



# American Tort Reform Association

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## 2020 State Tort Reform Enactments

### Iowa

#### **Phantom Damages Reform – S.F. 2338**

Limits the evidence offered to prove past medical expenses to the amounts actually paid to satisfy the bills that have been satisfied and the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. Provides that, except in certain medical malpractice actions, in an action brought to recover damages for personal injury, the damages that may be recovered by a claimant for the cost of medical care shall not exceed the amounts actually paid to the health care providers who rendered treatment and any amounts necessary to satisfy the charges that have been incurred but not yet satisfied.

### Louisiana

#### **Civil Justice Reform Act of 2020 – H.B. 57 (special session)**

JURY TRIAL THRESHOLD – Reduces the jury trial threshold from \$50,000 to \$10,000.

Provides that if a party fails to file a motion to transfer within the delays provided by existing law, the matter shall not be transferred. Further provides that a jury trial shall not be available for non-tort suits originally filed in parish or city court when the amount in controversy does not exceed the parish or city court's jurisdictional limit. Provides that in a tort action where a petitioner stipulates or otherwise judicially admits that his cause of action exceeds \$10,000, but is less than \$50,000, a party requesting a jury trial shall provide a cash deposit in the amount of \$5,000. Further provides that when the case is set for trial, the court may provide for a supplemental bond or cash deposit in accordance with existing law.

#### EVIDENCE OF LIABILITY INSURANCE

Provides that the existence of insurance coverage shall not be communicated to the jury, unless any of the following apply: (1) a factual dispute related to an issue of coverage is an issue which the jury will decide; (2) the existence of insurance coverage would be admissible to attack the credibility of a witness pursuant to existing law (C.E. Art. 607) which provides for attacking and supporting a witness' credibility; (3) the cause of action is brought against the insurer alone in the limited circumstances provided by existing law under the direct action statute or under the statute requiring good faith and fair dealing in the settlement of claims. Provides that the identity of the insurer shall not be communicated to the jury unless the identity of the insurer would be admissible to attack the credibility of a witness pursuant to existing law. Provides that in all cases brought against an insurer, at the opening and closing of the trial, the court shall read instructions to the jury that there is insurance coverage for the damages claimed by the plaintiff.

#### RECOVERABLE PAST MEDICAL EXPENSES (COLLATERAL SOURCE)

Provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer or Medicare to a medical provider, the claimant's recovery of medical expenses is limited to the amount actually paid to the medical provider by the health insurance issuer or Medicare, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed. Provides that the court shall award 40% of the difference between the amount billed and the amount actually paid to the contracted medical provider by a health insurance issuer or Medicare in consideration of the plaintiff's cost of procurement provided that this amount shall not make the award unreasonable. Provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by Medicaid to a medical provider, the

claimant's recovery of medical expenses paid by Medicaid is limited to the amount actually paid to the medical provider by Medicaid, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed. Provides that the recovery of any other past medical expenses shall be limited to amounts paid to a medical provider by or on behalf of the claimant, and amounts remaining owed to a medical provider, including medical expenses secured by a contractual or statutory privilege, lien, or guarantee. Provides that in cases where a claimant's medical expenses are paid pursuant to the La. Workers' Compensation Law (LWC), a claimant's recovery of medical expenses is limited to the amount paid under the medical payments fee schedule of the LWC. Provides that in a jury trial, only after a jury verdict is rendered may the court receive evidence related to the limitations of recoverable past medical expenses paid by a health insurance issuer or Medicare. The jury shall be informed only of the amount billed by a medical provider for medical treatment. Whether any person, health insurance issuer, or Medicare has paid or has agreed to pay, in whole or in part, any of a claimant's medical expenses shall not be disclosed to the jury. In trial to the court alone, the court may consider such evidence. The bill does not apply in medical malpractice claims or in claims brought pursuant to the Governmental Claims Act.

#### EVIDENCE OF FAILURE TO WEAR A SEAT BELT

Repeals the law that provided that the failure to wear a seat belt was prohibited from being admitted into evidence for purposes of mitigation of damages and comparative fault.

### **Missouri**

#### **MMPA and Punitive Damages Reform – S.B. 224**

##### MISSOURI MERCHANDISING PRACTICES ACT (MMPA) REFORM

A person seeking to recover damages for unlawful merchandising practices shall establish that the person acted as a reasonable consumer, that the alleged unlawful act would cause a reasonable person to enter into the transaction that resulted in damages, and the individual damages with sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty. A court may dismiss a claim for failure to show a likelihood that the alleged unlawful act would mislead a reasonable consumer. In a class action, any class representative shall establish these requirements. All other members of the class shall establish individual damages in a manner determined by the court. In addition to current damages available, a court may provide equitable relief as it deems necessary to protect the party from the unlawful acts. No action may be brought under these provisions to recover damages for personal injury or death in which a claim arises out of the rendering of or failure to render health care services. Furthermore, this act provides that any award of attorney's fees shall bear a reasonable relationship to the amount of the judgment. However, when the judgment grants equitable relief the attorney's fees shall be based on the amount of time reasonably expended.

##### PUNITIVE DAMAGES REFORM

Provides that punitive damages shall only be awarded if the plaintiff proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others, and the plaintiff is awarded more than nominal damages. Punitive damages may be awarded against an employer due to an employee's conduct in certain situations, as provided in the act. When an employer admits liability for the actions of an agent in a claim for compensatory damages, the court shall grant limited discovery consisting only of employment records and documents or information related to the agent's qualifications.

A claim for punitive damages shall not be contained in the initial pleading and may only be filed as a written motion with permission of the court no later than 120 days prior to the final pretrial conference or trial date. The written motion for punitive damages must be supported by evidence. The amount of punitive damages shall not be based on harm to nonparties. A pleading seeking a punitive damage award may be filed only after the court determines that the trier of fact

could reasonably conclude that the standards for a punitive damage award, as provided in the act, have been met. The responsive pleading shall be limited to a response of the newly amended punitive damages claim.

The legislation provides that the defendant may also be credited for punitive damages paid in a federal court.

These provisions shall not apply to claims for unlawful housing practices under the Missouri Human Rights Act.

Modifies the definition of "punitive damages" as it relates to actions for damages against a health care provider for personal injury or death caused by the rendering of health care services. In order to be awarded punitive damages, the jury must find by clear and convincing evidence that the health care provider intentionally caused damage or demonstrated malicious misconduct. Evidence of negligence, including indifference or conscious disregard for the safety of others, does not constitute intentional conduct or malicious misconduct.