



# **American Tort Reform Association**

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## **2018 State Tort Reform Enactments**

### **Idaho**

#### **Trespasser Liability – H.B. 658, Section 4**

Provides that a possessor of any interest in real property, including an owner, lessee or other lawful occupant, owes no duty of care to a trespasser, except to refrain from intentional or willful and wanton acts that cause injury to the trespasser. Specifies that the legislation shall not affect the common law doctrine of attractive nuisance.

### **Kansas**

#### **Limits on Appeal Bonds – S.B. 199**

Limits the amount a defendant would have to pay to appeal a decision in civil litigation to \$25 million. Creates a rebuttable presumption that an appellant will suffer an undue hardship when the judgment amount exceeds \$2.5 million, the defendant is a small business, and judgment is for a claim arising from activities within the appellant's ordinary course of business. For these purposes, "small business" is defined as a sole proprietorship, partnership, limited liability company, corporation, or other business entity, whether for-profit or not-for-profit, with between 2 and 50 employees that is not a corporate affiliate or subsidiary of, or owned in whole or in part by any other business.

#### **Asbestos Trust Transparency – H.B. 2457**

Enacts the Asbestos Trust Claims Transparency Act (Act), which shall apply to all asbestos claims filed on or after July 1, 2018. Requires the plaintiff to provide certain statements and materials no later than 30 days prior to the date the court establishes for the completion of all fact discovery. Specifically, the plaintiff is required to conduct an investigation, file all asbestos trust claims that can be made by the plaintiff, and provide a sworn statement indicating the investigation has been conducted and all possible claims filed. The plaintiff is required to provide all parties with all trust claim materials, accompanied by a custodial affidavit from the asbestos trust. If the plaintiff's asbestos trust claim is based on exposure through another individual, the plaintiff is required to produce all trust claim documents submitted by or on behalf of the other individual to any asbestos trust to which the plaintiff has access. The bill also requires the plaintiff to supplement the information and materials within 30 days after the plaintiff, or a person on the plaintiff's behalf, supplements an existing asbestos trust claim, receives additional information or materials related to such a claim, or files an additional asbestos trust claim. The bill outlines circumstances under and procedures by which a defendant may file and the court may grant a motion for the completion of all fact discovery regarding the plaintiff's asbestos trust claims. Additionally, the bill establishes evidentiary standards for asbestos claims; provides a procedure to reopen and adjust judgment in an asbestos claim if the plaintiff subsequently files an asbestos trust claim with an asbestos trust in existence at the time of judgment; and requires defendants and judgment debtors to file any motion under the bill within a reasonable time and not more than one year after the judgment was entered.

## **Kentucky**

### **Attorney General Sunshine – H.B. 198**

Prohibits any contracting body, including all constitutional officers and executive branch agencies with contracting authority, from entering into a contract for legal services that provides for payment by contingency fee unless the head of the contracting body determines in writing that the contingency fee is both cost-effective and in the public interest. Sets forth reasonable limits on the amount of contingency fee paid to outside counsel and prohibits the contingency fee from exceeding \$20 million. Requires the Attorney General or head of the contracting body to retain control over the course and conduct of the case, to attend settlement conferences, be personally involved in overseeing the litigation and have exclusive decision-making power regarding any settlement. Within five business days after the contract is awarded, the Finance and Administration Cabinet is required to post each contingency fee legal service contract on its website with the accompanying written determinations from the head of the contracting body. Any payment of contingency fees will also be posted on the website within 15 days after such payment and will remain posted for one year. Each year, by September 1, the Finance and Administration Cabinet and contracting bodies will submit a joint report to the Government Contract Review Committee identifying all contingency fee contracts for legal services and detailing the status of each contract, law firms hired for each contract, amount of recovery for each contract and amount of contingency fee paid, if any. Clarifies that all contingency fee contracts are also subject to the Kentucky Model Procurement Code.

## **Michigan**

### **Asbestos Trust Transparency – H.B. 5456**

Enacts the "Asbestos Bankruptcy Trust Claims Transparency Act. Requires a plaintiff, at least 180 days before the initial date set for the trial in an asbestos action, to give the court and all parties a sworn statement that an investigation had been conducted and all asbestos trust claims that the plaintiff could make had been completed and filed. Requires the plaintiff to provide all parties with all trust claims materials (a final executed proof of claim and all other documents related to a claim against an asbestos trust). Provides that the plaintiff would have a continuing duty to supplement the information and materials. Requires the defendant, at least 60 days before trial, to confer with the plaintiff if the defendant believed that the plaintiff had not filed all asbestos trust claims. Permits the defendant, after conferring with the plaintiff, to seek a court order requiring the plaintiff to file additional trust claims. Requires the defendant's motion to identify the asbestos trust claims that the defendant believed the plaintiff could file and require the defendant to produce information in support of the motion. Require the plaintiff, within 10 days of receiving the motion, to file: (1) an asbestos trust claim; (2) a response stating why there was insufficient evidence to file the claim; or (3) a response requesting a determination that the cost to file exceeded the reasonably anticipated recovery. Requires the court to stay the action until the plaintiff filed the trust claim if the court determined that there was sufficient basis for the plaintiff to do so. Requires the court to stay the action until the plaintiff filed a statement regarding exposure to and use of asbestos, if the court determined that the cost of submitting a trust claim exceeded the plaintiff's reasonably anticipated recovery. Provides that the court could not schedule the action for trial sooner than 60 days after the plaintiff complied with these requirements. Permits a defendant to seek discovery from an asbestos trust, and provide that the plaintiff could not claim confidentiality or privilege to bar discovery. States that trust materials could be used to prove an alternative source for the cause of the plaintiff's alleged harm and could serve as a basis to allocate responsibility for the harm. Provides that if a plaintiff filed an additional asbestos trust claim after obtaining a judgment in an asbestos action, and if the trust existed at the time of the judgment, the court could reopen and adjust the judgment by the amount of subsequent payments the plaintiff obtained and order other relief.

## Missouri

### **Transparency in Private Attorney Contracting- H.B. 1531**

Provides that the state shall not enter into a contingency fee contract with a private attorney unless certain conditions are met. Also, establishes limits on fee amounts that may be paid to a retained private attorney.

## North Carolina

### **Asbestos Trust Transparency- S.B. 470**

Requires a plaintiff to file a sworn statement within 30 days of filing a personal injury claim indicating that an investigation of all bankruptcy trust claims has been conducted and that all claims that can be made by the plaintiff have been filed. If the defendant has a reasonable belief that the plaintiff can file additional claims, the defendant may move the court to stay the action until the plaintiff files the bankruptcy trust claims.

## West Virginia

### **Venue – H.B. 4013**

Provides that a nonresident of the state may not bring an action unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in West Virginia. It also similarly provides an exception in situations where a nonresident's claim cannot proceed where the action arose because of the plaintiff's inability to obtain jurisdiction over the defendant there, unless the action is time-barred there. In addition, the law provides that in cases in which there are multiple plaintiffs, each plaintiff must independently establish proper venue.

## Wisconsin

### **Rules of Procedure – A.B. 773**

Provides that any party has a nondiscretionary right to interlocutory appeal of class certification. Specifies that, absent a showing by the moving party of substantial need and good cause (subject to an assessment of whether the burden of the proposed discovery outweighs its likely benefit), a party is not required to provide discovery of four categories of electronically stored information (ESI) as outlined in the legislation. Provides that, upon a motion of a party, a court shall limit the frequency or extent of discovery if it determines that one of the following applies: the discovery sought is cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; the burden or expense of the proposed discovery outweighs its likely benefit or is not proportional to the claims or defenses at issue considering the needs of the case, the amount in controversy, the parties' resources, the complexity and importance of the issues at stake in the action, and the importance of discovery in resolving the issues. Provides that a court, when ruling on a motion for a protective order, may order that discovery may be had only on specified terms and conditions, including the allocation of expenses. Adds new language to the general scope of discovery by specifically providing that parties may obtain discovery regarding any nonprivileged matter that is relevant to the party's claim or defense and is proportional to the needs of the case, considering: importance of the issues at stake in the action; amount in controversy; parties' relative access to relevant information; parties' resources; importance of the discovery in resolving the issues; and whether the burden or expense of the proposed discovery outweighs its likely benefit. Provides for automatic stay of discovery upon the filing of a motion to dismiss. Provides for limitations on discovery methods unless otherwise stipulated by the court. Reduces the statute of limitations for a number of causes of action including fraud, action for injury to character or other rights, and limitation when no other limitation is provided. Changes the statute of repose for actions that result from deficiency or defect in an improvement to real property. Lowers the interest rate on untimely payment of insurance claims from 12 percent to 7 percent. Provides for mandatory

disclosure of third party litigation financing. Makes certain changes as it relates to third party audits of unclaimed property.