



American Tort Reform Association

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

1990 TORT REFORM ENACTMENTS

As of December 31, 1990

Arizona

HB 2556 (concerning immunity for free health care services)
Effective September 27, 1990

- limits physician and health care facility liability related to the delivery of infants under certain emergency care situations if the patient was not previously treated for the pregnancy by the physician, a group practice of the physician, or the physician assistant and nurse midwife with whom the physician had an agreement. (Unless elements are proved by clear and convincing evidence, the licensed health care facility is not liable to the female patient, the child or children delivered or their families for medical malpractice related to labor or delivery.)

Colorado

HB 1065 (concerning medical malpractice certificate of review and "Good Samaritan" provisions) Effective July 1, 1990

- modifies the certificate of review process in medical malpractice actions to establish the fact that professionals review only the facts of the case; amends the "Good Samaritan" statute to provide that hospitals and other health care institutions may also be places of emergency immunity.

HB 1069 (concerning the establishment of punitive damages in medical malpractice actions) Effective July 1, 1990

- provides that punitive damages not be alleged in a professional negligence suit until discovery is substantially completed; provides that discovery cannot be reopened without an amended pleading; provides that physicians cannot be held liable for punitive damages because of the bad outcome of a prescription medication as long as it was administered in compliance with current FDA protocols. The bill also prohibits punitive damages from being assessed against physicians because of the act of another unless he directed the act or ratified it.

SB 80 (concerning limitations on liability in connection with the sport of skiing) Effective July 1, 1990

- clarifies the 1979 Ski Safety Act's assumption of risk provision by stating: skier accepts and assumes the risk of and all legal responsibility for any injury resulting from inherent dangers and risks of skiing; shortens the Act's statute of limitations from three years to two years.

Idaho

HB 574 (concerning non-economic damages limitation) Effective July 1, 1990

- removes the 1992 sunset to the \$400,000 limit on non-economic damages enacted in 1987.

HB 744 (concerning the 1987 joint and several liability statute) Effective July 1, 1990

- defines the term "acting in concert" as pursuing a common plan or design which results in the commission of an intentional or reckless tortious act as used in the 1987 joint and several liability modification.

HB 746 (concerning volunteer protection) Effective July 1, 1990

- provides limited immunity to volunteers, officers, and directors of non-profit organizations.

HB 745 (concerning collateral sources) Effective July 1, 1990

- allows the court to receive evidence of collateral source payments and to reduce jury awards to the extent that they include double recoveries from collateral sources other than federal benefits, life insurance or contractual subrogation rights.

Maine

LD 2513 (concerning medical malpractice actions) Effective July 14, 1990

- o provides for collateral source rule reform in medical malpractice cases. The judge shall automatically reduce a verdict by the amount of collateral source payments received by the plaintiff from all public or private sources.
- o establishes a five year medical liability demonstration project within the medical specialty areas of anesthesiology, emergency medicine and obstetrics and gynecology. As part of the project the Board of Registration in Medicine and specialty advisory committees will develop practice parameters and risk management protocols that may be used by the physician as an affirmative defense in a claim for professional negligence.
- o establishes a rural medical access program to increase access to physicians who deliver babies in underserved areas of the state. Projected savings from revision of the collateral source rule will go into a fund which the Superintendent of Insurance will use to reduce the premiums of the physicians delivering babies in underserved areas of the state.

Minnesota

SF 1827 (concerning all personal injury actions) Effective August 1, 1990

- Provides the following punitive damage reforms (Minn. Stat. Sec. 549.20)
 - a) raises the standard of conduct for punitive damages from the current "willful indifference" to a standard of "deliberate disregard";
 - b) establishes the party's right to insist on a bifurcated trial when a claim

includes punitive damages; a separate proceeding is held to consider financial condition of the defendant and other evidence relevant only to punitive damages;

c) provides trial and appellate judges the power to review all punitive damage awards.

- Expands contributory fault provision (Minn. Stat. Sec. 604.01, Subd. 1)

The scope of contributory fault was expanded to encompass "economic loss" claims. Awards to plaintiffs will be decreased in proportion to the plaintiff's fault in these claims.

- Expands settlements provision (Minn. Stat. Sec. 604.01, Subd. 3)

Settlements of claims by defendants are not an admission of fault in economic loss claims.