



## **American Tort Reform Association**

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As of December 31, 1999

### 1999 State Tort Reform Enactments

#### **Alabama Punitive Damages Reform**

SB 137--effective: August 6, 1999

- 1) Non physical injury cases:
  - a) general rule: limits punitive damages to the greater of three times compensatory damages or \$500,000.
  - b) small businesses: limits punitive damage to \$50,000 or 10% of net worth up to \$200,000, whichever is greater, for small business with a net worth of less than \$2 million.
- 2) Physical injury cases: limits punitive damage awards to the greater of three times compensatory damages or \$1.5 million.
- 3) Prohibits joint liability in all punitive damage actions by requiring a punitive damage award be specific to each defendant and in an amount commensurate with each defendant's conduct.
- 4) Exceptions include: wrongful death, intentional infliction of physical injury and class actions.
- 5) The limit will be adjusted on January 1, 2003 and increased at three-year intervals in accordance with the Consumer Price Index.

#### **Class Action Reform**

SB 72--effective: May 25, 1999

Sets procedures to certify class actions.

- 1) Codifies Supreme Court rulings to ensure that a defendant receive adequate notice prior to class certification.
- 2) Provides for an immediate appeal of any order certifying a class or

refusing to certify a class, and for an automatic stay of matters in the trial court pending such appeal.

### **Venue Reform**

SB 305--effective: July 25, 1999

Establishes venue rules to restrict forum shopping; restricts filing of suit against corporations to qualified venues; specifies venue rules for class action lawsuits and actions involving multiple plaintiffs.

### **Alaska**

#### **Y2K Liability**

HB 82--effective: June 30, 1999

In contract actions, provides immunity for businesses including members of boards of directors who made substantial efforts and have used reasonable care to prevent or remedy damages associated with year 2000 date changes excluding computer developers or manufacturers; provides that noneconomic damages may not be awarded unless plaintiff is able to prove by a preponderance of the evidence that the defendant knew or should have known of the date-related failures; requires written notice to bring suit and allows the opportunity to fix related failures; provides that class action suits may only be brought if the aggregate claim for economic loss exceeds \$150,000; and provides that all claims accrue from the effective date until January 1, 2006.

### **Arizona**

#### **Y2K Liability**

SB 1294--effective: April 26, 1999

Requires a 90 day written notice before action is filed; establishes affirmative defenses; addresses remedial measures and extends qualified immunity to public entities and employees.

### **Colorado**

#### **Y2K Liability**

HB 1295--effective: July 1, 1999

Limits liability for all businesses in Y2K actions; provides a 3-year statute of limitations after the cause of action accrues; limits recovery to actual damages; provides affirmative defenses and provides immunity for officers and directors.

#### **Employer Reference Liability**

HB 1072--effective: March 31, 1999

Provides immunity for employers who disclose information concerning job performance of a former employee to a prospective employer.

### **Volunteer Immunity**

HB 1071--effective: April 22, 1999

Provides immunity for licensed physicians from civil liability while performing volunteer services.

## **Florida**

### **Comprehensive Tort Reform Package**

HB 775--effective: Unless otherwise specified, October 1, 1999

#### **Punitive Damages**

- 1) Limits punitive damages to three times compensatory damages or \$500,000, whichever is greater.
- 2) The limit is increased to 4 times compensatory damages or \$2,000,000, whichever is greater, if the defendant's wrongful conduct was motivated by unreasonable financial gain or the likelihood of injury was known.
- 3) Prohibits multiple punitive damage awards based on the same act or course of conduct unless the court makes a specific finding that earlier punitive damage awards were insufficient.
- 4) Establishes a clear and convincing evidence standard for intentional misconduct or gross negligence.
- 5) Outlines circumstances when an employer is liable for punitive damages arising from an employee's conduct.
- 6) Exceptions include: abuses to the elderly or child abuse cases or cases where the defendant is intoxicated.

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

Provides for a multi-tiered approach for applying limits on joint and several liability.

1) Where a plaintiff is at fault:

Any defendant 10% or less at fault shall not be subject to joint liability; for any defendant more than 10% but less than 25% at fault, joint liability is limited to \$200,000; for any defendant at least 25% but not more than 50% at fault, joint liability is limited to \$500,000; and for any defendant more than 50% at fault, joint liability is limited to \$1 million.

2) Where a plaintiff is without fault:

Any defendant less than 10% at fault shall not be subject to joint liability; for any defendant at least 10% but less than 25% at fault, joint liability is limited to \$500,000; for any defendant at least 25% but not more than 50% at fault, joint liability is limited to \$1 million; and for any defendant more than 50% at fault, joint liability is limited to \$2 million.

### **Product Liability**

#### **Statute of Repose--effective July 1, 1999**

- Provides a 12-year statute of repose for products with a useful life of 10 years or less, unless the product is specifically warranted a useful life longer than 12 years.
- Provides for a 20-year statute of repose for airplanes or vessels in commercial activity, unless the manufacturer specifically warranted a useful life longer than 20 years.
- Exceptions include: improvements to real property including elevators and escalators; latent injury cases; and when the manufacturer, acting through its officers, directors or managing agents, took affirmative steps to conceal a known defect in the product.

#### **Subsequent Remedial Measures--effective: July 1, 1999**

Prohibits evidence of measures taken after an injury for the purpose of proving negligence or a product defect.

### **State of the Art Defense**

Requires a jury to consider the state of the art of scientific and technical knowledge that existed at the time when the product was manufactured.

### **Government Rules Defense**

Provides a rebuttable presumption of liability if the product violated any such standards. Provides a rebuttable presumption that a product is not defective if the product met federal or state standards.

### **Vicarious Liability--effective: July 1, 1999**

Limits liability of an owner or lessor of an automobile to \$100,000/person or \$300,000/incident for bodily injury, and to \$50,000 for property damage. Uninsured or under insured are liable up to \$500,000 for economic damages only.

Exceptions: commercial vehicles used in ordinary course of business, and for transportation of hazardous materials.

### **Employer Reference Liability**

Provides immunity for employers who disclose information concerning job performance of a former employee to a prospective employer.

### **Additional Provisions**

Limits landowner's liability to injured trespassers, limits liability of convenience store owners for criminal attacks, provides an alcohol and drug defense, provides an employer with a presumption against negligent hiring, and provides incentives to mediate nursing home litigation.

### **Y2K Liability**

SB 80--effective: June 4, 1999

Provides immunity for businesses and government agencies who follow specified procedures; provides exclusive remedy in contract, if no written contract: limits recovery to direct economic damages; bars recovery for damages which plaintiff could have avoided or mitigated; requires mediation; prohibits class actions against government agencies; requires each class member has a loss of \$50,000 to bring a class action; provides liability

protection for directors and officers; and requires filing of suit by March 1, 2002.

## **Louisiana**

### **Medical Monitoring**

HB 1784—effective: July 9, 1999

Overturns the Supreme Court’s decision in *Bourgeois v. Green* which allowed someone exposed to a “hazardous” substance to recover expenses for medical monitoring even if there is no evidence of any injury.

### **Immunity for Officers and Directors**

HB 389—effective date: July 12, 1999

Overturns the First Circuit Court of Appeals’ decision in the *Theriot v. Bourg* case which allowed officers and directors of corporations to be sued for errors in judgment even when decisions were made in good faith.

### **Forum Shopping**

HB 858—effective: June 30, 1999

Allows a district court judge to dismiss a civil lawsuit upon a defendant’s request when the act giving rise to the suit occurred outside the territorial limits of the state.

### **Maritime Jury Trial Reform**

SB 832—effective: August 15, 1999

Repeals the prohibition against jury trials in suits involving admiralty or general maritime cases.

### **Volunteer Immunity**

SB 507—effective: August 15, 1999

Provides liability protection for healthcare providers for their voluntary services at community health clinics or community pharmacies.

### **Blood and Tissue Liability**

SB 597—effective: August 15, 1999

Limits liability and provides for a statute of limitations for healthcare providers in cases involving blood transfusions, tissue products or the transplant of any human organ.

**Minnesota Y2K Liability**

SB 1262--effective: May 26, 1999

Establishes affirmative defenses for individuals and small businesses for Y2K related failures.

**Nebraska Y2K Liability**

LB 661--effective: May 28, 1999

Limits liability for state and local governmental entities and federally insured financial institutions: requires privity of contract to bring suit; provides 180 day waiting period after a cause of action accrues for class actions; and creates a sunset provision on January 31, 2002.

**North Carolina Y2K Liability**

SB 1005--effective: July 14, 1999

Requires privity of contract to bring a suit; eliminates punitive damages; provides that total damages shall not exceed actual damages, provides that no employee, officer or director shall be held liable for Y2K related failures and requires mediation procedures before filing a suit.

**North Dakota Y2K Liability**

SB 2303--effective: August 1, 1999

Limits liability for financial institutions and credit unions: actions must be brought by January 1, 2001; requires privity of contract; prohibits joint liability and establishes a comparative fault standard; limits liability to actual economic damages and creates a sunset provision on July 31, 2003.

**State Attorney General Contracting Authority**

SB 2047--effective: August 1, 1999

Provides that an emergency commission must approve the attorney general's appointment of a special assistant attorney general in a civil case in which the amount of the controversy exceeds \$150,000. Prohibits a state governmental agency from contracting legal services by contingency fee unless entity receives an appointment from the attorney general for a special assistant attorney general.

**Oklahoma      Y2K Liability**

HB 1325--effective: July 1, 1999

For businesses that have met specified criteria: prohibits punitive damages; provides immunity for officers and directors; provides protection from third party liability; deems action to be based solely and exclusively in contract; and prohibits class actions suits. Provides qualified immunity to governmental entities.

**Y2K Liability**

H 3759--effective: June 30, 1999

Provides that a person who has suffered a Y2K related problem must be in privity of contract in order to recover only economic loss and reasonable attorney's fees; any person who successfully defends a claim is entitled to recover reasonable costs and attorney's fees if the court determines that the claim was frivolous

**South Carolina      Y2K Liability**

H 3759-- effective: June 30, 1999

Provides that a person who has suffered a Y2K related problem must be in privity of contract in order to recover only economic loss and reasonable attorney's fees; any person who successfully defends a claim is entitled to recover reasonable costs and attorney's fees if the court determines that the claim was frivolous.

**South Dakota      Y2K Liability**

SB 186--effective: March 17, 1999

Provides entities that have made an attempt to become Y2K compliant with a rebuttable presumption that any injury based on Year 2000 disruption was not

caused by negligence of the defendant.

## **Texas**

### **Y2K Liability**

SB 598--effective: May 20, 1999

Provides a two-year statute of limitations and a fifteen-year statute of repose; requires a 60 day cooling off period before a suit may be filed; protects sellers and users who rely on statements that a product or service does not have a Y2K problem; establishes affirmative defenses; requires alternative dispute resolution before trial; prohibits pain and suffering awards, and limits punitive damages, unless the plaintiff can prove by clear and convincing evidence that the defendant committed fraud or malice.

### **Volunteer Immunity**

SB 215--effective: September 1, 1999

Provides immunity to licensed health care providers who volunteer their services for or on behalf of charitable organizations.

### **State Attorney General Contracting Authority**

SB 113--effective: September 1, 1999

Requires that the state attempt to handle all litigation through in-house counsel; provides that when seeking outside counsel, the contracting agency must first seek an hourly fee arrangement; provides that contingency-fee contracts in excess of \$100,000 be approved by a Legislative Review Board; and requires that at the conclusion of contingent-fee representation, the state receive a statement of hours worked and total fee recovered.

## **Utah**

### **Joint and Several Liability**

HB 74--effective: March 3, 1998

Clarifies the 1986 statute that totally abolished joint liability to address the Utah Supreme Court decision in *Field v. The Boyer Company*.

## **Virginia**

### **Y2K Liability**

SB 983--effective: April 7, 1999

Requires privity of contract; provides protection from third party liability; limits recoveries to actual damages, provides immunity to directors and officers; and prohibits punitive damages.

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