



American Tort Reform Association

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1986 TORT REFORM ENACTMENTS AND BALLOT INITIATIVES

as of December 31, 1986

Alaska --

SB 337

- o established a \$500,000 cap on non-economic damages other than physical impairment or disfigurement
- o allowed evidence of collateral sources of payment with broad exclusions
- o required "clear and convincing" evidence for punitive damage recovery
- o allowed court to order periodic payments for future damages only

California --

Proposition 51

- o abolished joint and several liability for non-economic damages

Colorado --

SB 70

- o totally abolished joint and several liability (an amendment in 1987 allows joint liability when tortfeasors consciously acted in a concerted effort to commit a tortious act)
- o required that pleadings be signed and that the court assess reasonable expenses including reasonable

attorney fees for frivolous pleadings, motions, or defenses

SB 67

- o established a \$250,000 cap on non-economic damages (unless court finds justification by "clear and convincing evidence" for a larger award which cannot exceed \$500,000)
- o allowed evidence of collateral sources and provides for offset with broad exclusions

HB 1197

- o provided that punitive damage award may not exceed compensatory award: court may reduce if deterrence achieved without award, but may also increase to three times compensatory if misbehavior continues during trial;
- o one third of the award goes to the state fund

(The Colorado Supreme Court held the state fund portion of this statute unconstitutional in Kirk v. The Denver Publishing Company, 15 Brief Times Reporter, No. 88SA405, September 23, 1991)

Connecticut --

HB 6134

- o modified joint and several liability to prohibit joint liability except where liable party's share of the judgment is uncollectible (1987 amendment by opposition limited this reform to non-economic damages only)
- o allowed evidence of collateral sources and provided for offset with broad exclusions
- o mandated periodic payments if future economic damages exceed \$200,000
- o allowed the court to assess twice the amount of court

costs and attorney fees as the penalty for frivolous suits.

Florida --

SB 465

- o abolished joint liability for non-economic damages in negligence actions; also abolished joint liability for economic damages for defendants less at fault than the plaintiff; (The rule does not apply to economic damages for pollution, intentional torts, actions governed by a specific statute providing for joint and several liability, actions for damages no greater than \$25,000.)

(The Florida Supreme Court upheld the statute as constitutional in Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987). The Florida Supreme Court further interpreted the Joint and Several liability portion of the statute in Allied Signal v. Fox, case No. 80818, Florida Supreme Court, Aug. 26, 1993 and Fabre v. Marin, case No. 76869, Florida Supreme Court, Aug. 26, 1993.

- o established a \$450,000 limit on non-economic damages

(The Florida Supreme Court held the limit on non-economic damages unconstitutional in Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987))

- o provided for mandatory offset of collateral sources of payment with broad exclusions

(The Florida Supreme Court upheld the collateral source provision as constitutional in Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987))

- o provided that punitive awards may not exceed three times compensatories unless plaintiff can demonstrate by "clear and convincing" evidence that a higher award would not be excessive. Sixty percent of the award

goes to the state's General Fund or Medical Assistance Trust Fund (Amended in 1992 so that 35% of any punitive damage award goes to the state's General Fund or Medical Assistance Trust Fund)

(The Florida Supreme Court upheld the constitutionality of the punitive damages limit and "clear and convincing" evidence requirement in Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987))

(The Florida Appellate Court upheld the constitutionality of the state fund provision in Harvey Gordon v. State of Florida, K-Mart Corp. et al., No 90-2497, August 27, 1991)

- o mandated periodic payments when requested by a party to the suit if economic damages exceed \$250,000
- o provided that court may assess fees to the prevailing party in any action in which the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the complaint or defense of the losing party.

Hawaii --

SB S1 -- (special session)

- o abolished joint liability for non-economic damages for defendants 25% or less at fault (modification does not apply for auto, product, or environmental cases)
- o established a \$375,000 cap on physical pain and suffering, other non-economic damages are not limited
- o provided for payment of valid liens from special damages recovered; prevents double recoveries by allowing subrogation liens by insurance companies or other sources. Third parties are allowed to file a lien and collect the benefits paid to plaintiff from the award. The amount of damages paid by the defendant to the plaintiff is not affected.
- o allowed court to assess penalty not exceeding 25% of the losses claimed as a penalty for frivolous suits or defenses

Illinois --

SB 1200 --

- o abolished joint and several for defendants 25% or less at fault; applies for non-economic damages only, but does not apply to auto, product or environmental cases
- o provided that plaintiffs are no longer able to plead punitives in original complaint; subsequent motion to add punitive claim must show at hearing reasonable chance that the plaintiff will win punitive award at trial; defendant must be shown to have acted "willfully and wantonly"; court has discretion to award among plaintiff, plaintiff's attorney, and State Department of Rehabilitation Services
- o allowed court to assess reasonable costs and attorney fees for frivolous pleadings, motions or defenses (Rule 11)

Indiana --

SB 394

- o allowed evidence of collateral sources with certain exclusions; court may reduce awards at its discretion; jury may be instructed to disregard tax consequences of its verdict

SB 393

- o allowed court to assess court costs and attorney fees for frivolous conduct

Iowa --

SB 2265

- o provided that punitive damages only be awarded where "willful and wanton disregard for the rights and safety of another" is proven; 75% or more of the award goes to State Civil Reparations Trust Fund (In 1987 the evidence standard was elevated to "clear and convincing and satisfactory" evidence)
- o allowed court to order periodic payments when requested by a party to the suit

- o allowed court to assess penalties for frivolous lawsuits or deceptive tactics

Maryland --

SB 558

- o limited non-economic damages awards to \$350,000

(The Court of Special Appeals of Maryland upheld the constitutionality of the non-economic damages limit in Potomac Electric Power Co. v. Smith, 79 Md. App. 591, 558 A.2d 768 1989))

- o allowed the court to order periodic payments for future damages only

Michigan --

HB 5154

- o limited joint and several (except in products liability actions and actions involving a blame-free plaintiff) holds defendants severally liable except when uncollectible shares of a judgment are reallocated between solvent co-defendants according to their degree of negligence (joint and several liability is abolished for municipalities)
- o provided that evidence that expense or loss was paid by a collateral source is admissible after the verdict and before judgment is entered; court will offset but cannot reduce the plaintiff's damages by more than amount awarded for economic damages
- o prohibited prejudgment interest on awards for future damages
- o mandated periodic payments if future damages exceed \$250,000
- o allowed court to assess court costs and attorney fees for frivolous actions or defenses

Minnesota --

SB 2078

- o capped at \$400,000 all awards based on loss of consortium, emotional distress, or embarrassment (no

cap for pain and suffering)

- o allowed evidence of collateral sources to be admitted only for the court's review; offset is provided for, but collateral sources having rights of subrogation are excluded
- o prohibited prejudgment interest on awards for future damages
- o provided that punitive claims no longer are allowed in original complaints -- plaintiff must make prima facie showing of liability before an amendment of pleadings is permitted by the court
- o allowed court to assess court costs and attorney fees for frivolous claims

Nebraska --

LB 298

- o reduced the rate of interest to 1% above the rate on U.S. Treasury Bill; offer of settlement provision allows the award of prejudgment interest for unreasonable failure to settle
- o allowed court to assess court costs and attorney fees for alleging claim or defense which is frivolous or in bad faith

New Hampshire --

HB 513

- o placed a \$875,000 limit on non-economic damages

(The New Hampshire Supreme Court held this statute unconstitutional in Brannigan v. Usitalo, No. 90-377, March 13, 1991).

- o prohibited punitive damages
- o allowed court to assess penalties for frivolous lawsuits

New York --

SB 9391

- o limited joint and several liability; a defendant who is 50% or less at fault is only severally liable for

non-economic damages. However, the limitation does not apply to:

- a) actions in reckless disregard of rights of others
- b) motor vehicle cases
- c) actions involving the release of toxic substances into the environment
- d) intentional torts
- e) contract cases
- f) products liability cases where the manufacturer could not be joined
- g) construction cases
- h) other specific actions

- o mandated periodic payments if future damages exceed \$250,000

SB 9351

- o mandated offset of collateral source benefits by the court
- o provided a penalty of up to \$10,000 for anyone who commences a suit which the court determines is frivolous

Oklahoma --

SB 488

- o prohibited prejudgment interest on punitive damage awards, reduced rate of interest to 4% above the rate on U.S. Treasury Bill
- o capped punitive award at amount of compensatory damages unless plaintiff establishes his case by "clear and convincing " evidence, in which case, there is no dollar limitation

South Dakota --

SB 280

- o required "clear and convincing" evidence of "willful, wanton, or malicious" conduct

SB 281

- o mandated periodic payments when requested by a party to the suit if future damages exceed \$100,000

Utah --

SB 64

- o totally abolished joint and several liability

Washington --

SB 4630

- o abolished joint liability except for cases in which:
 - a) defendants acted in concert
 - b) plaintiff is fault free
 - c) hazardous or solid waste disposal sites are involved
 - d) business torts are involved
 - e) manufacturing of generic products is involved
- o mandated periodic payments when requested by a party to the suit if future damages exceed \$100,000
- o allowed court to assess reasonable expenses including attorney fees where it is determined that an action, claim, or defense was frivolous
- o limited non-economic damages for bodily injury to .43% times the average annual wage times the plaintiff's life expectancy (no less than 15 years).

(The Washington Supreme Court held the limit on non-economic damages unconstitutional in Sofie v. Fibreboard Corp, 112 Wash.2d 636, 771 P.2d (1989))

Wyoming --

SB 17

- o totally abolished joint and several liability

HB 14A

- o allowed court to assess reasonable court costs and attorney fees for frivolous claims or defenses