

2014 State Tort Reform Enactments

Alaska

H.B. 250 (Kurt Olson-R) – Medical Apology

Makes an expression of apology, responsibility, liability, sympathy, commiseration, compassion or benevolence by a health care provider inadmissible in a medical liability case. It also requires a health care provider to advise a patient to seek legal advice before making an agreement with the patient to correct an unanticipated outcome of medical treatment or care.

Arizona

S.B. 1248 (Adam Driggs-R) - Jury Service Reform

Extends the Lengthy Jury Trial Fund for another ten years to June 30, 2024. Arizona's Lengthy Jury Trial Fund was established in 2003 as a part of a comprehensive jury service reform package to attract better jurors. The fund was scheduled to sunset on July 1, 2014.

Colorado

S.B. 138 (John Michael Kefalas-D) – Firefighter Immunity

Extends immunity provided for volunteer firefighters at the scene of an emergency to community volunteers and their organizations.

Florida

S.B. 670 (John Thrasher-R) – Nursing Home Liability

Specifies that a cause of action for negligence or violation of residents' rights alleging direct or vicarious liability for the injury or death of nursing home resident may be brought against a licensee, its management or consulting company, its managing employees, and any direct caregiver employees, but limits the liability of "passive investors." The bill authorizes the Agency for Health Care Administration to suspend the license of a nursing home facility that fails to pay a judgment or settlement agreement.

Georgia

S.B. 125 (Jesse Stone-R) – Trespass Liability

Codifies the current common law regarding trespasser liability. It provides that a possessor of land owes no duty of care to a trespasser except to refrain from causing a willful or wanton injury. A possessor also would be liable to child trespassers in certain instances.

Louisiana

H.B. 599 (Neil Abramson – D) – Summary Judgment

Permits documentary evidence cited in support of a motion for summary judgment to be filed with the motion or in opposition in any electronic format authorized by the court's local rules or approved by the court's clerk for receipt of evidence.

H.B. 624 (Neil Abramson – D) – Expert Evidence

Provides that a witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise if the expert's knowledge will help the trier of fact to understand the evidence or to determine a fact in issue, the testimony is based on sufficient facts or data, the testimony is the product of reliable principles and methods, and the expert has reliably applied the principles and methods to the facts of the case.

H.B. 799 (Stuart Bishop – R) – TiPAC

This bill codifies the Louisiana Supreme Court decision in *Meredith v. Ieyoub*. It says the state cannot compensate attorneys on a contingency fee basis, absent express statutory authority. The legislation, which is prospective only, prohibits the attorney general, state agencies and boards and commissions from entering into contingency fee contracts without express statutory authority. It also provides a transparent process for the use of outside counsel contracts by the state.

H.B. 874 (Stuart Bishop – R) – Legislative Oversight

Requires an annual report to the Legislature regarding litigation initiated by a state agency and requires the attorney general to publish an annual report containing a list of all civil actions initiated by the State of Louisiana. Includes fraud cases at the Department of Health and Hospitals in the reporting requirements.

S.B. 469 (Robert Adley– R) – Lawsuits Brought by Local Agencies

Prohibits any governmental entity, other than those that currently have the authority under the Coastal Zone Management Act, from filing suit based on any uses in the coastal zone, including actions against oil and gas companies. The bill was filed to kill the Southeast Louisiana Flood Protection Authority-East's lawsuit seeking to get 97 oil, gas and pipeline companies to pay a portion of the cost of restoring marshland desecrated in five parishes around New Orleans by drilling activity. S.B. 469 provides that no state or local governmental entity, except the Department of Natural Resources, the Office of the Attorney General, and the Coastal Protection and Restoration Authority may bring any action for violation or a claim for damages for violation of a coastal use permit. Under this legislation, any monies received by the state for violation of a coastal use permit shall be deposited in the Coastal Protection and Restoration Fund. S.B. 469 also provides that for litigation filed prior the effective date of the act shall be dismissed if the secretary of DNR, the executive director of CPRA, or the attorney general fail to intervene in the litigation.

S.B. 667 (Robert Adley – R) – Legacy Lawsuit

Retroactive legacy lawsuit legislation that clarifies the types of damages that may be recovered and the standards for recovery of those damages. It allows attorney fees for a party that was dismissed on a motion for preliminary dismissal and would create a definition for contamination.

Kansas

H.B. 2447 (House Judiciary Committee) – Trespasser Liability

Codifies current Kansas common law of trespass and provides that a possessor of real property owes no duty of care to a trespasser except in those circumstances where a common law or statutory right of action currently exists.

S.B. 311(Senate Judiciary Committee) - Daubert Legislation

Incrementally raise the limit on noneconomic damages by \$50,000 every four years until 2022. The current limit is \$250,000, and under this legislation, for all causes of action accruing after July 1, 2022, the limit would be \$350,000. This provision is in response to a 2012 Kansas Supreme Court opinion, which called for the state legislature to reexamine the limit and make the necessary monetary increases due to inflation and cost of living increases. The second piece of the bill would adopt the *Daubert* standard for expert testimony.

Michigan

H.B. 5335 (Bradford Jacobsen-R) – Trespass Liability

Codifies the common law of trespass in Michigan.

North Carolina

S.B. 648 (Brent Jackson) - Transparency in Private Attorney Contracting

Ensures that should the state award contingency fee contracts that they are awarded openly and transparently and that the state would receive maximum practicable amount of any settlement or award. The bill places a tiered limit on the contingency fees that may be paid to outside counsel.

Oklahoma

H.B. 3365 (John Echols –R) – Product Liability

Deals with rebuttable presumptions against liability for any manufacturer where the product complied with mandatory safety standards or regulations adopted and promulgated by the federal government.

H.B. 3375 (Terry O'Donnell–R) – Discovery

Allows parties, upon showing of good cause, to obtain discovery regarding any matter that is relevant to any party's claim or defense by one or more of the following methods: depositions, written interrogatories, production of documents or things or permission to enter property for the purpose of inspection, copies of physical and mental examinations, and authorizations for release of the records. Also provides that in any action in which physical or mental injury is claimed, the party making the claim shall provide to the other parties a release or authorization allowing the parties to obtain relevant medical records and bills, and, when relevant, a release or authorization for employment and scholastic records.

S.B. 1799 (Bryce Marlatt – R) – Derivative Suits

Requires the nonprevailing party or parties in a derivative suit to pay the prevailing party or parties the reasonable expenses, including attorney fees, taxable as costs, incurred as a result of such action.

S.B. 1905 (Anthony Sykes – R) – Medical Liability

Provides that a health care provider's failure to comply with or a health care provider's breach of the federal Patient Protection and Affordable Care Act shall not be admissible, used to determine the standard of care, or the legal basis for a presumption of negligence in any medical liability action.

Tennessee

S.B. 1360 (Jack Johnson-R) – Lawsuit Lending

The bill is lawsuit lending regulatory legislation.

Utah

S.B. 69 (Stephen Urquhart–R) – Judgment Interest Reform

Requires that in order for a plaintiff to receive prejudgment interest, the plaintiff shall have tendered an offer of settlement. S.B. 69 provides that prejudgment interest is only calculated from the date of a qualifying offer. Under this legislation, the prejudgment interest rate is limited to two percentage points above the prime rate, as published by the Federal Reserve, but it may not be lower than 5% or higher than 10%.

Wisconsin

A.B. 19 (Andre Jacqui–R) - Asbestos Trust Fund Transparency

Provides transparency and prevent fraud in lawsuits involving personal injury trusts by creating certain discovery requirements during litigation. The bill requires asbestos plaintiffs to disclose any and all claims that plaintiffs have filed or will file with asbestos trust funds, along with all of the documents and information that support the trust claim. A.B. 19 also requires judges to admit trust claims and supporting materials into evidence at trial and prohibits plaintiffs from spuriously alleging that trust claims and their supporting documents are privileged. Finally, it provides defendants with a powerful tool to ensure that plaintiffs file and disclose all possible claims with asbestos trust. A.B. 19 authorizes defendants to identify trust claims that the plaintiff could and should file. If a judge agrees, the case is stayed until that claim is filed and disclosed.

A.B. 120 (Erik Severson) – Medical Liability Reform

Provides that a statement or conduct of a health care provider that expresses apology to a patient or patient's relative or representative is not admissible as evidence of liability or as an admission against interest.