American Tort Reform Association
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2010 State Tort Reform Enactments

(as of December 30, 2010)

Arizona

Admissibility of Expert Opinion Testimony- S.B. 1189, A.R.S. § 12-2203
Adopted the *Daubert* standard for admitting expert witness testimony and expert evidence; Arizona Courts currently embrace the less stringent *Frye* standard. The *Daubert* standard requires the courts to consider four factors when examining the merits of expert testimony: (1) whether the expert's technique or theory can be tested; (2) whether the theory has been subject to peer review and publication; (3) the known or potential rate of error of the technique or theory; and (4) whether the theory or technique has been generally accepted in the relevant field. This standard substantially decreases the probability of "junk science" being presented to juries, thus, affecting the outcome of a trial. It also serves as a filter that screens out ungrounded lawsuits from even reaching trial, which is especially important for manufacturers facing questionable product liability claims and health care providers facing questionable medical malpractice claims.

This bill is currently being litigated in several counties around the state. A Maricopa County judge recently ruled that the Daubert legislation is unconstitutional; however a Pima County judge subsequently ruled that it was in fact constitutional.

Florida

Slip and Fall Reform- H.B. 689; Fla. Stat. § 768.0755
Provided that if a person slipped and fell on a transitory foreign substance in a business establishment, the injured person must prove that the establishment had actual or constructive knowledge of the condition and should have taken action to remedy it. Also provided that constructive knowledge may be proven by circumstantial evidence.

Attorney General Sunshine - H.B. 437; Fla. Stat. § 16.0155
Prohibited the Department of Legal Affairs of the Office of the Attorney General from entering into contingency fee contracts with private attorneys unless the Attorney General made a written determination prior to entering into such a contract that contingency fee representation was both cost effective and in the public interest. Required the Attorney General, upon making his or her written determination, to request proposals from private attorneys to represent the Department of Legal Affairs on contingency-fee basis unless the Attorney General determined in writing that requesting such proposals were not feasible under the circumstances. Provided that written determination did constitute final agency action, and provided that requests for proposals and contract awards were not subject to challenge under the Administrative Procedure Act. Required maintenance of specified records, limited the amount of contingency fee that may be paid to private attorney pursuant to contract with the Department of Legal Affairs, and required Internet posting of specified information

International Commercial Arbitration- H.B. 821; Fla. Stat. § 684.001-684.0024;
Defined the scope and intent of the "Florida International Commercial Arbitration Act," and limited the ability of the court to intervene in an arbitral proceeding. Designated the circuit court in which arbitration is or will be held as the court that may take certain actions.

Recreational Liability Releases- S.B. 2440; Amending Fla. Stat. § 549.09 and Fla. Stat. §744.301;
Provided that a business will not be held harmless when there is gross negligence and required the businesses to show they acted with "due care" to avoid an accident. However, the legislation also took into account the rights of children to have access to these activities and the ability of a parent to make decisions in the best interest of their child and understood that there is some inherent risk when children participate in activities like riding ATVs, scuba diving and even playing sports. Provided that should a lawsuit be filed against an activity provider, the plaintiff will have a higher burden of proof and they will be prohibited from bringing a failure to warn claim.

Georgia

Implied Causes of Action – S.B. 138; O.C.G.A. § 9-2-8
Created the *Transparency in Lawsuits Protection Act*. Provided that legislative enactments do not create a private right of action unless expressly stated therein.

Minnesota

Civil Actions- H.B. 2709
Specified immunity for certain volunteer entities, including a firm, corporation, association, limited liability company, partnership, limited liability partnership, nonprofit organization, or other business, religious, or charitable organizations which provide assistance in the event of an emergency or disaster.

Real Property Liability / Opportunity to Cure – S. 1494
Required performance guidelines for certain residential contracts and modified statutory warranties. Also, required notice and opportunity to repair. Allowed a home improvement contractor to inspect claims and provide a written offer to repair.

Utah

Health Care Malpractice Act- S.B. 145; Amended Utah Code Ann. § 78B-3-410; Utah Code Ann. § 78B-3-412; Utah Code Ann. § 78B-3-416; Utah Code Ann. § 78B-3-418;
Created a statute of repose that requires all claims to be brought within 10 years or they are barred. Placed limitations on noneconomic damages of $350,000 for causes of action arising after May 15, 2010. Required an affidavit of merit from a health care professional in order to proceed with an action, if they received a non-meritorious finding from the pre-litigation panel. Limited the liability of a health care provider, in certain circumstances, for the acts or omissions of an ostensible agent.

West Virginia

Business Court Divisions – H.B. 4352; W. Va. Code § 51-2-15
Authorized the West Virginia Supreme Court to create a business court division within certain circuit court districts.

Non-health Care Provider Defibrillator Users- S.B. 422; W. Va. Code § 16-4D-4
Limited civil liability for nonhealth care provider defibrillator users in good faith who are not health care providers.