American Tort Reform Association
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As of December 31, 2002

2002 State Tort Reform Enactments

Arizona **Construction Liability Reform**

HB 2620
Required a purchaser to wait to file a lawsuit against a seller for a construction defect until after the seller has had an opportunity to correct the defect.

California **Barring Admission of a Defendant's Sympathy**

AB 2723
Provided for the inadmissibility of certain evidence as a matter of public policy, including portions of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident and made to that person or to the family of that person, which are inadmissible as evidence of an admission of liability in a civil action. The reform did not make admissions of fault inadmissible.

Construction Liability Reform

S.B. 800
Allows a builder an opportunity to cure an alleged defect before litigation can proceed.

Florida **Premises Liability Reform**

SB 1946
Reversed the Florida Supreme Court's November 15, 2001 ruling in *Owens v. Publix*, which shifted the burden of proof to the defendant. Owens requires defendants to demonstrate that: (1) they had no actual or constructive knowledge of a hazard that would have allowed a responsible defendant to remedy that hazard and prevent injury; or (2) a pattern of neglect did not exist.

Reforming the Doctrine of "Dangerous Instrumentalities"

SB 1832
Provided that a "powered shopping cart" of the type generally used in retail establishments by elderly or handicapped customers is not covered by the common law doctrine of "dangerous instrumentalities." The law allowed powered shopping cart owners to remain liable for damages caused by their own negligence.

Idaho **Small Lawsuit Resolution Act**

HB 627
Required nonbinding arb`itration or mediation at the request of either party, where claims amount to $25,000 or less. The law relaxed the rules of evidence in such proceedings, and limits the duration of such proceedings to three hours. The law also allowed an unsatisfied party to try his or her case *de novo* in court, but required the "appealing" party to pay the other party's costs and attorneys' fees, if the "appealing" party did not improve his or her position by at least 15 percent.

Indiana **Appeal Bond Waiver Reform**

HB 1204
Limited the amount a defendant can be required to pay to secure the right to appeal p punitive damages awards to $25 million.

Michigan **Appeal Bond Waiver Reform**

HB 5151
Limited the amount a defendant can be required to pay to secure the right to appeal to $25 million. This limit will be adjusted on January 1, 2008 and on January 1 every 5 years after that adjustment by an amount determined by the state treasurer to reflect the annual aggregate percentage change in the Detroit consumer price index since the previous adjustment.

Provided that a court will rescind the limit if an appellee proves by a preponderance of the evidence that the party for whom the bond to stay execution has been limited is purposefully dissipating or diverting assets outside of the ordinary course of business for the purpose of avoiding ultimate payment of the judgment.

Mississippi **Medical Liability Reform**

H.B.2 (special session)
Replaces the rule of joint and several liability with the rule of proportionate liability for noneconomic damages (that is, limit a joint tortfeasor's liability for noneconomic damages to his percentage of fault). Replaces the rule of joint and several liability with the rule of proportionate liability for economic damages, where the defendant is found to be less than 30% at fault. Replaces the rule of joint and several liability with a rule that allows a joint tortfeasor to be held up to 50% responsible for economic damages, where the defendant is found to be at least 30% at fault.

H.B. 2 also limits noneconomic damages to $500,000 until July 1, 2011, $750,000 from July 1, 2011 until July 1, 2017, and $1 million after July 1, 2017, not adjusted for inflation, unless a judge were to determine that a jury could impose punitive damages. Prohibits the disclosure to a jury of the noneconomic damages limit.

Nevada **Medical Liability Reform**

AB 1
Limited noneconomic damages to $350,000, except upon a showing of "gross malpractice" or a judicial determination that there is "clear and convincing evidence" that the noneconomic award should exceed the cap. The law also imposed an anonymous medical error reporting requirement, and a $50,000 civil liability cap on emergency room physicians.

AB 1 also bars application of the rule of joint and several liability in the recovery of noneconomic damages for medical liability claims.

Ohio **Appeal Bond Waiver Reform**

HB 161
Limited the amount a defendant can be required to pay to secure the right to appeal to $50 million.

Nursing Home Liability Reform

HB 412
Reformed the state's civil liability laws governing lawsuits against nursing home or other residential facility caretakers.

Pennsylvania **Joint and Several Liability Reform**

SB 1089
Barred application of the rule of joint and several liability in the recovery of all damages, except when a defendant has not: (1) been found liable for intentional fraud or tort; (2) been held more than 60% liable; (3) been held liable for environmental hazards, or; (4) been held civilly liable as a result of drunk driving.

Medical Liability Reform

HB1802
Provided: (1) a provision that permits the periodic payment of a prevailing plaintiffs' future medical costs of more than $100,000; (2) collateral source reform (the law prohibited patients from suing for damages that were paid by a health insurer); and (3) a seven-year statute of limitations on medical liability actions.

South Dakota **Abolishing the "Loss of Chance" Doctrine**

HB 1164
Reversed the South Dakota Supreme Court's adoption of the "loss of chance" doctrine in a July 2000 decision. That doctrine allows a plaintiff to recover for damages upon a showing by a majority of evidence that a doctor's negligence reduced a patient's chance of recovering from an illness or injury. The amount of damages recoverable under the doctrine depends on the extent to which the doctor's negligence contributed to the loss. The previous law permitted a plaintiff to recover for all damages for loss of chance of recovery upon a showing that a greater than 50 percent chance existed that the doctor's negligence caused the plaintiff's loss of chance of recovery. The previous law barred recovery upon a showing of a 50 percent or less chance of causation.

Utah **Medical Liability Reform**

HB 112
Added "health care facility" to the definition of "health care provider" in the *Health Care Malpractice Act*. The law assured that the state's medical liability reforms apply to nursing care facilities and residential assisted living facilities.

Virginia **Private Attorney Retention Sunshine**

HB 309
Required open and competitive bidding in accordance with the *Virginia Public Procurement Act* for all contingent fee contracts for legal services between a state agency or state agent and outside counsel, where fees and services are reasonably expected to exceed $100,000.

Physician Testimony Reform

HB 37

Clarified that: (1) a treating physician can be called to testify regarding facts, diagnosis and treatment plan of his patient, and (2) a lawyer and practitioner of the healing arts may contact each other for a limited number of purposes. Some judges had previously barred physicians from providing such testimony.

Washington **Barring Admission of a Defendant's Apology**

SB 6429

Barred the admission of a defendant's apology to a plaintiff as evidence in support of a plaintiff's case. The law previously discouraged discourse and impeded the resolution of disputes between parties by allowing apologies to be used against defendants in litigation.

Construction Liability Reform

SB 6409

Required a potential plaintiff to wait to file a lawsuit against a construction professional for a construction defect until that construction professional has had an opportunity to correct the defect.

West Virginia

Monitoring Settlements in Lawsuits Against State Agencies

SB 667

Required anyone planning to sue a state agency to notify the agency 30 days before filing in court. The law required an agency defendant to alert the Senate President and the House Speaker. The purpose of S.B.667 was to avoid the kind of settlements that occurred previously in the Recht School and the Hartley mental health cases. In those cases, agencies settled without aggressively defending the state's interests, leaving the Legislature to foot the costs of the settlements by rebuilding schools and revamping the mental health system.

Immunity for Donators of Volunteer Fire Equipment

HB 2986

Limited the civil liability of an entity donating used or obsolete fire equipment to a volunteer fire department.