



American Tort Reform Association

1101 Connecticut Ave, NW ■ Suite 400 ■ Washington, DC 20036
(202) 682-1163 ■ Fax: (202) 682-1022 ■ www.atra.org

2021 State Tort Reform Enactments (non-covid reforms)

Arizona

Firearms Liability – S.B. 1382

Prohibits the state from suing members of the firearm industry for lawful design, marketing, distribution, and sale of firearms and ammunition to the public. It also prohibits civil action against the manufacturer or seller of a firearm or ammunition for damages related to the criminal misuse of the firearm or ammunition.

Montana

Phantom Damages Reform – S.B. 251

Addresses both the definition of recoverable damages and the evidence admissible to establish the value of medical treatment. Establishes that the reasonable value of past treatment cannot exceed the amounts actually paid to the provider. For future treatment or services that have been rendered but are still owed, the reasonable value cannot exceed the amounts necessary to satisfy the charges. Admissible evidence to show the value of past medical treatment under the bill includes only the sums paid to satisfy the providers' charges; amounts discounted or written off cannot be considered. Evidence addressing the value of treatment for which payment is still owed or future medical care cannot include figures exceeding what providers would receive if the claims were submitted to a health insurer or government-sponsored program that covers the plaintiff. Finally, the bill abrogates the common law collateral source rule as it applies to medical expense damages.

Trespasser Responsibility – S.B. 338

Provides that, in general, a landowner does not owe a duty of care to trespassers with respect to the condition of the property.

Missouri

Arbitration Awards and Intervention in Court Proceedings for Insurance Companies– H.B. 345

Provides that any arbitration award for personal injury, bodily injury, or death or any judgment or decree entered on an arbitration award for personal injury, bodily injury, or death shall not be enforceable against insurers unless the insurer has agreed in writing to the arbitration proceeding or agreement. Unless otherwise required by contract, an insurer's election to not participate in arbitration shall not constitute bad faith. These provisions shall not apply to any arbitration awards for personal injury, bodily injury, or death or any judgment or decree entered on an arbitration award for personal injury, bodily injury, or death, arising out of an arbitration agreement preceding the date of injury or loss.

Specifies that a person having an unliquidated claim for damages against a tort-feasor may enter into a contract with the tort-feasor if the person's insurer has refused to withdraw a reservation of rights or declined coverage for such unliquidated claim. The bill specifies what happens if there is any action seeking a judgment on a claim against a tort-feasor at the time of the execution of any contract between the two parties, what happens if there is a pending action at the time of the execution of a contract but the action is subsequently dismissed, and what happens if there is no

action seeking judgment on a claim at the time of the execution of any contract between the two parties. Any insurer who receives notice under this section will have the unconditional right to intervene in any pending civil action involving the claim for damages within 30 days after receipt of the notice and insurers intervening in a court proceeding where the defendant has contracted to limit his or her liability to specified assets shall have all the same rights as are afforded to defendants. These provisions shall not alter or reduce an intervening insurer's obligations to any insureds other than the tort-feasor, including any co-insureds. All terms of a covenant not to execute or any terms of any contract to limit recovery to specified assets must be in writing and signed by the parties to the covenant or contract. No unwritten terms of any covenant or contract under this section will be enforceable against any party to the covenant or contract or any other person or entity. In any action asserting bad faith by the insurer, any agreement between the tort-feasor and the insured will be admissible in evidence. The exercise of any rights under this section will not be construed to be bad faith.

North Dakota

Asbestos Litigation Reform – H.B. 1207

Asbestos claimants will have to support their claims with a medical report signed by a treating physician demonstrating that the claimant has asbestos-related impairment according to objective medical criteria. For claims involving a malignant condition, the trial court will be required to hold a hearing to determine if the exposed person's cancer is asbestos-related. Within 45 days of filing an asbestos or silica action, a plaintiff must file a sworn information form that specifies the evidence that provides the basis for each claim against each defendant and include supporting documentation. In addition, absent consent of all parties, asbestos cases may be joined for trial only if the cases relate to the exposed person and members of that person's household. Codifies a legal doctrine called the "bare metal" defense, which holds that a manufacturer or seller of a product, such as a pump, is not liable for later-added external thermal insulation or replacement internal components, such as gaskets, made or sold by a third party. Permits a seller to obtain dismissal when the seller has simply been part of the chain of distribution of a product that is alleged to have caused a harm. The law applies to all asbestos claims filed on or after August 1, 2021.

Ohio

Statute of Limitations for Contracts – S.B. 13

Reduces the statute of limitations on written and oral contracts. Shortens from eight to six years the period of limitations of actions on a contract in writing and shortens from six to four years the period of limitations of actions on a contract not in writing.

Tennessee

Asbestos Litigation Reform / Over-Naming

A plaintiff filing an asbestos action after July 1 must file, within 30 days of any complaint, an information form attested by plaintiff stating the evidence that provides the basis for each claim against each defendant and include supporting documentation. Plaintiffs have a continuing duty to supplement the required disclosures. The court, on motion by a defendant, shall dismiss a plaintiff's asbestos action without prejudice as to any defendant whose product or premises is not identified in the required disclosures. In addition, absent consent of all parties, asbestos cases may be joined for trial only if the cases relate to the exposed person and members of that person's household. Tennessee had banned on joinder of nonmalignant asbestos disease claims at trial; that ban has been extended to all asbestos cases.

West Virginia

Asbestos & Silica Litigation Reform / Over-Naming – H.B. 2495

Provides that within 60 days of filing an asbestos or silica action, a plaintiff must file a sworn information form that specifies the evidence that provides the basis for each claim against each defendant and include supporting documentation. Plaintiffs have a continuing duty to supplement the required disclosures. The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to any defendant whose product or premises is not identified in the required disclosures.

Intermediate Court of Appeals – S.B. 275

Establishes an intermediate court of appeals in the State of West Virginia. Prior to enactment of this legislation, the state did not have an intermediate court of appeals.

Seat Belt Evidence Admissibility – S.B. 439

Displaces a longstanding provision that had excluded seat belt non-usage evidence for any purpose if the claimant stipulated to a reduction of damages by a mere five percent. Juries will be allowed to consider and use evidence that a claimant had failed to wear seat belt when they determine the damages resulting from motor vehicle crashes. In the case of adult drivers and passengers who bring product liability claims against vehicle and component sellers, evidence of the claimant's failure to buckle-up is admissible without limitation. For other types of claims, an adult's failure to use a seat belt may be considered by juries with respect to the exacerbation and contribution to that claimant's injuries, but not to establish comparative negligence or fault. For child passengers, allows juries to consider seat belt non-usage evidence in support of a finding that the driver was negligent in contributing to the child's injuries, but the evidence may not be considered in determining injury causation. The failure to use a seat belt is an affirmative defense, that the defendant must support with admissible opinion testimony. Finally, exceptions apply so that seat belt non-usage evidence will be excluded when an at-fault driver is determined to be intoxicated or fleeing law enforcement. The bill is applicable to claims arising from collisions that occur on or after July 6, 2021.