



American Tort Reform Association

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2019 State Tort Reform Enactments

Alabama

Asbestos Trust Transparency – S.B. 45

Creates the Asbestos Exposure Transparency Act and requires a plaintiff in an asbestos action to file a sworn statement disclosing information regarding the plaintiff's exposure to asbestos or, alternatively, file available asbestos trust claims and produce all trust claims materials before trial.

Florida

Assignment of Benefits Reform – H.B. 7065

Provides for a prohibition on assignees accessing the one-way attorney fee statute, and replacing that with a defined prevailing party formula. Gives policyholders substantial new rights of disclosure and rescission, and requires both assignees and insurers to perform under new, strict timelines for the benefit of policyholders.

Civil Remedy Notice of Bad Faith - H.B. 301 (lines 332-334)

Addresses the *Cammarata v. State Farm* decision by saying a civil remedy notice may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim. The bill also includes a provision relating to the right of contribution among liability insurers for defense costs.

Dangerous Instrumentality Reform – S.B. 862

Provides that the lessor of special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or lessee's agent or employee if the lease agreement requires documented proof of insurance coverage with limits of at least \$250,000/\$500,000 for bodily injury liability and \$100,000 for property damage liability, or at least \$750,000 for combined property damage liability and bodily injury liability. Provides that the failure of the lessee to maintain insurance coverage required by the lease agreement does not impose liability on the lessor. Special mobile equipment are vehicles not designed or used primarily to transport persons or property and that are only incidentally operated or moved over a highway. Examples include ditch digging apparatus, well-boring apparatus, and road construction and maintenance machinery, draglines, self-propelled cranes and earthmoving equipment. The bill responds to the Florida Supreme Court's decision in *Newton v. Caterpillar Financial Services Corporation*, which found that a loader is a dangerous instrumentality and thus subject to Florida's dangerous instrumentality doctrine. The dangerous instrumentality doctrine imposes "strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another."

Mississippi

Premises Liability Reform – S.B. 2901

Creates the Landowners Protection Act to regulate the liability of landowners when an invitee is injured on the landowner's property, and revises the definition of fault regarding joint and several liability.

Missouri

Discovery Reform – S.B. 224

REQUIREMENT OF PROPORTIONALITY – Requires that parties may discover any relevant matter, not privileged, as described in the act, provided that the matter is proportional to the needs of the case considering several factors described within the act.

LIMITS ON FREQUENCY OR EXTENT OF DISCOVERY AND ELECTRONICALLY STORED INFORMATION - Requires that the court limit the frequency or extent of discovery if it determines that certain factors exist. Additionally, a party does not need to provide discovery of electronically stored information if the source of the information is not reasonably accessible because of an undue burden or cost. Even if a showing of undue burden or cost is made, the court may order and specify the conditions for the discovery if the requesting party shows good cause.

LIMITS ON PRIVILEGED INFORMATION AND TRIAL PREPARATION MATERIALS

If information produced is subject to a claim of privilege or protection as trial preparation material, the claiming party may notify any receiving party of the claim and the basis for it. A notified party is required to return, sequester, or destroy the specified information and may present it under seal to the court for claim determination. Additionally, the party shall take steps to retrieve any information disclosed prior to notification, shall preserve the information until the claim is resolved, and shall not use or disclose the information until the claim is resolved. An attorney who receives privileged information involving an adverse or third party and who has reasonable cause to believe that the information was wrongfully obtained shall not read the information, shall promptly notify the other attorney to return the information, and shall delete and take reasonable measures to assure that the information is inaccessible. An attorney notified has the obligation to preserve the information. The production of privileged or protected trial preparation materials is not a waiver of the privilege or protection from discovery in the proceeding.

LIMITS ON INTERROGATORIES AND DEPOSITIONS – Limits the number of written interrogatories that may be served upon a party to 25, including all discrete subparts. For oral or written depositions, leave of court is required if the deponent is confined in prison or the parties have not stipulated to a deposition and: the deposition would result in more than 10 depositions being taken by the plaintiffs, or by the defendants, or by the third-party defendants; the deponent has already been deposed in the case; or the plaintiff seeks a deposition prior to the expiration of 30 days after the service of the summons and petition upon any defendant, except leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery. Additionally, limits the length of any oral deposition to one day of seven hours, provided that the court may order additional time for any deposition under certain circumstances. The court is permitted to impose sanctions on persons who impede, delay, or otherwise frustrate the fair examination of a deponent.

LIMITS ON REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS – Provides that a party may serve a request to produce and permit the requesting party or its representative to inspect, copy, test, or sample designated documents, electronically stored information, or any designated tangible things. Requests may specify that electronically stored information be produced in native format. Objections to part of a request shall specify the part and permit inspection of the rest.

LIMITS ON REQUESTS FOR ADMISSIONS - Limits the number of written requests for admission that may be served upon a party to 25 without leave of the court or stipulation of the parties. However, this limitation shall not apply to requests regarding the genuineness of documents.

Seat Belt Evidence Admissibility – S.B. 30

In actions arising out the design, construction, manufacture, distribution, or sale of a motor vehicle factory equipped with a safety belt, failure to wear a safety belt by the plaintiff shall be admissible as evidence of comparative negligence or fault, causation, absence of a defect or hazard, and failure to mitigate damages.

Venue / Joinder Reform – S.B. 7

Provides that claims arising out of separate purchases of the same product or separate incidents involving the same product shall not be joined regardless of whether the claims arise out of the same transaction, occurrence, or series of transactions or occurrences with a common question of law or fact. Expressly adopts the holding of *State ex rel. Johnson & Johnson v. Burlison*, No. SC96704, issued on February 13, 2019, as it relates to joinder and venue. If such terms are just, parties may be dropped, added, or severed by order of the court upon a motion by any party or by the court during any stage of the action. For the purposes of meeting the venue requirement, there is a rebuttable presumption that the principal place of residence for an individual is the county of voter registration at the time of the injury. For an individual whose employment conduct with a corporation is at issue in at least one count in the action, the principal place of residence shall be the corporation's principal place of residence. When all defendants are nonresidents, proper venue in a non-tort action is any county in this state if there is personal jurisdiction over each defendant, independent of each other defendant. In tort actions where the plaintiff was first injured in Missouri, venue shall be the county where the plaintiff was first injured by the acts or conduct alleged in the action. In tort actions where the plaintiff was injured outside the state of Missouri and the defendant is an individual, venue for that individual plaintiff shall be the county of the defendant's principal place of residence, which shall be that of his or her employer corporation if any count alleges conduct in the course of employment, or may be in the county of the plaintiff's principal place of residence if located in Missouri on the date the plaintiff was first injured. If the county where the action is filed is not proper venue, the plaintiff shall be transferred to a county where proper venue can be established. If no such county exists, then the claim shall be dismissed without prejudice. If denied in error, a denial of a motion to transfer venue pursuant to this act is required to be reversed and no finding of prejudice is required for such reversal. For the purposes of meeting the venue requirement, an insurance company resides in the county where it maintains its registered office. A foreign insurance company without a registered office in any county in Missouri shall be deemed to reside in, and be a resident of, Cole County. At any time prior to the commencement of trial, if a plaintiff or defendant is added, removed, or severed from a petition filed in any Missouri court which would have if originally added, removed, or severed from the initial petition, altered the determination of venue, then the judge shall transfer the case to a proper forum upon application of any party. Currently, an order of dismissal in a products liability claim for a defendant whose liability is based solely on his or her status as a seller shall not divest a court of venue or jurisdiction that was proper at the beginning of the action. Further, the defendant seller dismissed in the action shall remain a party to such action for venue and jurisdiction purposes. This act repeals these provisions.

VENUE FOR PENDING CLAIMS (SECTIONS 1 AND 2)

The provisions of this act shall apply to any action filed after February 13, 2019. A Missouri resident plaintiff may continue to trial in the venue as filed if the plaintiff has a case pending in a Missouri court as of February 13, 2019, has proper jurisdiction in Missouri, and such case has or had been set at any time prior to February 13, 2019, for a trial date beginning on or before August 28, 2019. For actions pending as of February 13, 2019, a plaintiff whose claim has been found to have no Missouri county in which venue exists may proceed in the Missouri venue where such claim was dismissed without prejudice if the court finds that the claim was filed in the Missouri court within the applicable statute of limitations, has no proper venue in Missouri, and cannot be maintained, as of August 28, 2019, in any other state where the claim may be brought because of applicable statutes of limitations and lack of a savings statute or similar law.

Texas

American Law Institute – H.B. 2757

Provides that, in any action governed by the laws of Texas concerning rights and obligations under the law, the American Law Institute's Restatements of the Law are not controlling.

Deceptive Trade Practices Act Reform – S.B. 2140

Reduces the amount of civil penalties the attorney general may seek to recover under the Deceptive Trade Practices-Consumer Protection Act from \$20,000 per violation to \$10,000 per violation.

Hiring of Contingency Fee Counsel by Political Subdivisions – H.B. 2826

The Office of the Attorney General is responsible for the review and approval of outside counsel contracts for state agencies. The provisions of the bill expand this requirement to include contingent fee legal contracts for political subdivisions. Furthermore, the bill provides an administrative appeal against determinations.

Trial Lawyer Advertising – S.B. 1189

Amends the Government Code to provide that a violation of deceptive advertising of legal services through television advertising may be enforced by the attorney general or district or county attorney as provided by the Deceptive Trade Practices Act.

Virginia

Compensation for Employees in the Office of the Attorney General – H.B. 1700 (Chapter 854, Section G)

Provides that the sole source of compensation paid to employees of the Office of the Attorney General for performing legal services on behalf of the Commonwealth shall be from the appropriations provided under this act. In any case in which the Office of the Attorney General is authorized under law to contract with, hire, or engage a person to perform legal services on behalf of the Commonwealth, the sole consideration for such legal services shall be a monetary amount bargained for in an arm's length transaction with such person and the Office of the Attorney General or another Virginia governmental entity, stating under what authority that office enters the contract.