



American Tort Reform Association

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2013 State Tort Reform Enactments

Alabama

H.B. 227 (Paul DiMarco-R) - Transparency in Private Attorney Contracts Act

Provides that any state entity seeking to enter into a contingency fee contract must make a written determination that such representation is both cost-effective and in the public interest. This must include details about whether the state has sufficient legal and financial resources to handle the matter on its own without a contingency fee contract; the expected time and labor required, as well as the complexity and skill necessary to handle the issues; and the amount of experience desired for the particular attorney services and the nature of private attorney's experience with similar matters. To ensure that the public interest is kept as the foremost consideration when cases are handled by private attorneys on contingency fee basis, the bill mandates that a government attorney retains complete control over the litigation. The government attorney has supervisory authority, retains veto power over any decisions by private attorneys, may be contacted directly by defendants, must attend all settlement conferences, and has exclusive discretion over settlement decisions. Contingency fees will be limited to 22 percent of the first \$10 million; plus 20 percent of the next \$15 million; plus 16 percent of the next \$25 million; plus 12 percent of the next \$25 million; plus 8 percent of the next \$25 million; plus 7.1 percent of any recovery exceeding \$100 million. Total fees are capped at \$75 million per action. For transparency and accountability of public funds, contingency fee attorneys must keep detailed records of expenses and time spent on a case, which would be available to the state for inspection. The contingency fee contract and all payments made are to be posted on the state's Open Alabama website.

Arizona

S.B. 1346 (Don Shooter-R) – Class Action Reform

Makes changes to how class action lawsuits are treated in Arizona. Allows for interlocutory appeal of class certification. If the court certifies the class, it is required to certify its action in writing, outlining why the action should be maintained as a class (including providing evidence in support of determination). If an appeal is filed, all discovery and other proceedings shall be stayed, except that if a party makes a motion, the court may permit discovery proceedings to continue during the pendency of the appeal. Finally, the bill provides for the trial court to make appropriate orders governing the management of the proceedings and provide for appropriate orders for the protection of class members during the trial proceedings.

Florida

H.B. 7015 (Matt Gaetz-R) – Expert Evidence

Provides that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances. It requires the state to interpret and apply the principles of expert testimony in conformity with the United States Supreme Court's decision in the *Daubert* case.

Indiana

H.B. 1558 (Martin Carbaugh-R) - Lawsuit Lending Study Bill

Urges the legislative council to assign to the interim study committee on insurance, during the 2013 interim of the general assembly, the topic of consumer lawsuit lending.

Louisiana

H.B. 472 (Jay Morris-R)- Class Action Reform

Provides that a class action cannot be maintained if the court would be required to look at the merits of any individual class member's claim to determine whether or not the individual would fall within the defined class. Furthermore, at the hearing on the motion to certify a class action, the plaintiff bears the burden of proof.

H.B. 589 (Neil Abramson – D) – Summary Judgment

Provides that summary judgment on a particular issue may be rendered in favor of one or more parties even if the granting of the summary judgment does not dispose of the case as to that party or parties. Also provides that the court may only render a decision as to those issues raised in the motion under consideration. Changes present law to allow the court to consider evidence submitted for the purposes of summary judgment and provides that a party can object to evidence submitted through a memorandum in support or opposition or in a motion to strike that provides the specific grounds for the objection. Finally, provides that a party may retain the right to a trial by jury even if the petitioner has stipulated that the cause of action does not exceed \$50,000 when the party is entitled to trial by jury has complied with the procedural requirements for asserting that right if the stipulation has occurred less than 60 days prior to trial.

Montana

H.B. 224 (Cary Smith –R) - Appeal Bond Reform

Limits the amount a defendant can be required to pay to secure the right to appeal to \$50 million.

New Hampshire

S.B. 96 (Sharon Carson-R) – Vexatious Litigants

Allows a judge to order a vexatious litigant to retain an attorney of good character to represent him in all actions or to post a cash or surety bond sufficient to cover all attorney fees and anticipated damages. Defines a vexatious litigant as an individual who has been found to have filed three or more frivolous lawsuits which have had a final disposition and which the judge finds, by clear and convincing evidence, were initiated for the primary purpose of harassment.

New Jersey

A.B. 3123 (Patrick Diegnan-D) - Derivative Proceedings and Shareholder Class Actions

Requires a written demand be made on the corporation for derivative suits. The new demand requirement grants the company 90 days to respond and stays all proceedings, including discovery, during this period. It also allows the corporation to move for a stay of proceedings if it is currently conducting an investigation. Raises the amount of ownership in the company that a shareholder must have in order to avoid posting security in any shareholder class action or derivative suit. Requires that the shareholder hold ownership at the time of filing suit and remains a shareholder for the duration of the suit. Next and significantly, the court shall dismiss the case if the corporation moves for dismissal after specified groups have determined "in good faith, after conducting a reasonable inquiry upon which its conclusions are based, the maintenance of the derivative proceedings is not in the best interest of the corporation." The specified groups include: (1) a majority vote of shareholders; (2) a majority vote of independent directors; (3) a majority vote of a committee appointed by independent directors; (4) a panel appointed by the court at the request of the corporation. Finally, introduces a fee shifting provision which requires plaintiffs to pay the corporation if the suit was brought without the exercise of reasonable diligence, cause or with improper purpose.

Oklahoma

S.B. 1 (Brian Bingman-R) - Affidavit of Merit

Sets forth that in any civil action for professional negligence, the plaintiff shall attach to the petition an affidavit and sets forth what is required in the filing and what should be done without an affidavit attached.

S.B. 2 (Brian Bingman-R) – Dismissal of Claims

Allows any action to be dismissed by the plaintiff without an order of the court by filing a notice of dismissal "at any time before the pretrial." After the pretrial hearing, an action may only be dismissed by agreement of the parties or by the court. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice... meaning the action may be filed again in the future.

S.B. 4 (Brian Bingman-R) – Recovery of Medicaid Payments

Medicaid allows for the reduction of its recovery, to take into account the costs of procuring a judgment or settlement. This legislation sets out how a recovery is split when Medicaid is involved in a medical liability action.

S.B. 6 (Brian Bingman-R) – Expert Testimony

Adopts the federal rules of evidence. Sets out that a qualified expert witness may testify on scientific, technical or other specialized knowledge if; (1) The testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case. Also sets out that facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

S.B. 7 (Brian Bingman-R) – Good Faith

Clarifies that every contract of duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement, and that a breach of the obligation of good faith shall not give rise to a separate tort cause of action.

S.B. 10 (Brian Bingman-R) – Governor’s Emergency Powers

Sets out the powers of the Governor in the case of emergency. Clarifies that she has certain powers during an emergency which includes certain “resources” not to include “health manpower.” She does maintain power of “health” resources. This bill works closely with the Uniform Emergency Volunteer Health Practitioners Act.

S.B. 11 (Brian Bingman-R) – Volunteer Liability

Deletes old definition language dealing with the term “volunteer” that restricted a volunteer and replaces it with new language: “provided, being legally entitled to receive compensation for the service or undertaking performed shall not preclude a person from being considered a volunteer;” and, further grants immunity “... where such actions are agreed upon in advance by all involved persons to be provided on a volunteer basis...”

S.B. 12 (Brian Bingman-R) – Common Sense Consumption Act

Applies to all covered claims pending on November 1, 2009, and all claims filed thereafter, regardless of when the claim arose. The bill sets forth that the intent of the Act is to prevent frivolous lawsuits against manufacturers, packers, distributors, carriers, holders, sellers, marketers or advertisers of food products that comply with applicable statutory and regulatory requirements. It sets for the definition of a claim and a “knowing and willful violation,” as well as setting forth guidelines that an entity shall not be subject to civil liability for a claim arising out of weight gain, obesity, or a health condition associated with weight gain or obesity. Additionally, the bill outlines that the pleading requirements and deems them part of the substantive law of the state and not merely in the nature of procedural provisions.

S.B. 13 (Brian Bingman-R) – Products Liability

States that in a product liability action, a manufacturer or seller shall not be liable if the product is inherently unsafe and known to be unsafe by the ordinary consumer. Sets out the defenses to be used in such cases. For purposes of this section, the term “product liability action” does not include an action based on manufacturing defect or breach of the warranty. States that in a product liability action, “if measures are taken which, if taken previously, would have made an event less likely to occur, evidence of the subsequent measures is not admissible to prove a defect in a product, negligence, or culpable conduct in connections with the event.

S.B. 14 (Brian Bingman-R) – Asbestos/Silica Claims

Enacts the asbestos & silica exposure liability protection sought for many years; and, also enacts reforms needed to protect successor companies who have purchased companies with an earlier asbestos exposure.

S.B. 16 (Brian Bingman-R) – Class Action Reform

Defines who can be a member of a class and set a procedure for the court to determine class attorneys and fees to be paid. Allows the court to appoint an independent attorney to represent the class in any dispute over attorneys’ fees. Provides that in coupon settlements, the attorney shall receive fee in coupons.

S.B. 404 (Clark Jolley-R) – The Personal Injury Trust Fund Transparency Act
Requires that within 90 days after filing an action for personal injury, the plaintiff must provide to the court and to all parties a statement identifying all personal injury claims the plaintiff has or anticipates filing against a personal injury trust. The defendant may then seek discovery against a personal injury trust identified by the plaintiff, and the plaintiff may not claim privilege or confidentiality to bar discovery.

S.B. 440 (Rob Johnson-R) - Prevailing Party in Vacated Judgments
States that the party that prevails in an action to vacate a judgment shall only be considered the prevailing party for the purpose of the award of costs, including reasonable attorney fees, if such party prevails on the merits in the underlying action.

S.B. 1016 (Brian Crain-R) – Lawsuit Lending Reform
Subjects consumer lawsuit lenders to Oklahoma’s Uniform Consumer Credit Code.

S.B. 1080 (Rob Johnson-R) - Judgment Interest Reform
Provides that if a rate of interest is specified in a contract and does not exceed the lawful rate, postjudgment interest shall be calculated at the contractual rate.

H.B. 1003 (T.W. Shannon-R) Forum Non Conveniens
Allows the court, upon a motion by either party or on its own, to decline jurisdiction, if in the interest of justice and for the convenience of the parties, an action would be more properly heard in another forum.” The bill also outlines what the court shall consider in determining whether to grant a motion to stay, transfer or to dismiss an action.

H.B. 1004 (T.W. Shannon-R) Firearms Manufacturer Liability
Exempts gun manufacturers, distributors and sellers who “lawfully” manufacture, distribute or sell firearms from liability for “any injury suffered.” Does not exempt such firearms from product liability actions if appropriate.

H.B. 1005 (T.W. Shannon-R) Emergency Volunteer Health Practitioners Act
Clarifies who is and who is not an “emergency management worker;” creates the “Uniform Emergency Volunteer Health Practitioners Act; and repealed old language dealing with the licensing and appointment of health personnel.

H.B. 1006 (T.W. Shannon-R) Definition of “Frivolous”
Sets forth guidelines for signing of pleadings and sets forth guidelines for “frivolous” suits brought in bad faith or without any rational argument based in law or facts to support the position of the litigant or to change existing law. Upon finding, the court shall enter an order requiring such non-prevailing party to reimburse the prevailing party for reasonable costs, including attorney fees, incurred with respect to such claim or defense.

H.B. 1007 (T.W. Shannon-R) Peer Review
Clarifies that in medical peer review proceedings, peer review information shall be private, confidential, privileged and not subject to discovery. Also states that in any action brought against a health care facility involving possible negligence in hiring, or contract with, a health care professional, any information discovered pursuant to a claim of negligence against such health care facility shall not be admissible as evidence until a

judge or jury has first found the health care professional to have been negligent in providing health care services to the patient in such health care facility.

H.B. 1011 (T.W. Shannon-R) Pleading Requirements

Clarifies that “every pleading demanding relief for damages in money in excess of the amount required for diversity jurisdiction shall, without demined any specific amount of money, set forth only that the amount sought as damages is in excess of the amount required for diversity jurisdiction, except in actions sounding in contract. Every pleading demanding relief for damages in an amount of that required for diversity jurisdiction or less shall specify the amount of such damages sought to be recovered. Further clarifies that “if the amount of damages sought to be recovered is less than the amount required for diversity jurisdiction, the defendant may file, for purposes of establishing diversity jurisdiction only, a Motion to Clarify Damages prior to the pretrial order to require the plaintiff to show by a preponderance of evidence that the amount of damages, if awarded, will not exceed the amount required for diversity. If the court finds that any damages awarded are more likely than not to exceed the amount of damages required for diversity jurisdiction, the plaintiff shall amend his or her pleadings in conformance with the law.

H.B. 1013 (T.W. Shannon) Class Action Procedure

Adopted the expanded federal rule as a foundation for class actions. Includes specific procedures and guides the court must follow in appointing an attorney to represent the class. Requires specific findings that must be included in an order certifying a class. Requires more specific information be included in the notice provided to potential class members if a class is certified. Calls for more specific court oversight of the case, particularly regarding dismissals and settlements. Limits non-resident membership in state class actions and allows the court to stay, transfer or dismiss a case if it should be heard in another court.

H.B. 1015 (T.W. Shannon) Seat Belt Admissibility

Sets out that the use or nonuse of seatbelts shall be submitted into evidence in any civil suit in Oklahoma unless the plaintiff in such suit is a child under sixteen years old.

Tennessee

S.B. 222 (Brian Kelsey-R) - Punitive Damages Reform

Authorizes the award of punitive damages in a civil action against a defendant based on vicarious liability only if the finder of fact determines by clear and convincing evidence that the act or omission was committed by a person employed in a management capacity while that person was acting within the scope of employment, the defendant was reckless in hiring or retaining the agent or employee, and the defendant authorized or approved the act with knowledge or conscious disregard that the act may result in the loss or injury.

S.B. 56 (Brian Kelsey-R) – Joint and Several Liability Reform

Codifies current state law by providing that if multiple defendants are found liable in a civil action governed by comparative fault, a defendant shall only be severally liable for the percentage of damages for which fault is attributed to such defendant by the trier of fact, and no defendant shall be held jointly liable for any damages.

S.B. 1053 (Brian Kelsey-R) – Future Damages

Deletes the requirement that the trier of fact must specify, on an annual basis, the amount of future damages and the periods over which such future damages will accrue.

Texas

H.B. 1325 (Doug Miller – R) – Asbestos Inactive Docket

Provides a mechanism for Texas asbestos and silica MDL courts to dismiss long dormant claims on the inactive docket enacted in 2005, while preserving a claimant's ability to re-file a dismissed case should the claimant develop an impairing condition.

Utah

H.B. 135 (Dean Sanpei-R) - Arbitration in Medical Liability Actions

Provides that a party in a medical liability action or arbitration may not attempt to allocate fault to any health care provider unless a certificate of compliance has been issued. Also, requires that evidence from a medical review panel remain unreportable to a health care facility or health insurance plan.

H.B. 347 (Brad Wilson-R) – Trespasser Liability Reform

Codifies current Utah common law regarding trespass liability. It provides that a land owner does not owe a duty of care to a trespasser except in a few limited circumstances.

Virginia

H.B. 1545 (Sal Iaquinto-R)- Expert Witness Certification

States that in an action for medical liability, the court, upon showing good cause, may conduct an in camera review of the opinion obtained by the plaintiff of an expert witness who certified that the defendant deviated from the applicable standard of care and the deviation was the proximate cause of the injuries claimed.

H.B. 1618 (Todd Gilbert-R) – Venue Reform

Eliminates from the list of Category B venue, the forum where the defendant regularly conducts substantial business activity or where such activity was conducted before the defendant's withdrawal from the Commonwealth. Category B venue exists where a defendant corporation, partnership, or limited liability company has its principal office or place of business.

H.B. 1708 (Greg Habeeb-R) - Summary Judgment

Allows requests for admission for which the responses are submitted in support of a motion for summary judgment may be based, in whole or in part, upon discovery depositions and may include admitted facts learned or referenced in such a deposition, provided that any such request for admission shall not reference the deposition or require the party to admit that the deponent gave specific testimony. Also allows that a motion for summary judgment seeking dismissal of any claim or demand for punitive damages, except in cases involving driving under the influence, may be sustained when based, in whole or in part, upon discovery depositions.

H.B. 1709 (Greg Habeeb-R) - Dismissal of Nonsuits

Clarifies that if notice to take a nonsuit is given to the opposing party during trial, the court may assess against the nonsuiting party reasonable witness fees and travel costs of

expert witnesses scheduled to appear at trial, which are actually incurred by the opposing party, solely by reason of the failure of the nonsuiting party to give notice at least seven days prior to trial. Provides that invoices, receipts, or confirmation of payment shall be admissible to prove reasonableness of such expert witness costs and may, in the court's discretion, satisfy the reasonableness requirement, without the need for further testimony.

H.B. 2004 (Ben Cline-R) – Trespasser Liability Reform

Codifies the common law with regards to trespassers. Provides that a possessor of real property owes no duty of care to a trespasser except in circumstances where a common law or statutory right of action already exists.

S.B. 699 (Kenneth Cooper Alexander-D) - Medical Liability Expert Witness

Requires the plaintiff, in medical liability cases, to provide certification of expert witnesses. The plaintiff must disclose the identity and qualifications of the expert witness who certified that the defendant deviated from the applicable standard of care and the deviation was the proximate cause of the injuries claimed. The certification is required before the plaintiff can commence any action for medical liability.