



## American Tort Reform Association

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### 1989 TORT REFORM ENACTMENTS

#### Arizona

SB 1453 -- Effective September 15, 1989,

- establishes a government standards defense to punitive damages for FDA-approved drugs.

HB 2123 -- Effective September 15, 1989,

- allows court to order periodic payments for future damages in medical malpractice actions.

#### Mississippi

HB 1171 -- Effective July 1, 1989, includes the following provisions:

- a modification of joint and several liability such that the doctrine of joint and several only applies to the extent necessary for the injured party to receive 50% of his recoverable damages
- a reduction of the statute of limitations from 6 years to 3 years;
- a provision stating that cases which cannot be maintained in other states because of the lapse of time will not be allowed in Mississippi.

#### Nevada

AB 307 -- Effective May 30, 1989, includes the following punitive damage provisions:

- a "clear and convincing evidence" standard;
- a higher standard of liability: "oppression, fraud or malice";
- a requirement that the trial be bifurcated for cases involving punitive damage claims and that evidence of financial condition be inadmissible until after the finding of liability;
- a limit on punitive damage awards of:
  - a) three times the amount of compensatory damages if the amount of compensatory damages is \$100,000 or more; or

- b) three hundred thousand dollars if the amount of compensatory damages is less than \$100,000.

Note: the limits above do not apply in actions brought against: a manufacturer, distributor or seller of a defective product; an insurer who acts in bad faith regarding its obligations to provide insurance coverage; a person violating a state or federal law prohibiting discriminatory housing practices; a person for damages or an injury caused by the emission, disposal or spilling of a toxic, radioactive or hazardous material or waste; or a person for defamation.

**New Hampshire**

SB 110 -- Effective January 1, 1990,

- abolishes joint liability below a 50% liability threshold.

**Texas**

HB 18 -- Effective September 1, 1989, the Rural Health Care Act,

- requires that juries be instructed that a bad medical outcome does not necessarily justify a finding of negligence;
- requires that expert witnesses be practicing physicians;
- indemnifies physicians with a case load of 10% or more charity cases.

Note: under the Act, OB-GYN's and emergency room physicians would be indemnified for the first \$100,000 and all physicians meeting the patient load, risk management and insurance requirements would be indemnified for the first \$25,000.

**Virginia**

HB 1977 --

- requires expert witnesses to have had a clinical practice in the area of specialty about which he/she is to testify within one year of the date of malpractice.

SB 437 -- Effective September 1, 1989 the amendments to the Deceptive Trade Practices Act include,

- language which expands the DTPA waiver provision to allow valid waivers when the defendant proves:
- the consumer is not in a significantly disparate bargaining position;
- the consumer is represented by legal counsel in seeking or acquiring goods; and
- the consumer waives all or part of his rights under this act by an express provision on a written contract signed by both the consumer and the consumer's legal counsel.
- language which strengthens the DTPA notice provision by extending to 60 days the time during which a seller must offer a settlement.

**Utah**

SB 24 -- Effective May 1, 1989, includes the following

punitive damage provisions:

- a higher standard of liability for punitive damages (from "reckless" to "knowing and reckless");
- a clear and convincing evidence standard;
- a provision allowing punitive damages only when compensatory damages are awarded;
- a requirement that the trial be bifurcated for cases involving punitive damage claims and that the evidence of a party's wealth or financial condition not be admissible until after a finding of liability;
- a government standard defense to punitives for FDA approved drugs.

SB 25            --            Effective April 24, 1989, this products liability bill includes all the provisions of the 1977 products statute except the eight year statute of repose which was ruled unconstitutional. The bill includes a presumptive government standards defense for all products.