



American Tort Reform Association

1101 Connecticut Avenue, NW ■ Suite 400 ■ Washington, DC 20036
(202) 682-1163 ■ Fax: (202) 682-1022 ■ www.atra.org

1988 TORT REFORM ENACTMENTS AND BALLOT INITIATIVES

December 31, 1988

Alabama constitutional amendment removing double standards against foreign corporations -- passed Super Tuesday with 55% of the vote.

Alaska joint and several liability was abolished through a ballot initiative; Proposition 2 on November 8, 1988.

Colorado SB 143 -- Professional Liability Bill includes:

- mandatory periodic payments for medical malpractice
- liability cap of 1 million dollars of which no more than \$250,000 can be for non-economic damages

(The \$1 million limit on total damages and the \$250,000 limit on non-economic damages in medical liability actions were held constitutional by the Colorado Supreme Court in Scholz v. Metropolitan Pathologists, P.C., No. 92-8A277, Co. Sup. Ct., (April 26, 1993).)

- collateral sources as evidence
- binding voluntary arbitration

Florida CS/SB6-E -- Medical Malpractice Bill:

- establishes a volunteer system of arbitration which sets a \$250,000 cap on non-economic damages if parties agree to arbitration. If the claimant rejects the defendant's offer to arbitrate, the non-economic damage cap is set at \$350,000. If the defendant refuses an offer of arbitration by the plaintiff, there is a requirement that the defendant pay a successful plaintiff's reasonable attorney fees, up to 25% of the award reduced to present value, and prejudgment interest and establishes the Florida Birth Related Neurological Injury Compensation Act through assessment of \$250 against each licensed physician in the state, \$50 per live birth for each hospital, and \$5,000 for each physician who desires to participate in the program

- requires the plaintiff to demonstrate "reckless disregard" in order to recover damages against emergency room and trauma center health care providers

Idaho SB 1524 -- Amendment to State Tort Claims Act

- provides exceptions to government liability for government entities and their employees when acting without malice or criminal intent and without reckless, willful and wanton conduct.

Kansas HB 2692 -- non-economic cap of \$250,000

HB 2731 --

- punitive cap = lesser of the defendant's annual gross income, or \$5 million -- (If the court finds the profitability of defendant's misconduct exceeds this limit, the limit shall be one and one half times the amount of profit the defendant gained.)
- punitives awarded only if trier of fact finds defendant acted with willful or wanton conduct, fraud or malice.
- the determination of punitive damages will be made in a separate proceeding.

HB 2693 -- collateral sources as evidence - In cases in which damages exceed \$150,000, the trier of fact can hear evidence of collateral sources. When the court assigns comparative fault, it must make a setoff of the collateral sources determined.

(The \$150,000 threshold for the admissibility of collateral sources into evidence was held unconstitutional by the Kansas Supreme Court in Thompson v. KFB Insurance Company, Case No, 68,452 (1993).)

Kentucky- HB 551 --

(The Kentucky Supreme Court held the "clear and convincing" evidence standard that conduct constituted oppression, fraud or malice unconstitutional in Terri C. Williams v. Patricia Lynn Herald Wilson, No. 96-SC-1122-DG, April 16, 1998.)

- Joint and Several Liability -- requires that juries be instructed to determine percentage of fault appropriate to each claimant, defendant, third party defendant and defendant settling out of court and apportion each party's equitable share in accordance with the respective percentages of fault;
- Punitive Damages -- requires "clear and convincing" evidence that conduct constituted oppression, fraud or malice;

- Collateral Sources -- the jury must be advised of collateral source payments and subrogation rights of collateral payers;
- Statute of Limitation -- reduces the statute of limitation for property damage from five years to two years;
- Officers and Directors of For-profit Corporations --
 - * allows corporations through shareholder action to assume greater responsibility for the liability of their directors and
 - * requires clear and convincing evidence of conduct which was willful, wanton, or in reckless disregard of corporation's interests
- Officers, Directors, and Volunteers of Non-profit Corporations --
 - * defines standards for which officers and directors cannot be held personally liable
 - * grants immunity to volunteers
- Municipal Tort Claims Act --
 - * limits damages recoverable against a city
 - * exempts cities from liability in performance of or failure to perform "legislative, quasi-legislative, judicial, and quasi-judicial functions."

House Concurrent Res. 62

- urges Supreme Court to provide for "certificate of merit" requiring plaintiff and defendant to file a certificate stating merit of claim or defense and that an expert witness will testify to it
- recommends that Supreme Court amend Rule 68 directing that all costs be awarded against party failing to accept a reasonable offer of settlement
- recommends Supreme Court amend Rule 59 to allow the Court to review an award to raise or lower it if the Court believes amounts are excessive or inadequate

Louisiana

SB 684--Product Liability

- a product may be unreasonably dangerous only because of one or more of the following characteristics:
 - a) defective construction or composition
 - b) defective design
 - c) failure to warn or inadequate warning
 - d) nonconformity with an express warranty
- a manufacturer of a product shall not be liable for damage proximately caused by a characteristic of the product's design if the manufacturer proves that at the time the product left his control:
 1. he did not know and, in light of then-existing reasonably available scientific and technological knowledge, could not have known of the design characteristic that caused the damage;
 2. he did not know and, in light of then-existing reasonable available scientific and technological knowledge, could not have known of the alternative design identified by the claimant;
 3. the alternative design identified by the claimant was not feasible, in light of then-existing reasonably available scientific and technological knowledge or then-existing economic practicality.

SB 679 -- Frivolous suits

Court shall impose sanctions which may include an order to pay reasonable expenses incurred including reasonable attorney's fees

Maine

LD 2520 --

- prohibits use of an ad damnum clause
- decreases the prejudgment and post judgment interest rate to that of U. S. Treasury Bill rate
- grants limited immunity to non-paid directors, officers and volunteers of non-profit organizations

		<ul style="list-style-type: none"> ● increases protections for medical peer review and confidentiality ● establishes limited immunity for emergency room physicians
<u>Maryland</u>	HB 273 --	limits liability of directors and officers of for-profit corporations
	SB 223 --	limits liability of directors and officers on non-profit corporations
<u>Minnesota</u>	HF 1493 --	limits joint liability for those who are less than 15% at fault -- they pay no more than 4 times their percentage of fault
<u>Mississippi</u>	HB 772 --	frivolous suit sanctions - court may assess transaction costs and attorney fees for frivolous claims or defenses
	HB 774 --	jury service exemption requirements - doctors and lawyers are now eligible for service - all those called must appear in court and be excused for cause
	HB 775 --	volunteer immunity
<u>New Hampshire</u>	HB 936 --	state of the art defense
	HB 237 --	volunteer immunity
<u>New Jersey</u>	AB 1366 --	court may assess costs and attorney fees upon a finding that a complaint, counterclaim, cross-claim or defense of a nonprevailing party was frivolous
<u>South Carolina</u>	H 2610 includes:	<ul style="list-style-type: none"> ● clear and convincing evidence requirement for punitives ● contribution among joint tortfeasors ● frivolous suit sanctions ● statute of limitations reduction from 6 years to 3 ● medical malpractice statute of limitations for minors of 7 years from discovery of the injury ● retention of contributory negligence
<u>Utah</u>	HB 13 --	expands its statute to require that the court award attorneys' fees to the prevailing party where suit or defense was not brought in good faith