

2022 State Tort Reform Enactments

Arizona

Asbestos Overnaming – S.B. 1157

Provides that within 45 days of filing an asbestos action, a plaintiff shall file a sworn statement specifying the facts that provide 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.

Secondary Sources / Insurance – H.B. 2272

Provides that a secondary source on insurance (such as an ALI Restatement), including any legal treatise, scholarly publication, textbook or other explanatory text, does not constitute the law or public policy of Arizona and is not authoritative if the secondary source purports to create, eliminate, expand or restrict a cause of action, right or remedy or if it conflicts with any of the following: the United States Constitution or the Arizona Constitution, state law, state case law precedent, or other common law that may have been adopted by Arizona.

Colorado

Premises Liability Reform – S.B. 115

Clarifies the meaning of terms related to landowner liability and declares that the Colorado court of appeals and supreme court decisions in *Rocky Mountain Planned Parenthood, Inc. v. Wagner* should not be relied upon to the extent that those decisions determined: the foreseeability of third-party criminal conduct based upon whether the goods or services offered by a landowner are controversial; and that a landowner could be held liable as a substantial factor in causing harm without considering whether a third-party criminal act was the predominant cause of that harm.

Florida

Property Insurance Reform – S.B. 2-A (special session)

Arbitration

A property insurance policy may not require that a policyholder participate in mandatory binding arbitration unless all of the following apply: (1) the mandatory binding arbitration requirements are contained in a separate endorsement attached to the property insurance policy; (2) the premium that a policyholder is charged for the policy includes an actuarially sound credit or premium discount for the mandatory binding arbitration endorsement; (3) the policyholder signs a form electing to accept mandatory binding arbitration. The form must notify the policyholder of the rights given up in exchange for the credit or premium discount, including, but not limited to, the right to a trial by jury; (4) the endorsement establishes that an insurer will comply with the mediation provisions set forth in s. 627.7015 before the initiation of arbitration; and (5) the insurer also offers the policyholder a policy that does not require that the policyholder participate in mandatory binding arbitration.

Assignment of Benefits

Prohibits the assignment, in whole or in part, of any post-loss insurance benefit under any residential property insurance policy or under any commercial property insurance policy issued on or after January 1, 2023.

Property Insurance Reform – S.B. 2-A (special session) – CONTINUED

Attorney Fees in Property Insurance Cases

Provides that the one-way attorney fee provisions are not applicable in a suit arising under a residential or commercial property insurance policy. Reinstates application of the civil offer of judgment statute to civil actions arising under a residential or commercial property insurance policy and allows joint offers of settlement in property insurance litigation contingent on acceptance of all joint offerees. Removes provisions regarding attorney fees relating to the alternative procedure for resolution of disputed sinkhole insurance claims.

Bad Faith Failure to Settle Actions against Property Insurers

Provides that bad faith litigation for failure to settle a property insurance claim may not be filed until after the insured has established through adverse adjudication by a court that the insurer breached the insurance contract and a final judgment or decree has been rendered against the insurer.

Claim Filing Deadline

Reduces the deadline for policyholders to report a claim under the policy from 2 years to 1 year for a new or reopened claim, and from 3 years to 18 months for a supplemental claim.

Property Insurance Reform – S.B. 2-D (special session)

Assignment of Benefits

Prohibits assignment of the right to obtain attorney fees in suits arising out of a property insurance policy to persons other than a named or omnibus insured or a named beneficiary under the policy. Result is that assignment agreements may occur, but the assignee vendor will no longer be able to recover attorney fees in suits against an insurer. Applies to property insurance lawsuits brought by vendor assignees against authorized insurers and surplus lines insurers. Eliminates statutory language detailing the methodology for awarding attorney fees to plaintiffs or defendants in litigation brought by an assignee of benefits under a property insurance policy. The language is no longer necessary because the bill prohibits assignment of the right to recover attorney fees in suits arising out of a property insurance policy. Revises the definition of “assignment agreement” to include assignments executed by a party that inspects the property, clarifies that public adjuster fees are not an assignment agreement, and clarifies the requirement to provide a Notice of Intent to Initiate Litigation before filing suit. Requires that a valid AOB must specify that the assignee will hold harmless the assignor from all liabilities, including attorney fees.

Attorney Fee Multipliers

Creates a new standard for the award of an attorney fee multiplier in property insurance litigation. Creates a presumption that in property insurance cases, attorney fee awards based on the Lodestar methodology are sufficient and reasonable. Attorney fee multipliers may only be awarded under rare and exceptional circumstances with evidence that competent counsel could not be hired in a reasonable manner. Allows a court to award attorney fees when a first-party claimant’s property insurance suit is dismissed without prejudice for failure to provide a Notice of Intent to Initiate Litigation.

Attorney Fees Dismissal for Failure to Provide Notice

Provides that a defendant insurer may obtain attorney fees and costs associated with securing a dismissal without prejudice for failure to provide the required Notice of Intent to Initiate Litigation at least 10 days before filing a suit against a property insurer.

First Party Bad Faith

Requires a claimant to establish a property insurer breached the insurance contract in order for the claimant to prevail in a bad faith claim for extracontractual damages under s. 624.155(1)(b), F.S. Applies to civil remedy actions based upon a property insurer: not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted

Property Insurance Reform – S.B. 2-D (special session) - CONTINUED

fairly and honestly toward its insured and with due regard for his or her interests; making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or except as to liability coverages, failing to settle claims promptly, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy.

Georgia

Apportionment of Liability – H.B. 961

Provides for apportionment of damages in single-defendant lawsuits.

Idaho

COVID-19 Liability – H.B. 444

Extends the sunset of previously enacted COVID-19 liability protections.

Kansas

Advertising for Legal Services – S.B. 150

Creates law related to legal advertising and the use of protected health information to solicit individuals for legal services. If the advertisement is for a lawsuit soliciting clients who may allege an injury from a FDA-approved prescription drug or medical device or from a medical device substantially equivalent to an approved medical device, requires disclosure that the drug or medical device remains approved by the FDA, unless the product has been recalled or withdrawn. Creates a statutory section stating a person may not use, cause to be used, obtain, sell, transfer, or disclose to another person without written authorization protected health information for the purpose of soliciting an individual for legal services. Specifies that nothing in this section applies to the use or disclosure of protected health information to an individual's legal representative, in the course of any judicial or administrative proceeding, or as otherwise permitted or required by law. Attorneys and law firms are exempted from the provisions of the bill; the legislation only applies to lead generators.

Louisiana

Attorney Advertising – S.B. 378

Prohibits deceptive or misleading advertisements, specifically those presented as a medical alert, health alert, drug alert, or public service announcement.

Attorney Advertising – S.B. 383

Sets forth the requirements and limitations for legal advertising consistent with the U.S. Fifth Circuit's opinion in *Public Citizen v. Louisiana Disciplinary Board* 632 F. 3d 212 (2011).

Missouri

Secondary Sources / American Law Institute – S.B. 775

Provides that a secondary source (such as ALI Restatements) including a legal treatise, scholarly publication, textbook, or other explanatory text, does not constitute the law or public policy of Missouri to the extent its adoption would create, eliminate, expand, or restrict a cause of action, right, or remedy, or to the extent it is inconsistent with, or in conflict with, or otherwise not addressed by, Missouri statutory law or Missouri appellate case law precedent.

Oklahoma

Attorney General Sunshine – S.B. 984

Requires state agencies and officials to use an open request for proposal process when seeking outside counsel in a matter in which attorneys' fees may exceed \$1 million. Mandates inclusion of due process safeguards in contingency-fee contracts between the state and outside counsel, such as ensuring that government attorneys have complete control over the litigation and settlement. Requires state agencies and officials to disclose to the attorney general any past or present relationship between the attorney or firm and state agency, the reason use of a contingency-fee arrangement is believed to be in the state's interest, and the justification for hiring the private attorney or firm before entering a contract. Requires submission of a copy of contracts in which fees may be \$1 million or more, along with supporting information, to the Legislative Oversight Committee. Establishes a maximum sliding scale for contingency fees in state contracts with outside counsel ranging from 25% of amounts below \$10 million to 5% of amounts over \$25 million (the percentage declines as recovery increases). Prohibits a total fee in excess of \$50 million. Makes contingency-fee contracts available to the public on the attorney general's website and requires firms to maintain records of their time and expenses and requires the attorney general to submit an annual report to Governor and legislative leaders describing the use of contracts with private law firms and attorneys over the prior year. Prohibits provisions in settlement agreements that direct money to any place other than the state or state agency that is a party litigation, which must be paid into the state treasury. Exempts agencies not subject to notice and comment requirements and securities litigation conducted on behalf of state entities.

Tennessee

COVID-19 Liability – H.B. 2671 / S.B. 2448

Extends the sunset of previously enacted COVID-19 liability protections from July 1, 2022, to July 1, 2023.