



American Tort Reform Association

1101 Connecticut Ave, NW ■ Suite 400 ■ Washington, DC 20036
(202) 682-1163 ■ Fax: (202) 682-1022 ■ www.atra.org

2012 State Tort Reform Enactments

Alabama

S.B. 342 (Phil Williams-R) - Trespasser Liability Reform

Codifies longstanding state common law that a possessor of real property owes no duty of care to a trespasser except to: (1) refrain from causing wanton or intentional injury, including by a trap or pitfall; and (2) exercise reasonable care to avoid causing injury to a known trespasser in a position of peril and to use reasonable care to warn a known trespasser of dangers known by the possessor to exist on the property.

Arizona

S.B. 1410 (Ron Gould-R) – Trespasser Liability Reform

Codifies the common law regarding liability of a possessor of land relating to an individual trespassing on the possessor's land. Provides that except in a few specific instances, a possessor of real property, including an owner, lessee, or other occupant, or an agent of such owner, lessee, or other occupant, owes no duty of care to a trespasser except to refrain from harming the trespasser by a willful or wanton act

S.B. 1132 (Steve Yarbrough – R) – Government Retention of Personal Injury Lawyers

Limits contingency fees by prohibiting the state from entering into a contingency fee contract providing for the state's private attorney to receive a contingency fee from this state's portion of the recovery. The bill also requires posting of executed contingency fees contracts unless the attorney general determines that the posting may cause damage to the reputation of any business or person.

S.B. 1142 (Adam Driggs-R) – Jury Service Reform

Allows jurors of lengthy trials to begin being paid at the higher rate on the first day of service, instead of the fourth day, if their employer does not compensate them.

H.B. 2503 (Kimberly Yee-R) - Punitive Damages Reform

Establishes reasonable liability rules for manufacturers, service providers and sellers of products with respect to punitive damages when their product or service is in compliance with state or federal laws/regulations. Recognizes that the specific purpose of an award of punitive damages is to punish and deter unlawful conduct, and a defendant should not be punished in civil litigation when it is in compliance with applicable laws and regulatory requirements. Punitive damages do apply if it can be demonstrated that the defendant engaged in the following conduct: (1) the business withheld or misrepresented information utilized to gain regulatory approval; (2) the defendant made an illegal payment to an official to obtain approval of the product or service; or, (3) the defendant sold a product or service after the government ordered the product or service to be removed from the marketplace.

Colorado

H.B. 1036 (James Kerr-R) – Open Records Act Clarification

Amends the Colorado Open Records Act to clarify that civil government investigatory files fall within the investigations exception, contrary to a ruling by the Colorado Court of Appeals in *Land Owners United LLC v. Waters*, which held that such files are not protected from disclosure. Without exemption, personal information of consumer victims and propriety information of businesses could be subject to an open records request. Does allow for a public interest exemption.

Iowa

H.F. 563 (House Judiciary Committee) - Government Retention of Personal Injury Lawyers

Provides that the state shall not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into the contract, that contingency fee representation is both cost-effective and in the public interest. Limits the aggregate contingency fee a private attorney can receive to 25% of any recovery up to \$10 million, 20% of any recovery between \$10-\$15 million, 15% of any recovery between \$15-\$20 million, 10% of any portion between \$20-\$25 million, and 5% of any recovery that exceeds \$25 million. In no event shall the aggregate contingency fee of any recovery exceed \$50 million. Allows the caps to be waived if approved by the majority of the state Executive Council (Governor, Secretary of State, Auditor, Treasurer, and Secretary of Agriculture). Requires the contract, payments made under the contract, and the attorney general's written determinations to be posted on the attorney general's website.

Louisiana

H.B. 618 (Neil Abramson-D) & S.B. 555 (Robert Adley-R) – Legacy Lawsuit Reform

Provides oil producers with the ability to admit to responsibility for cleaning up pollution from past oil drilling activities without admitting to larger damages. The admission would not waive the admitting party's right to use any of the available defenses in court. The bills also create a system where the Department of Natural Resources would develop a cleanup plan for polluted lands that would be open to public scrutiny via a public hearing. The cleanup plan also has to pass analysis by the Department of Environmental Quality and the Department of Agriculture.

H.B. 464 (Neil Abramson-D) - Class Action Venue Reform

Provides that when two or more actions requesting the same certification of a class are filed in two or more Louisiana courts regarding the same transaction or occurrence at the same location, and such classes would encompass one or more of the same plaintiffs suing in the same capacities against the same defendants, the defendant may have all such actions transferred to the district court where the event occurred. Provides that when two or more actions requesting certification of a class are filed in two or more Louisiana courts regarding multiple related transactions or occurrences in different locations, the defendant may have all such actions transferred to the district court where the first suit was brought. Also, if within 30 days of certification of a class action, there are related putative class actions pending, they may be transferred to the court where the related action has been certified. Defines domicile for venue purposes, with regards to a corporation or business, as either the state of formation or the state of its principal place of business, whichever is most pertinent to the particular issue.

Michigan

S.B. 1115 (Roger Kahn-R)- Noneconomic Damages in Medical Liability Cases

Classifies the loss of household or other services, loss of companionship and loss of consortium as noneconomic damages.

S.B. 1118 (Joe Hune-R) – Prejudgment Interest in Medical Liability Cases

Ensures that a full 91-day period is given to defendants who submit an affidavit of meritorious defense and ends the practice of prejudgment interest being awarded on attorney fees and costs in medical liability cases.

Mississippi

H.B. 211 (Phillip Gunn-R) – Government Retention of Personal Injury Lawyers

Enacts conditions required of the Attorney General before entering into a contingency fee contract for legal services. Requires public notice of contracts entered into and contingency fees paid, and places incremental restrictions upon the amount of contingency fees that can be paid out of a specific recovery amount.

Missouri

S.B. 628 (Kurt Schaefer – R)- Trespasser Liability Reform

Codifies existing law by providing that a real property occupant owes no duty of care to a trespasser except to refrain from harming the trespasser by an intentional, willful, or wanton act. Establishes that a possessor of land does not owe a duty of care to a trespasser, except for cases when the land possessor knows of the trespasser's presence, maintains certain types of artificial conditions on the premise, or in certain instances involving child trespassers.

Ohio

S.B. 202 (Bill Seitz-R) - Trespasser Liability Reform

Codifies existing law by providing that landowners immunity from liability for injuries to trespassers. Establishes that a possessor of land does not owe a duty of care to a trespasser, except for cases when the land possessor knows of the trespasser's presence, maintains certain types of artificial conditions on the premise, or in certain instances involving child trespassers.

H.B. 380 (Louis Blessing-R) - Asbestos Bankruptcy Trust Transparency

Mandates that within thirty days after filing an asbestos complaint, a claimant shall provide to all of the parties in the action a sworn statement identifying all existing asbestos trust claims made by or on behalf of the claimant and all trust claims material pertaining to each identified trust claim.

Rhode Island

H.B. 7559 (Michael Tarro-D) - Medical Liability Evidence

Expands the type of medical services and expense affidavits that can be introduced into evidence without the provider being required to testify in court.

Tennessee

S.B. 2719 (Brian Kelsey-R) – Trespass Liability Reform

Codifies the common law regarding liability of a possessor of land relating to an individual trespassing on the possessor's land. Provides that a possessor of real property, including an owner, lessee, or other occupant, or an agent of such owner, lessee, or other occupant, owes no duty of care to a trespasser except to refrain from harming the trespasser by an intentional, willful, or wanton act.

H.B. 2982 (Vance Dennis-R) – Judgment Interest

Establishes the Federal Reserve weekly average prime loan rate as the standard interest rate on judgments so long as such rate does not exceed 10%.

Wisconsin

S.B. 202 (Glen Grothman – R) – Punitive and Compensatory Damages Reform

Eliminates punitive and compensatory damages under the Wisconsin Fair Employment Act (WFEA) – a 2009 invention in Wisconsin law. This forced Wisconsin employers to not only defend WFEA claims in the administrative hearing process, but also then re-litigate the same case in State Court in a full jury trial (or in a new trial to the court) in defense of potential punitive and compensatory damages, and additional costs and attorney fees. At the same time, Wisconsin employers continued to be forced to defend simultaneously cross-filed claims under federal laws based on the same facts and alleged types of claims before federal agencies, and then in state or federal court under federal law. The types of damages WFEA made available were already accessible under several federal statutes under which much litigation came.