



American Tort Reform Association

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1997 Tort Reform Enactments

Alaska Comprehensive Tort Reform Package

HB 58 -- effective date August 7, 1997

- **Punitive Damages**

- 1) Limits amount of punitive damages to the greater of three times compensatory damages or \$500,000; except
 - a) When the defendant's action is motivated by financial gain; limits punitive damages to the greater of four times compensatory damages, four times the aggregate amount of financial gain, or \$7,000,000.
 - b) In an unlawful employment practices suit, limits punitive damages to \$200,000 if the employer has less than 100 employees in the state; \$300,000 if the employer has more than 100 but less than 200 employees in the state; \$400,000 if the employer has more than 200 but less than 500 employees in the state; and \$500,000 if the employer has more than 500 employees in the state.
- 2) Establishes a clear and convincing evidence standard to prove conduct was "outrageous" or "evidenced reckless indifference."
- 3) Provides for a bifurcated trial when punitive damages are awarded.

- **Non-economic Damages**

Limits non-economic damages to the greater of \$400,000 or the injured person's life expectancy in years multiplied by \$8,000, unless the plaintiff "suffers severe permanent physical impairment or severe disfigurement," in which case non-economic damages are limited to the greater of one million dollars or the injured person's life expectancy multiplied by \$25,000.

- **Expert Witness Reform**

Establishes qualifications for expert witnesses to be licensed and trained in the defendant's discipline, and certified by a board recognized by the state.

- **Comparative Negligence**

Provides that the court shall determine and state each party's share of the judgment in accordance with their respective fault, whether the parties are named in the suit or not.

- **Offers of Judgment**

Establishes that either party rejecting an offer of judgment who then receives a final judgment that is at least five percent less favorable than the actual offer must pay a percentage of the other party's reasonable attorney's fees and court costs based on how long before the trial the offer was made.

- **Interest on Judgment**

Sets the interest on judgments, including prejudgment interest, equal to three percentage points above the 12th Federal Reserve District's discount rate; and does not allow prejudgment interest to be awarded for future damages or punitive damages.

- **Additional Provisions**

Bars recovery for claimants injured during the commission of a felony or under the influence of drugs or alcohol; requires expert advisory panels in medical liability suits, provides immunity to hospitals for emergency room physicians who are independent contractors; and establishes a limited 10 year statute of repose (does not apply to defective products).

Arkansas **Volunteer Liability Reform**

HB 1218 -- effective date July 31, 1997

Grants immunity to volunteer physicians who provide services in low-cost medical clinics.

Hawaii **Sports Liability**

HB 581 -- effective date July 1, 1997

Releases owners and operators of recreational activities that have "inherent risks" from liability as long as the patron is fully aware of the risk and signs a written waiver.

Iowa Comprehensive Tort Reform Package

HF 693 -- effective date July 1, 1997

- **Joint and Several Liability**

Amends doctrine of joint liability to provide that defendants fifty percent or more at fault are jointly liable for economic damages only. (Note: defendants less than fifty percent at fault are not jointly liable for *any* damages.)

- **Statute of Repose**

Establishes a 15-year statute of repose for product liability lawsuits with an exception for fraud, concealment, latent diseases caused by harmful materials, and specified products.

- **Statute of Limitations**

Establishes medical malpractice statute of limitation for minors under age 8 until the minor's 10th birthday.

- **Interest Rates on Judgments**

Sets the interest rate on judgments equal to the rate for the U.S. Treasury Bill plus two percent.

- **Calculation of Damages**

Provides that future damage awards must reflect present value.

Louisiana Review Panel for Actions Against Certified Public Accountants

HB 389 -- effective date August 15, 1997

Provides for mandatory review panel of claims against certified public accountants unless both parties agree to waive; provides that panel's opinion is admissible as an expert opinion; and provides that claimant must pay for the cost of panel if the panel finds for the certified public accountant.

Volunteer Physician Immunity

HB 1088 -- effective date August 15, 1997

Provides tort immunity for health care providers who provide free services at community health care clinics.

Judicial Interest

HB 1214 -- effective date June 17, 1997

Sets judicial interest to the average Treasury Bill Rate for 52 weeks plus 2%. Provides varying rates of interest for actions pending or filed during the last 10 years.

Offer of Judgment

HB 1215 -- effective date August 15, 1997

Provides that if final judgment is 25% less than defendant's offer or 25% greater than claimant's offer, the offeree must pay offeror's court costs, *exclusive of attorneys' fees*, after offer is made.

Class Action Reform

HB 1984 -- effective date July 1, 1997

Updates Louisiana class action laws by providing objective definitions and detailed procedures.

Maryland Volunteer Liability

HB 1125 -- effective date October 1, 1997

Grants immunity from personal liability for professional engineers, acting upon the request of state officials, who volunteer at the scene of an emergency, disaster, or catastrophic event.

Minnesota Certificate of Merit

SF 627 -- effective date August 1, 1997

Requires a certificate of merit prior to filing claims against licensed professionals.

Montana Punitive Damages

SB 212 -- effective date April 21, 1997

Requires a unanimous jury to determine liability and the amount of punitive damage awards.

Frivolous Suits

HB 251 -- effective date October 1, 1997

Allows the court to assess jury costs if a party's case is frivolous or maintained for purposes of harassment.

Comparative Negligence / Joint & Several Liability

HB 571 -- effective date April 18, 1997

Retains the current system of modified joint and several liability where joint liability does not apply to defendants less than fifty percent at fault. Revises the comparative negligence statute to permit the allocation of a percentage of liability to defendants who settle or are released from liability by the plaintiff. Allows those defendants to intervene in the action to defend against claims affirmatively asserted.

HB -- 572 Takes effect only if HB 571 is held unconstitutional.

Abolishes joint liability, and retains the modified comparative fault system.

North Carolina

Employer Reference Immunity

SB 264 -- effective date October 1, 1997

Provides employers immunity from civil liability for providing employee references unless proven by a preponderance of the evidence both of the following: (1) the employer disclosed false information and (2) the employer knew or reasonably should have known the information was false.

North Dakota

Medical Liability Reform

HB 1351 -- effective date August 1, 1997

Provides that a person bringing suit for medical malpractice waives medical privilege as to medical records, opinions, and information with other physicians having examined that party.

SB 2217 -- effective date August 1, 1997

Requires that a medical malpractice case must be dismissed without prejudice unless the claimant obtains an admissible expert opinion within three months of commencement of the action or a date determined by the court.

Punitive Damages

HB 1297 -- effective date August 1, 1997

Requires a preponderance of the evidence to prove oppression, fraud, or actual malice before a moving party may amend pleadings and claim punitive damages.

South Dakota

Frivolous Suits

HB 1272 -- effective date July 1, 1997

Creates a cause of action for barratry and institutes procedures for asserting the claim.

SB 178 -- effective date July 1, 1997

Requires the court to impose payment of part or all of court costs and reasonable attorneys' fees upon a party whose action was dismissed and found to be frivolous or brought for malicious purposes.

Texas Forum Non Conveniens

SB 220 -- effective date May 29, 1997

Restores the common-law doctrine of *forum non conveniens* to allow the court to decline to exercise jurisdiction in an action or claim for personal injury or wrongful death that arose outside of the state.

Interlocutory Appeals Reform

SB 453 -- effective date June 20, 1997

Amends the Texas statute to allow an interlocutory appeal for (1) a special appearance or (2) a jurisdictional challenge over a unit of state or local government before the time and expense of trial have been incurred

Utah Medical Liability Reform

HB 188 -- effective date May 5, 1997

Establishes a 180 day time limit for prelitigation hearings and permits parties to stipulate bypassing the prelitigation panel process.

West Virginia Landowner Liability

SB 378 -- effective date July 9, 1997

Provides that landowners owe no duty of care to keep the premises safe for entry or to give warning of dangerous or hazardous condition to others who use the premises for recreational or wildlife propagation purposes. Exceptions provided for deliberate, willful or malicious infliction of injury or when a sum is charged to enter the land.