



# American Tort Reform Association

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## 1993 TORT REFORM ENACTMENTS

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Arizona

Generic Tort Reform

### SB 1055

- o bars a plaintiff from recovering if he or she is found 50% or more at fault for his or her injuries,
- o a plaintiff recovering for personal injury, property damage or wrongful death is barred from recovery if he or she is aware of the risk posed and voluntarily exposed him or herself to such a risk (assumption of the risk),
- o extends periodic payments from medical malpractice to other types of personal injury claims,
- o establishes a possible defense in all personal injury actions if a claimant as a result of the influence of alcohol or drugs, is determined to be more than 50% liable for his or her injuries,
- o extends the existing collateral source legislation from medical malpractice claims to other forms of personal injury litigation (under this legislative approach, a jury would not be bound to deduct the amounts paid from other sources, but would be free to consider them in determining fair compensation for the injured party),
- o establishes a 12 year statute of repose for all civil actions except in cases of fraud,
- o establishes a 1 year statute of limitations for suits against the state,
- o grants immunity from liability to volunteers rendering

aid to another person, unless a jury finds by clear and convincing evidence that the volunteer was guilty of gross negligence,

- o prevents persons involved in the commission of a crime from bringing suit against a landowner whose property the criminal burglarized or against persons defending their homes or businesses and
- o limits the liability of landowners who allow others to use their property for recreational and educational purposes.

**Colorado                      Commission of a Crime**

**HB 1061**

- o bars the bringing of a civil action by the perpetrator of a crime injured in the commission of that crime, unless the injuries were wilfully inflicted.

**Hawaii                         Generic Tort Reform**

**HB 928**

- o extends until 1995 the generic tort reform package (joint and several reform, non-economic damages limit and collateral source reform) due to sunset this year and
- o establishes a study committee to determine the effectiveness of the 1986 tort reforms and whether or not they should be made permanent.

**Maryland                     Medical Liability Reform**

**HB 1359**

- o (part of a comprehensive health care reform package)  
  
provides a defense from liability for physicians who adhere to standards of practice among health care professionals with similar training and experience in the same, or similar, community.

## **Michigan**

### **Comprehensive Medical Liability Reform**

#### **SB 270 (H-2)**

- o provides a variable limit on non-economic damages (\$280,000 for an ordinary occurrence, \$500,000 for incidents falling within certain exceptions),
- o establishes more stringent requirements for expert witnesses,
- o requires written pre-suit notice,
- o requires a certificate of merit and
- o provides for a shorter statute of limitations in medical liability actions.

## **Mississippi**

### **Product Liability and Punitive Damages Reform**

#### **HB 1270**

- o establishes a clear and convincing burden of proof for the award of punitive damages,
- o requires bifurcation of trials on the issue of punitive damages,
- o prohibits the award of punitive damages in the absence of a compensatory award,
- o prohibits the award of punitive damages against an innocent seller,
- o lays down factors for the jury to consider when determining the amount of a punitive damages award,
- o provides that product liability cases must be based on a design, manufacturing or warning defect, or breach of an express warranty, which caused the product to be unreasonably dangerous,
- o provides that a product which contains an inherently dangerous characteristic is not defective if the dangerous

characteristic cannot be eliminated without substantially reducing the product's usefulness or desirability and the inherent characteristic is recognized by the ordinary person with ordinary knowledge common to the community,

- o provides that a manufacturer or seller cannot be held liable for failure to warn of a product's dangerous condition if it was unknowable at the time the product left the manufacturer's or seller's control,
- o completely bars from recovery a plaintiff who knowingly and voluntarily exposes himself or herself to a dangerous product condition if he or she is injured as a result of that condition,
- o relieves a manufacturer or seller from the duty to warn of a product that poses an open and obvious risk,
- o provides that a properly functioning product is not defective unless there was a practical and economically feasible design alternative available at the time of manufacture and
- o provides for indemnification of innocent retailers and wholesalers.

**New Hampshire      Product Liability Reform**

**SB 76**

- o establishes New Hampshire manufacturers' right of indemnification from the original purchaser of a product for damages caused by the product if it is significantly altered after it leaves the New Hampshire manufacturer's control.

**North Dakota      Generic Tort Reform and Punitive Damages Reform**

**SB 2351**

- o repeals the sunset clause on the comprehensive tort reform package passed in 1987,

- o limits punitive damages to the greater of \$250,000 or two times compensatory damages,
- o allows for bifurcated trials on the issue of punitive damages,
- o prohibits a defendant's financial worth from being admitted in the punitive damages portion of a trial,
- o provides for a move from pure comparative fault to modified comparative fault in product liability actions.

**South Dakota            Medical Liability Reform**

**SB 1253**

- o limits liability for health care professionals volunteering health care services at free clinics.

**Texas                        *Forum non conveniens* and Product Liability Reform**

**SB 2**

- o reinstates the *forum non conveniens* doctrine in Texas, which permits a court to decline to hear a case if justice would be better served by trying the case elsewhere

**SB 4**

- o requires proof of an economically and technologically feasible safer alternative design available at the time of manufacture in most product liability actions for defective design,
- o provides a defense for manufacturers and sellers of inherently unsafe products that are known to be unsafe,
- o establishes a 15 year statute of repose for product liability actions against manufacturers or sellers of manufacturing equipment and
- o provides protection for innocent retailers and wholesalers.