant pays only assessed percentage of fault unless defendant is 50% or more responsible. Defendants can designate (as opposed to join) other responsible third parties whose fault contributed to causing plaintiff's harm. In toxic tort cases, the threshold for joint and several liability was raised from 15% to 50%.

Medical Liability Reform: Noneconomic Damages Reform: Limited the award of noneconomic damages in medical malpractice cases to \$250,000 against all doctors and health care practitioners and a \$250,000 per-facility cap against health care facilities such as hospitals and nursing homes, with an overall cap of \$500,000 against health care facilities, creating, in effect, an overall limit of noneconomic damages in medical malpractice cases of \$750,000.

Multi-district Litigation Reform: Provided for the creation of a multi-district panel which can consolidate any cases with common issues of fact in a single district court for pre-trial proceedings, including disposition short of trial.

Prejudgment Interest Reform: Set the prejudgment interest rate to the New York Federal Reserve prime rate, with a floor of 5% and a ceiling of 15%.

Product Liability Reform: Provided for a 15 year statute of repose for product liability cases. In cases involving latent diseases, the plaintiff must have been exposed within 15 years of the product's sale and must show symptoms more than 15 years after the sale. Provided for an innocent seller provision which prohibits actions against non-manufacturing sellers except in specific circumstances such as if the seller participated in the design of the product or knew of the defect at the time of the sale. Provided for the presumption that a product is not defective if it meets mandatory government standards or was approved or licensed by the FDA. Allowed plaintiff to rebut by showing material omission or misrepresentation to agency, or that standards were insufficient to provide reasonable safety.

Professional Liability Reform: Architects and Licensed Professional Engineers: Provided that the filing of a suit against an architect or licensed professional engineer for professional negligence must be accompanied by affidavit of expert witness who holds a Texas license in the field and actively practices the same subject area as the defendant.

Punitive Damages Reform: Required unanimous jury verdict to award punitive damages. Specified that jury must be so instructed.

School Employee Immunity: Broadened definition of school employees entitled to immunity for actions involving the exercise of discretion in the course and scope of employment. Required the exhaustion of school district administrative remedies prior to suit. Mandated payment of attorney fees and costs by plaintiff suing person subject to immunity. Provided that immunity does not extend to use of excessive force in discipline or negligence that results in personal injury to a student.

Seat Belts Admissibility: Repealed statute forbidding any evidence of lack of seat belt use in auto accident cases.

Venue Reform: Provided that every plaintiff must establish venue independently of every other plaintiff. Mandated dismissal or transfer of any plaintiff who cannot establish venue except upon exception showing. Provided for interlocutory de novo appellate review of order granting or denying transfer or dismissal.

Constitutional Amendment – Noneconomic Damages – H.J.R. 3 (Proposition 12)
Provided that the Texas Legislature has the authority to place limits on noneconomic damages.

Utah

Jury Service Reform - HB 324

Provided for employee protection by prohibiting an employer to require an employee to use annual or sick leave for the time spent in the jury service process. Provided that a person is to be excused from jury service upon showing by the person of undue hardship or if the person is incapable of serving.

Medical Liability Reform, Arbitration - S.B. 138

Provided that physicians are allowed to withhold services, except in emergencies, if patient does not consent to arbitration (oral and written consent).

Virginia

Medical Liability Reform, Expert Witnesses - HB 1906

Limited the number of expert witnesses that can be called to testify in medical malpractice cases.

West Virginia

Medical Liability Reform - HB 2122.

Provided that lawsuits may only be filed by a patient or on behalf of a patient. Limited noneconomic damages to \$250,000 to \$500,000. Limited trauma care awards to \$500,000. Provided that liability is several among defendants who go to trial, but does not take into account settling defendant's liability. Required that the Board of Medicine investigate claims after 3 judgments or 5 settlements within 5 years.

Venue Reform - S.B. 213

Provided for stricter parameters for non-residents to establish venue in state courts. Specified that a substantial portion of the cause of action had to have occurred in the state. Provided that each plaintiff has to establish venue independently.

Wisconsin

Appeal Bond Reform - A.B. 548

Limited the amount a defendant can be required to pay to secure the right to appeal to \$100 million.

Wyoming

Medical Liability Reform - HB 97

Provided immunity from liability for volunteer health care professionals at nonprofit health care facilities.