



# **American Tort Reform Association**

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## **2004 State Tort Reform Enactments**

### **Arizona**

#### **Obesity Litigation Reform—H.B. 2220**

H.B. 2220 exempted from civil liability purveyors of food when the claim is a result from the repeated consumption of a food product that is not defective and unreasonably dangerous if consumed in reasonable quantities. Furthermore, H.B. 2220 provided that there is no duty to warn purchasers, users, or consumers, regardless of age, that the consumption of a food product that is not defective and unreasonably dangerous may cause healthy problems if consumed excessively. Food product is defined as any product that is grown, prepared, provided, served or sold and that is primarily intended for human consumption and nourishment.

### **Colorado**

#### **Civil Liability Reform—H.B. 1038**

Exempted volunteers at crisis telephone hotlines from civil liability.

#### **Jury Service Reform—H.B. 1159**

Established stricter criteria for jurors to be excused from service. Provided protections for small business by allowing employees of small businesses to reschedule service if another employee from the same firm already is serving on a jury.

#### **Noneconomic Damages Reform—S.B. 115**

Limited noneconomic damages in breach of contract claims by specifying that noneconomic damages may only be recovered for breach of contract when recovery of such damages is specifically authorized in the contract that is the subject of the claim. The only other circumstance under which noneconomic damages may be recovered is for any first-party claim brought against an insurer for breach of an insurance contract and that the defendant willfully and wantonly breached the contract.

#### **Obesity Litigation Reform—H.B. 1150**

Exempted from civil liability, manufacturers, packers, distributors, carriers, holders, or sellers of food or an association of one or more such entities when the claim is for weight gain, obesity, a health condition related to obesity or weight gain, or any other injury caused by the long-term consumption of food. The exemption does not apply when the claim is for a material violation of federal or state composition, branding, or labeling standards and the injury was caused by the violation. Finally, H.B. 1150 provided that all proceedings, including discovery, shall be stayed during a motion to dismiss

## **Florida**

### **Obesity Litigation Reform—H.B. 333**

Exempted from civil liability manufacturers, distributors, or sellers of food or nonalcoholic beverages when the claim is based upon a person's weight gain or obesity, or a health condition related to weight gain or obesity, related to the long-term consumption of such food or nonalcoholic beverages. The liability exemption does not apply if defendant failed to provide nutritional content information as required by any applicable state or federal statute or regulation, or provided materially false or misleading information to the public.

## **Georgia**

### **Appeal Bond Reform—S.B. 411**

Expanded the cap of \$25 million on appeal bonds that applied to punitive damages and expanded the cap to cover all forms of judgments in all civil cases.

### **Obesity Litigation Reform—H.B. 1519**

Exempted from civil liability manufacturers, packers, distributors, carriers, holders, sellers, marketers, or advertisers of food (as defined in Title 21 U.S.C. Section 301, et seq., 52 Stat. Section 1040, et seq.) or an association of one or more such entities when the claim is for weight gain, obesity, or a health condition associated with weight gain or obesity resulting from the long-term consumption of food. The liability exemption does not apply if the claim is based on a material violation of a state or federal adulteration or misbranding requirement. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food and the violation was committed knowingly and willfully. Finally, H.B. 1519 provided that discovery and all other proceedings shall be stayed during a motion to dismiss.

## **Idaho**

### **Obesity Litigation Reform—H.B. 590**

Provided a civil liability exemption for a manufacturer, packer, distributor, carrier, holder, seller, marketer or advertiser of a food or beverage, when the claim is for weight gain, obesity, a health condition associated with weight gain or obesity, or any other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food. The liability exemption does not apply if the claim is based on a material violation of state or federal law with respect to adulteration or misbranding. The liability exemption also does not apply if the claimed injury is for any other material violation of federal or state law applicable to the manufacturing, marketing, distributing, advertising, labeling or the sale of food and that the violation was committed knowingly and willfully. In addition, it provided that discovery and other proceedings shall be stayed during any motion to dismiss.

## **Iowa**

### **Appeal Bond Reform—S.F. 2306**

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

## **Kansas**

### **Class Action Reform—H.B. 2764**

Provided for the interlocutory appeal of class action certifications

## **Michigan**

### **Obesity Litigation Reform—H.B. 5809**

Exempted from civil liability manufacturers, packers, distributors, carriers, holders, sellers, marketers, promoters, or advertisers of food (as defined in 21 U.S.C. 321) or an association of one or more such entities when the claim is for weight gain, obesity, or a health condition associated with weight gain or obesity. The liability exemption does not apply if the claim is based on a material violation of a state or federal adulteration or misbranding requirement. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food and the violation was committed knowingly and willfully. Provided that discovery and all other proceedings shall be stayed during a motion to dismiss. Finally, H.B. 5809 specified that the state is prohibited from filing obesity lawsuits.

## **Minnesota**

### **Appeal Bond Reform—H.F. 1425**

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

### **Civil Liability Reform—S.F. 837**

Provided civil liability protections for employers who provide job references about current and former employees.

## **Mississippi - Comprehensive Civil Justice Reform - H.B. 13 (Special Session)**

### **Innocent Seller/Product Liability Reform**

Provided that the seller of a product, other than a manufacturer, cannot be held liable unless the seller had substantial control over the harm causing aspect of the product, the harm was caused by a seller's alteration or modification of the product, the seller had a actual knowledge of the defective condition at the time the product was sold, or the seller made an express warranty about the aspect of the product which caused the plaintiff's harm.

**Joint Liability Reform**

Abolished joint and several liability. Provided that defendants are not responsible for any fault allocated to an immune tortfeasor or a tortfeasor whose liability is limited by law.

**Jury Service Reform**

Established a lengthy trial fund to compensate jurors up to \$300 per day, starting on the eleventh day of service. In such circumstances, jurors who can show hardship may also receive compensation of up to \$100 per day from the fourth through tenth days of service. Specified circumstances under which jurors may be excused from service. Provided for penalties for those who fail to appear: fines up to \$500 and/or three days imprisonment, or alternatively community service.

**Medical Liability Reform: Noneconomic Damages Reform**

Established a hard cap of \$500,000 on noneconomic damages in medical liability cases (the \$500,000 cap that was passed during a special session in 2002 contained an escalator clause which would have raised the cap to \$750,000 in 2011 and \$1 million in 2017).

**Noneconomic Damages Reform**

Limited the recovery of noneconomic damages in all civil cases, with the exception of medical liability actions, to \$1 million.

**Premises Liability**

Abolished civil liability for premises owners for death or injury to an independent contractor or their employees if the contractor knew or should have known the danger that caused the harm.

**Punitive Damages Reform**

Modified and lowered some caps on punitive damages, based upon the net worth of a defendant.

- \$20 million for a defendant with a net worth of more than \$1 billion;
- \$15 million for a defendant with a net worth of more than \$750 million but not more than \$1 billion
- \$5 million for a defendant with a net worth of more than \$500 million but not more than \$750 million (new law);
- \$3.75 million for a defendant with a net worth of more than \$100 million but not more than \$500 million (new law);
- \$2.5 million for defendants with a net worth of more than \$50 million but not more than \$100 million (new law);
- Two percent of the defendant's net worth for a defendant with a net worth of \$50 million or less (new law).

**Venue Reform**

Provided that civil suits may be filed in the county where the defendant resides (in the case of a corporation, the county of its principal place of business) or in the county where a "substantial alleged act or omission occurred or where a substantial

event that caused the injury occurred.” Plaintiff may file in the county where he/she lives if venue cannot be established under above criteria. Provided that venue must be proper for each plaintiff. Provided that the trial court shall dismiss the claim or action if it would be more properly decided in another state. If the claim would be more properly decided in another county, provided the case shall be transferred to the appropriate county. Provided that for medical providers, venue shall be proper where the act or omission occurred.

## **Missouri**

### **Jury Service and Class Action Reform—H.B. 1211**

Provided for stricter criteria for jurors to be excused from service. Allowed one automatic postponement from service. Specified a maximum fine of \$500 for those who fail to appear for jury service. Provided for employee protections by prohibiting employers from requiring employees to use personal or sick leave for time spent responding to a summons for jury duty. Provided for small business protections by requiring a court to reschedule the service of a summoned juror if the juror works for an employer with five or fewer employees and has another employee already summoned during the same period. Finally, S.B. 1211 provided for the interlocutory appeal of class certifications.

### **Obesity Litigation Reform—H.B. 1115**

Exempted from civil liability manufacturers, packers, distributors, carriers, holders, sellers, marketers, or advertisers of food (as defined in Title 21 U.S.C. Section 301 (F)) or an association of one or more such entities when the claim is for weight gain, obesity, or a health condition associated with weight gain or obesity. The liability exemption does not apply if the claim is based on a material violation of a state or federal adulteration or misbranding requirement. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food and the violation was committed knowingly and willfully. The provisions of the bill do not preclude civil liability for breach of express contract or express warranty in connection with the purchase of food. Finally, H.B. 1519 provided that discovery and all other proceedings shall be stayed during a motion to dismiss.

## **Nebraska**

### **Appeal Bond Reform—L.B. 1207**

Limited the amount a defendant can be required to pay to secure the right to appeal to the lesser of the amount of the judgment, 50 percent of the appellant’s net worth, or \$50 million.

## **Ohio**

### **Asbestos Litigation Reform—H.B. 292**

Established minimum medical requirements (based on AMA guide to the evaluation of permanent impairment) for filing asbestos claims. Specified plaintiff’s burden of proof in asbestos actions. Established premises liability with respect to asbestos claims.

### **Silica/Mixed Dust Litigation Reform—H.B. 342**

Established minimum medical requirements (based on AMA guide to the evaluation of permanent impairment) for filing silicosis claims or mixed dust disease claims. Specified a plaintiff's burden of proof in silica or mixed dust exposure actions. Established premises liability with respect to those claims.

### **Comprehensive Civil Justice Reform—Am. Sub. S.B. 80**

#### **Asbestos Litigation Reform**

In tort actions, limited the liability for certain successors in tort actions to the value of the acquired company on the effective date of the acquisition.

#### **Collateral Source Rule Reform**

Provided that collateral source benefits can be introduced into evidence, except under certain circumstances.

#### **Legal Consumer's Bill of Rights**

Requested that the Ohio Supreme Court adopt a "Legal Consumer Bill of Rights" outlining attorney and client responsibilities. Attorney responsibilities include: courtesy, professionalism, attention, fee disclosure, responsiveness, control, respect, confidentiality, ethics, non-discrimination, and grievances. Client responsibilities include: truthfulness, responsiveness, courtesy, communication, and ethics.

#### **Noneconomic Damages Reform**

Limited noneconomic damages in cases involving noncatastrophic injuries to the greater of \$250,000 or three times economic damages up to \$350,000, per plaintiff, with a maximum limit of \$500,000 per occurrence. Limits applied to all cases but medical liability cases. Specified that juries may not consider the following when determining noneconomic damages: (1) evidence of a defendant's alleged wrongdoing, misconduct or guilt; (2) evidence of the defendant's wealth or financial resources; (3) all other evidence that is offered for the purpose of punishing the defendant. Finally, S.B. 80 specified procedures and guidelines, based on ALEC's *Full and Fair Noneconomic Damages Act*, for trial courts to review (upon a motion) noneconomic damage awards.

#### **Obesity Litigation Reform**

Exempted from civil liability manufacturers, marketers, distributors, advertisers, sellers, suppliers of a qualified product (defined as articles used for food or drink for a human being or other animal; chewing gum; articles used for components of the previously listed products) or a trade association when the claims is based on cumulative consumption, weight gain, obesity, or a health condition related to cumulative consumption, weight gain, or obesity. Provided that a party that prevails on a motion to dismiss may recover reasonable attorney fees and costs associated with the motion to dismiss. The liability exemption does not apply for any material violation of federal or state law applicable to the manufacturing, marketing, supplying, distribution, advertising, labeling, or sale of a qualified product and the violation was committed knowingly and willfully. The provisions of the bill do not preclude civil liability for breach of express contract or express warranty in connection with the purchase of a qualified food product. H.B. 1519 provided that discovery and all other proceedings shall be stayed during a motion to

dismiss and that a party that prevails on a motion to dismiss may recover reasonable attorney fees and costs.

**Product Liability Reform: Statute of Repose**

Provided for a ten-year statute of repose for product liability actions, with certain exceptions.

**Punitive Damages Reform**

Limited punitive damages to not more than two times compensatory damages. Limited punitive damages for small businesses to the lesser of two times compensatory damages or 10 percent of a defendant's net worth, not to exceed \$350,000. Small businesses are defined as having less than 100 employees or manufacturers that have less than 500 employees. Prohibited the award of punitive damages if punitive damages have already been awarded based on the same act or conduct that is alleged, except under certain circumstances.

**Punitive Damages Reform: Bifurcated Trial**

Provided that in jury trials, if punitive damages are requested by any party, the trial is bifurcated so that the jury considers compensatory damages in one stage, and punitive damages in a second stage.

**Punitive Damages Reform: Over-the-Counter Drugs and Medical Devices**

Provided that manufacturers of over-the-counter drugs and medical devices are not liable for punitive damages if the FDA approved the product. This was an extension of existing law which provided for a government standards defense for manufacturers of prescription drugs.

**Improvements to Real Property: Statute of Repose**

Provided that tort actions, based on construction or improvement of real property, for injury or wrongful death, cannot be brought ten years after the substantial completion of the construction or improvement.

**Seat Belt Evidence Reform**

Permitted evidence to be introduced of plaintiff's non-seat belt use for purposes of reducing noneconomic damages.

**Oklahoma**

**Jury Service Reform—S.B. 479**

Provided jurors the right to automatically postpone service one time. Reduced the length of service from a two-week term to no more than one day unless selected to serve on a jury. Limited jury service to once every two years. Created a lengthy trial fund which compensates jurors up to \$200 per day, starting on the eleventh day of service – the fund is to be financed by a \$10 filing fee on all civil cases. Provided jurors employment protections by prohibiting employers from penalizing jurors who serve. Provided small business protections by allowing an employee of a small business to defer service if another employee from the same firm is already serving in the same period. Increased penalties for no-shows.

## **Medical Liability Reform / Civil Justice Reform – H.B. 2661**

### **Joint and Several Liability Reform**

Restricted joint liability to only a defendant that is more than 50 percent at fault, except where any defendant acted with willful and wanton conduct or reckless disregard and then all defendants may be held joint and severably liable. Limitation only applies when the plaintiff has no comparative negligence.

### **Noneconomic Damages Reform**

Limited noneconomic damages to \$300,000 in medical liability cases provided the defendant made an offer of judgment and the amount of the verdict is less than one-and-a-half times the amount of the final offer of judgment. Indexed the limit to inflation. Noneconomic damages do not include, by definition, exemplary damages. Limit on noneconomic damages may be lifted if nine or more members of the jury find by clear and convincing evidence that the defendant committed negligence or if nine or more members of the jury find by a preponderance of the evidence that the conduct of the defendant was willful or wanton. Provided, however, that the judge must, before submitting such determination to the jury, make a threshold determination that there is evidence from which the jury could reasonably make the findings set forth in the case. Provided that if the jury returns a verdict that is greater than \$300,000 but less than one-and-a-half times the amount of the final offer of judgment, the court shall submit additional forms of possible verdicts to the jury covering possible determinations of negligence and/or willful and wanton conduct. Provided that limits do not apply to wrongful death action. *Provisions of this section sunsets on November 1, 2010.*

### **Noneconomic Damages Reform (ob/gyn's and emergency care)**

Extended the sunset provision on the limit on noneconomic damages for ob/gyn's and emergency care situations (S.B. 629, 2003) from July 1, 2008 until November 1, 2010.

### **Prejudgment and Postjudgment Interest Rate Reform**

Set postjudgment and prejudgment interest rate at the prime rate plus 2 percent (effective January 1, 2005).

## **South Carolina**

### **Appeal Bond Reform—H. 4823**

Provided that judgments are to be stayed during the appeal of a judgment by signatories to the Master Settlement Agreement. Such defendants are not required to post an appeal bond.

## **South Dakota**

### **Obesity Litigation Reform—H.B. 1282**

Exempted from civil liability manufacturers, sellers, trade associations, livestock producers, or retailers of any food or drink (as defined in Sec. 201(f) of 21 U.S.C. 321 (f)) when the claim is based on the individual's weight gain, obesity, or a health condition related to weight gain or obesity, and the weight gain, obesity, or health condition results



from the individual's long-term consumption of a food or drink. The provisions also apply to cases that are currently pending.

## **Tennessee**

### **Obesity Litigation Reform—S.B. 2379**

Exempted from civil liability manufacturers, distributors, sellers or advertisers of food [as defined in Section 201(f) of 21 U.S.C. 321(f)] when the claim is for weight gain, obesity, or other conditions resulting from the long-term consumption of food. The civil liability exemption does not apply if the claim is based on a material violation of state or federal law with respect to adulteration or misbranding. The liability exemption also does not apply if the claimed injury is for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food and the violation was committed knowingly and willfully. Finally, S.B. 2379 provided that discovery and other proceedings shall be stayed during a motion to dismiss.

## **Utah**

### **Obesity Litigation Reform—S.B. 214**

Exempted from civil liability manufacturers, packers, distributors, carriers, holders, marketers, advertisers of food, or an association of one or more such entities when the claim is for obesity or weight gain resulting from the consumption of food. The liability exemption does not apply if the claim is based on a material violation of federal or state adulteration or misbranding requirements or any other material violation of applicable federal or state law related to the marketing, manufacturing, distribution, advertising, labeling or sale of food that was committed knowingly and willfully. The bill defined food as any raw, cooked, or processed edible substance, beverage, or ingredient for use or for sale, but does not include tobacco products, alcohol products, vitamins/dietary supplements, illegal drugs, or prescription/over-the-counter drugs. In addition, it provided for a stay of discovery during a motion to dismiss.

## **Virginia**

### **Appeal Bond Reform—H.B. 430/S.B. 172**

Expanded the application of the \$25 million limit on appeal bond amounts for punitive damages to apply to appeal bond amounts for all forms of damages.

## **Washington**

### **Obesity Litigation Reform—S.B. 6601**

Exempted from civil liability manufacturers, packers, distributors, carriers, holders, marketers, or sellers of food or nonalcoholic beverages for suits brought by private parties when the claim is based upon weight gain, obesity, or health conditions related to weight or obesity resulting from the long-term consumption of food or nonalcoholic beverages.

**Post-judgment Interest Rate Reform—H.B. 2485**

Established the post-judgment interest rate equal to the average twenty-six week Treasury bill rate, plus two percent.