



American Tort Reform Association

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As of December 31, 1995

1995 TORT REFORM ENACTMENTS

Arizona Privilege of Self-Critical Analysis

SB 1051 -- effective July 13, 1995

- provides confidentiality for product safety analysis or review and reasonable remedial measures so plaintiffs may not use such measures to prove negligence or to prove conduct subject to punitive damages.

Certificate of Merit

SB 1232 -- effective July 13, 1995

- requires parties asserting claims against registered professionals to complete an affidavit to be submitted with the claim stating how the acts or omissions caused or contributed to the alleged damages.

Colorado Prejudgment Interest Reform

SB 165 -- effective July 1, 1995

- allows the interest assessed during the period between accrual of the action and filing of the claim to remain under the one million dollar limit on the total amount recoverable in medical malpractice claims.

Connecticut Comparative Fault

SB 1012 -- effective July 1, 1995

- allows a defendant to bring an additional party into the suit for purposes of apportioning fault, even though the plaintiff did not originally include that party in the lawsuit.

Hawaii Sunset Provision Repealed

HB 806 -- effective July 1, 1995

- repeals the October 1, 1995 sunset provision of the tort reform enactments in Act 2 of the 1986 Special Session including the \$375,000 limit on damages for pain and suffering.

Illinois Civil Justice Reform Amendments of 1995

(The Illinois Supreme Court held the Civil Justice Reform Amendments of 1995 unconstitutional in Best, v. Taylor Machine Works, Inc., Nos. 81890, 81891, 81892, 81893 cons., Dec. 18,1997.)

HB 20 -- effective March 9, 1995

- **Punitive Damages Reform**

- 1) limits punitive damages to three times economic damages;
- 2) prohibits punitive damage awards unless conduct is "with an evil motive or with a reckless indifference to the rights of others";
- 3) bifurcates trials to allow the claim for punitive damages to be considered separately at the request of the defendant; and
- 4) requires courts to reduce awards in excess of caps.

- **Non-Economic Damage Awards**

limits awards for non-economic damages in all civil actions to \$500,000 per plaintiff, indexed for inflation.

- **Joint and Several Liability Reform**

abolishes joint liability for economic and non-economic damages so that a given defendant is only liable for damages in proportion to the assigned degree of fault.

- **Contributory Fault**

- 1) a plaintiff is barred from recovering damages if the trier of fact finds the plaintiff is more than 50% at fault for the injury or damage;
- 2) if plaintiff is less than 50% at fault, economic or non-economic damages awarded are to be diminished in proportion to plaintiffs' degree of fault; and

- 3) requires all tortfeasors to be considered when assigning fault regardless of whether a party to the lawsuit.

- **Product Liability Reform**

- 1) creates product liability affidavit requirement;
- 2) creates presumptions of safety for manufacturers which meet state and federal standards and where no practical or feasible alternative design existed at the time product was manufactured; and
- 3) applies statutes of repose on all product liability cases to bar an action after 12 years from first sale or 10 years from first sale to a user or consumer, whichever occurs first.

- **Expert Witness Reform**

- 1) raises standards for "expert witnesses" in cases where the standard of professional medical care is at issue; and
- 2) requires plaintiff to disclose identity of medical expert consulted in healing arts malpractice affidavits.

- **Premises Liability Reform**

amends Premises Liability Act by restricting the landowners' duty to warn. Additionally provides that landowners owe no duty of care to adult trespassers other than to refrain from willful and wanton conduct that would endanger the safety of a known trespasser.

Indiana Tort Reform Package

HB 1741 -- effective July 1, 1995

- **Punitive Damages Reform**

- 1) limits punitive damages to the greater of three times compensatory damages or \$50,000; and
- 2) redirects 75% of punitive awards to a state fund.

- **Product Liability Reform**

- 1) abolishes joint liability in product liability actions;
- 2) provides a rebuttable presumption that the product was not defective if: a) the manufacturer of the product was in conformity with recognized "state of the art" safety guidelines;

- or b) the manufacturer of the product complied with government standards (ie. approved by FDA, FAA etc...); and
- 3) restricts strict liability actions to the manufacturer of the product.

- **Offers of Settlement**

establishes incentives for early settlement of claims by "qualified settlement offers." The court will award attorneys' fees, costs, and expenses when a party refuses a reasonable offer as determined by the final judgment. Attorneys' fees will be awarded at a rate of \$100 per hour for expenses incurred after the date of the qualified offer, and may not total more than \$1,000.

Louisiana Exclusive Remedy in Worker's Compensation Reform

HB 1622 -- effective June 17, 1995

- reasserts the doctrine of "exclusive remedy" in workers' compensation cases to address the Louisiana Supreme Court decision which greatly weakened exclusivity in *Billiot v. B.P. Oil*.

Maine Volunteer Liability Reform

LD 320 -- effective June 14, 1995

- clarifies that medical professionals who volunteer services for county or municipal agencies are entitled to the same protection from civil liability as those who volunteer for a nonprofit corporation.

Michigan Joint and Several Liability Reform

HB 4508 -- effective September 1, 1995

- abolished joint liability making parties responsible for their own percentage of fault except for employers vicarious liability; and in medical malpractice cases where the plaintiff is determined not to have a percentage of fault, defendants are jointly liable. Provides venue control in product liability cases.

Product Liability Reform

SB 344 -- effective on March 28, 1996

- abolishes joint liability in product liability actions;
- provides statutory defenses including government standards, FDA, and

sellers' defense; provides absolute defense if claimant was 50% or more at fault due to intoxication or a controlled substance.

- limits non-economic damages at \$280,000 unless death or loss of vital bodily function which extends limit to \$500,000 in product actions.

Montana Joint and Several Liability Reform

SB 212 -- effective April 5, 1995

- restores joint and several liability reforms of 1987 which had been weakened by the Montana Supreme Court. Provides procedural safeguards to allow joint liability to apply only when a defendant is more than 50% at fault.

Medical Liability Reform

HB 309 -- effective October 1, 1995

- limits non-economic damages in medical malpractice cases to \$250,000, and
- includes periodic payments of future damages over \$50,000.

New Hampshire Prejudgment Interest Reform

HB 375 -- effective September 1, 1995

- sets the prejudgment interest rate at the 52 week discount T-bill rate plus 2%.

New Jersey Punitive Damages Reform

SB 1496 -- effective date to be determined upon Governor's signature

- limits punitive damage awards to five times compensatory damages or \$350,000, whichever is greater. Several exemptions are included in this provision including: bias crimes, discrimination, AIDS testing disclosure, sexual abuse, and injuries caused by drunk drivers.

Joint and Several Liability Reform

SB 1494 -- effective date to be determined upon Governor's signature

- provides a 60% threshold for joint and several liability for both economic and non-economic damages, and contains a toxic tort exception. Previous law extended the 60% threshold for non-economic damages only.

Certificate of Merit

SB 1493 -- effective date to be determined upon Governor's signature

- requires parties asserting claims against registered professionals to submit an affidavit by a neutral licensed person with the claim.

Product Liability

SB 1495 -- effective date to be determined upon Governor's signature

- excludes product sellers from strict liability in product liability actions.

Medical Liability Reform

SB 1497 -- effective date to be determined upon Governor's signature

- limits health care providers' liability for harm caused by certain medical devices.

North Carolina Expert Witness Reform

HB 730 -- effective January 1, 1996

- provides qualifications for expert witnesses in medical malpractice suits and requires a qualified expert witness to review the plaintiff's record prior to filing suit.

Punitive Damages Reform

HB 729 -- effective January 1, 1996

- limits punitive damages awards to three times compensatory damages or \$250,000 whichever is greater while providing an exception for harms caused by driving while impaired;
- requires "clear and convincing" evidence that the defendant is liable for compensatory damages and engaged in fraud, malice, willful or wanton conduct;

- provides for a bifurcated trial on motion of defendant.

Product Liability Reform

HB 637 -- effective date January 1, 1996

- expressly provides that there shall be no strict liability in tort for product liability actions; and
- provides several statutory defenses for manufacturer or sellers including an assumption of the risk defense.

North Dakota Tort Reform Package

HB 1369 -- effective August 5, 1995

- **Punitive Damages Reform**

requires "clear and convincing" evidence that the defendant has been guilty of oppression, fraud, or *actual* malice.

- **Product Liability**

- 1) creates 10 year statute of repose in product liability actions;
- 2) provides for a government standards defense; and
- 3) bars punitive damage awards when manufacturer complies with government standards.

Non-economic Damages in Medical Malpractice Awards

HB 1050 -- effective July 1, 1995

- limits non-economic damages to \$500,000 in medical malpractice cases and includes an Alternative Dispute Resolution provision.

Note: two bills which specifically address aviation product liability bills have passed this state's legislature: HB 1051 and HB 1243.

Oklahoma Tort Reform Package

SB 263 -- effective August 25, 1995

- **Punitive Damages Reform**

codifies factors which the jury must consider in awarding punitive damages, then provides three separate "categories" for limiting punitive awards.

When the jury finds by clear and convincing evidence that the defendant:

- 1) acted in "reckless disregard for the rights of others", the award is limited to \$100,000 or actual damages awarded, whichever is greater;
- 2) acted intentionally and with malice, the limit is \$500,000; two times actual damages awarded; *or* the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing injury; and
- 3) if the court finds evidence *beyond a reasonable doubt* that the defendant acted intentionally and with malice in conduct life-threatening to humans, the cap is lifted.

- **Offer of Settlement**

provides incentives for early settlement of a claim where the plaintiff demands or the defendant makes an offer of judgment in an amount over \$100,000. The party refusing a reasonable offer as determined by the ultimate judgment, pays reasonable litigation costs and attorneys' fees.

- **Volunteer Liability**

relieves volunteers who provide services to nonprofit organizations of liability for punitive damages unless those volunteers are currently offering the same service for profit.

Oregon Punitive Damages Reform

SB 482 -- effective September 9, 1995

- provides that 40% of the punitive award is paid to the prevailing party and 60% is paid to a state fund, and no more than 20% of the award may be paid to the attorney of the prevailing party;
- imposes a "clear and convincing" evidence standard to prove defendant "acted with malice or has shown a reckless and outrageous indifference to a highly unreasonable risk of harm and has acted with a conscious indifference to the health, safety and welfare of others";
- provides court review of jury awarded punitive damages;
- prohibits punitive damages in the original complaint. A prima facie case for liability is required before the complaint can be amended to include a punitive damages claim.

Frivolous Lawsuits Reform

SB 385 -- effective September 9, 1995

- enacts sanctions against frivolous lawsuits including a modified loser pays provision.

Joint and Several Liability Reform

SB 601 -- effective September 9, 1995

- abolishes joint liability and establishes a modified comparative fault system. However, if one of the defendants is determined to be insolvent within one year of the final judgment in the case, the relative fault of the parties is reapportioned so that the plaintiff and other defendants share in the financial burden of the insolvent defendant. A defendant less than 20% at fault would be liable for no more than 2 times their original exposure, and if greater than 20% liable subject to joint liability for the full amount of damages.

RICO Cause of Action

SB 386 -- effective September 9, 1995

- eliminates Civil Oregon RICO cause of action.

South Dakota State of the Art Defense

SB 200 -- effective July 1, 1995

- provides a state of the art defense in product liability actions.

Texas Punitive Damages Reform

SB 25 -- effective September 1, 1995

- limits punitive damage awards to the greater of \$200,000 or two times economic damages plus an amount equal to any non-economic damages up to \$750,000;
- requires "clear and convincing" evidence to prove *malice* defined as the "conscious indifference to the rights, safety, or welfare of others"; and
- provides for a bifurcated trial on motion by a defendant.

Medical Liability Reform

HB 971 -- effective September 1, 1995

- requires a plaintiff to file a \$5,000 cost bond, place \$5,000 in an escrow account, *or* file an expert report for each physician or health care provider listed in the claim;
- strengthens the qualifications for expert witness; and
- allows prejudgment interest only for damages that occurred before judgment.

Joint and Several Liability Reform

SB 28 -- effective September 1, 1995

- eliminates joint liability for defendants less than 51% at fault;

Venue

SB 32 -- effective September 28, 1995

- establishes venue rules to restrict forum shopping. Generally, a suit may only be filed where the injury occurred, where the defendant resides, or (if none of those apply) where the plaintiff resided when the injury or harm occurred.

Frivolous Lawsuits

SB 31 -- effective September 1, 1995

- adopts the model federal rule so that a court may impose penalties when a groundless lawsuit is filed.

Governmental Liability

HB 383 -- effective September 1, 1995

- provides a \$100,000 limit for specified cases of governmental liability.

Deceptive Trade Practices Act

HB 668 -- effective September 1, 1995

- refocuses the original law's intent to protect consumers from fraud and deceptive practices. The bill limits recovery to economic damages in most cases, however, damages may be tripled if the seller knew his conduct was fraudulent or deceptive.

Wisconsin Tort Reform Package

SB 11 -- effective May 17, 1995

- **Punitive Damages**

allows punitive damages only where defendants act "maliciously or in intentional disregard of the rights of the plaintiff."

- **Joint and Several Liability Reform**

abolishes joint liability for defendants found to be less than 51% at fault. Additionally, a plaintiff's negligence will be measured separately against each defendant.

Non-Economic Damages in Medical Malpractice Awards

AB 36 -- effective May 25, 1995

- limits non-economic damages to \$350,000, indexed for inflation, in medical malpractice actions.

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