



American Tort Reform Association

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As of December 31, 1996

1996 TORT REFORM ENACTMENTS

Alabama Expert Witness Reform

SB 194 -- effective date May 17, 1996

Establishes parameters for "expert witnesses" in medical malpractice cases; and provides that limits of liability insurance coverage for a health care provider are not discoverable.

Clarification of the Mini Code

SB 587 -- effective date May 20, 1996

Clarifies the consumer finance statute known as the mini code to provide guidance to lenders, retailers and consumer loan companies.

Statute of Limitations

SB 35 -- effective date May 17, 1996

Provides a 10 year statute of limitations for specified actions brought against public officials and municipalities.

Idaho Employer Reference Liability

H 593 -- effective date July 1, 1996

Exempts employers from civil liability for providing employee references by creating a presumption of good faith. The good faith presumption can be rebutted only by clear and convincing evidence that there was actual malice or a deliberate intent to mislead.

Illinois Employer Reference Liability

SB 1490 -- effective date June 13, 1996

Offers protection from civil liability to employers providing employee references unless: by a preponderance of the evidence the employer knowingly disclosed false information with the intent to mislead, in bad faith, or with malicious purpose; and/or, by a preponderance of the evidence the disclosure constituted an unlawful discriminatory practice. Provides a loser pays provision.

Louisiana Strict Liability

HB 18 -- effective date April 16, 1996

Repeals the judicially created strict liability doctrine exposing property owners to liability without proof of fault. Returns Louisiana to a negligence standard.

Punitive Damages

HB 20 -- effective date April 16, 1996

Repeals the statute which authorized punitive damages to be awarded for wrongful handling of hazardous substances. (The Louisiana courts had established precedents substantially expanding liability based upon the repealed statute.)

Joint and Several Liability

HB 21 -- effective date April 16, 1996

Abolishes joint liability in all civil actions so that a given defendant is only liable for damages in proportion to the assigned degree of fault.

Maine Product Liability

LD 346 -- effective date July 4, 1996

Provides that "subsequent remedial measures" or steps taken after an accident to repair or improve the site of injury are not admissible as evidence of negligence.

Maryland Employer Reference Liability

HB 597 -- effective date October 1, 1996

Releases employers from civil liability for providing employee references using a presumption of good faith. The good faith presumption can be rebutted only by clear and convincing evidence that there was actual malice or false information was intentionally or recklessly disclosed.

New Hampshire

Retired Physicians Immunity

HB 1509 -- effective date January 1, 1997

Grants certain retired physicians immunity from civil liability for volunteer health educational services.

Ohio Comprehensive Tort Reform Package

HB 350 -- effective date January 27, 1997

The Ohio Supreme Court held HB 350 unconstitutional in *Ohio Academy of Trial Lawyers v. Sheward*, -N.E.2d-(Ohio August 16, 1999)

• **Punitive Damages**

- 1) Limits amount of punitive damages recoverable from all parties except large employers to the lesser of three times compensatory damages or \$100,000;
- 2) Limits the amount of punitive damages recoverable from large employers (more than 25 employees on a full time permanent basis) to the greater of three times the amount of compensatory damages or \$250,000;
- 3) Provides that any party may request a bifurcated trial;

- 4) Limits multiple punitive damage awards based on the same act or course of conduct; and
- 5) Expands governmental defense standards to include non-drug manufacturers, and manufacturers of over-the-counter drugs and medical devices.

- **Non Economic Damages**

- 1) In all civil actions, limits non economic damages to the greater of \$250,000 or three times economic damages to a maximum of \$500,000 unless; there is (a) permanent and severe physical deformity, loss of use of limb or loss of a major bodily organ system; or (b) permanent physical functional injury that permanently prevents the injured person from being able to independently care for herself or himself and perform life sustaining activities.
- 2) If plaintiff establishes criteria set forth above, noneconomic damages are limited to the greater of \$1 million or \$35,000 times the number of years remaining in the plaintiff's expected life.

- **Joint and Several Liability**

Abolishes joint and several liability except for defendants who are more than 50% at fault who would then be jointly liable for economic damages only.

- **Collateral Source**

Allows collateral source payments, including workers' compensation benefits, to be submitted as evidence to the trier of fact, but only if there is no right of subrogation attached or the plaintiff has not paid a premium for the insurance.

- **Comparative Fault**

Allows juries to consider the comparative fault of non-parties when apportioning liability.

- **Product Liability**

Amends product liability law to include additional requirements for establishing liability; prohibits expanded theories of liability including enterprise liability; and adopts a fifteen year statute of repose in product liability cases unless there is

latent harm or fraud.

- **Statute of Limitations**

Adopts a six year statute of limitations in medical malpractice claims.

- **Statute of Repose**

Adopts a fifteen year statute of repose for improvements to real property.

- **Additional Provisions**

Includes provisions on frivolous conduct; an alcohol/drug defense; evidence of seat belt use; political subdivision liability; volunteer qualified immunity. It also requires a certificate of merit in medical malpractice actions and disallows contingency fees for expert witnesses.

Employer Reference Liability

HB 44 -- effective date July 3, 1996

Grants liability protection to an employer who releases information about an employee unless claimant proves either or both of the following: by clear and convincing evidence that the employer disclosed the information knowing it to be false or with intent to mislead in bad faith with malicious purpose; or, by a preponderance of the evidence that the disclosure violates the Ohio Civil Rights Commission Law. It also includes a loser pays provision.

Pennsylvania Medical Liability Reform

HB 2210 -- effective date, 60 days after governor's signature

Limits punitive damages to 200% of compensatory awards; raises the standard of defense in punitive damage cases to "willful or wanton misconduct or reckless indifference to the rights of others"; provides for bifurcated trials; provides for periodic payment of future damage awards; addresses informed consent, pretrial procedures and alternative dispute resolution, mandatory reporting, and affidavits of Non-Involvement; and imposes sanctions for frivolous suits.

South Carolina Employer Reference Liability

SB 1041 -- effective date May 6, 1996

Provides immunity from civil liability to employers providing information about a current or former employee unless employer knowingly or recklessly releases or discloses false information.

Sports Liability Reform

AB 3532 -- effective date May 7, 1996

Establishes immunity from liability for injuries or death to a person engaged in a skating activity caused by an inherent risk of ice or roller skating.

South Dakota Employer Reference Liability

HB 1129 -- effective date July 1, 1996

Presumes good faith when employers provide employee references unless it is shown by clear and convincing evidence that the employer recklessly, knowingly, or with a malicious purpose, disclosed false or deliberately misleading information; or disclosed information subject to a nondisclosure agreement or information that is confidential under any federal or state law.

Wisconsin Medical Records

AB 727 -- effective date June 4, 1996

Overturns the 1990 Court of Appeals decision in Ambrose v. General Cas. Co. which denied access to medical records pre-existing the date of the occurrence at issue in a given lawsuit. Allows a court order to provide requested information including directly relevant medical records, pre-existing conditions and treatments.

Employer Reference Liability

AB 860 -- effective date June 24, 1996

Limits employer liability for providing employee references by establishing a presumption that the employer acted in good faith unless rebutted by clear and convincing evidence that the employer knowingly provided false information, acted maliciously, or violated the fair employment law.

Sports Liability Reform

AB 628 -- effective date June 24, 1996

Limits liability for individuals who participate in contact recreational sports activities by changing the standard of care from ordinary negligence to recklessness in cases involving injury.