



American Tort Reform Association

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2023 State Tort Reform Enactments

Florida

Comprehensive Tort Reform – H.B. 837

- Provides uniform standards to assist juries in calculating the accurate value of medical damages in personal injury or wrongful death actions and addresses letters or protection.
- Changes Florida’s comparative negligence system from a pure comparative negligence system to a modified system, except for medical negligence cases, so that a plaintiff who is more at fault for his or her own injuries than the defendant may not generally recover damages from the defendant.
- Modifies Florida’s “bad faith” framework to:
 - Allow an insurer to avoid third-party bad faith liability if the insurer tenders the policy limits or the amount demanded by the claimant within 120 days after receiving actual notice of the claim.
 - Clarify that negligence alone is not enough to demonstrate bad faith.
 - Require a claimant to act in good faith with respect to furnishing information, making demands, setting deadlines, and attempting to settle the insurance claim.
 - Allow an insurer, when there are multiple claimants in a single action, to limit the insurer’s bad faith liability by paying the total amount of the policy limits at the outset.
- Provides that a contingency fee multiplier for an attorney fee award is appropriate only in a rare and exceptional circumstance, adopting the federal standard.
- Provides that Florida’s one-way attorney fee provisions for insurance cases apply in limited situations.
- Requires the trier of fact in certain negligent security actions to consider the fault of all persons who contributed to the injury, establishes a presumption against negligent security liability in specified situations, and expands immunity for a property owner defending a lawsuit against a criminal actor who is injured on the property.
- Reduces the statute of limitations for general negligence cases from 4 years to 2 years.

Legal Advertising – H.B. 1205

- Prohibits a person or entity issuing a legal services advertisement from doing specified things, including presenting the advertisement as a medical alert or as offering advice from a state or federal governmental entity.
- Requires a person or entity issuing a legal services advertisement to solicit clients who may allege injury from an FDA-approved prescription drug or medical device to include specified statements and information in the advertisement, in the manner specified in the bill.
- Prohibits a person or entity from using, causing to be used, obtaining, selling, transferring, or disclosing a consumer’s protected health information to another person or entity for the purpose of soliciting the consumer for legal services without the consumer’s written authorization, except to an individual’s legal representative under specified circumstances.
- Provides that a violation of the bill is a FDUTPA violation.

- Specifies that the bill does not limit or otherwise affect the Florida Bar’s authority to regulate the practice of law, enforce its rules of professional conduct, or discipline any person admitted to the practice of law.
- Specifies that the bill does not apply to an advertisement that has been reviewed and approved by a Florida Bar ethics or disciplinary committee in accordance with its rules of professional conduct.

Assignment of Benefits / Auto Glass Repair – S.B. 1002

Prohibits repair shops from offering an inducement to a customer in exchange for making an insurance claim for motor vehicle glass repair and also prohibits a policyholder or other person from entering into an assignment of post-loss benefits for motor vehicle glass repair, including for calibration or recalibration of advanced driver assistance systems.

Georgia

Apex Doctrine – S.B. 74

Includes language commonly referred to as the apex doctrine, which provides for certain criteria required to secure the deposition of certain high ranking public and corporate employees. The legislation defines a “high-ranking officer” as someone who is or has been a high-ranking officer of any large governmental entity or large corporation. A high-ranking official may demonstrate good cause for a protective order by showing they had no unique personal knowledge of any matter relevant to the subject matter involved in the underlying action. When the party seeking discovery has exhausted other reasonable means of discovery and the discovery is deemed inaccurate, good cause will not be considered sufficiently demonstrated. Finally, the court will have the ability to limit the scope of the deposition when a high-ranking officer lacks only some unique personal knowledge as it relates to the underlying litigation.

Indiana

Lawsuit Lending – H.B. 1124

Amends the law concerning civil proceeding advance payment (CPAP) transactions to provide that in a civil proceeding in which a consumer claimant has entered into a CPAP contract, the consumer claimant or the consumer claimant's attorney is required to provide to: (1) each of the other parties in the civil proceeding; and (2) each insurer that has a duty to defend another party in the civil proceeding; written notice that the consumer claimant has entered into a CPAP contract with a CPAP provider. Provides that in a civil proceeding in which a consumer claimant is a party, the existence and contents of the CPAP contract are subject to discovery under the Indiana Rules of Trial Procedure by: (1) a party other than the consumer claimant; or (2) an insurer that has a duty to defend another party in the civil proceeding. Provides that a written notice concerning a CPAP contract with a CPAP provider is not admissible in a court proceeding.

Iowa

Medical Liability Reform – H.F. 161

Provides, among other things, a limit on noneconomic damages of \$250,000. If the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, loss of pregnancy, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained, in which case the amount recoverable shall not exceed \$1 million, or \$2 million if the action includes a hospital. The limitations on noneconomic damages increases 2.1% on January 1, 2028, and each January 1 thereafter.

Commercial Trucking Litigation Reform – S.F. 228

Provides for a limit of \$5 million on noneconomic damages per plaintiff, with exceptions to the limit as specified. The limit adjusts for inflation every two years beginning in 2028. “Commercial Motor Vehicle” is specifically defined in the law and that definition provides for a limited list of “commercial motor vehicles” to which the limit applies. Employer cannot be sued

for negligent hiring if certain conditions apply. Finally, the legislation provides that plaintiffs are allowed to collect 100% of punitive damages.

Kansas

Prejudgment Interest Rate Reform – S.B. 75

Provides that the rate of legal interest for civil tort actions where prejudgment interest is awarded equals the federal discount rate plus two percent.

Montana

Comprehensive Products Liability Reform – S.B. 216

- Enables defendants to raise a comparative fault defense when the plaintiff asserts a strict product liability claim.
- Expands the statutory misuse defense to include use of the product at issue in a manner that contravenes an express warning or instruction provided with the product
- Establishes an affirmative defense that the product at issue could not have been made safer by the adoption of a reasonable alternative design or manufacturing process that was available at the time the product was first used
- Creates a 10-year statute of repose
- Establishes a rebuttable presumption that the product was not defective and that the seller was not negligent if the product complied with mandatory government safety statutes, regulations, or standards applicable to the product at issue and pertinent to the characteristics that allegedly caused the injury
- Provides protection against product liability lawsuits for sellers who are not also manufacturers of the product at issue.

Third Party Bad Faith Reform – S.B. 165

Amends the state's bad faith law to prevent a third-party claimant from bringing an action for bad faith in connection with the handling of an insurance claim. A third-party may bring a claim for fraud if they have suffered damages from the handling of an insurance claim but it cannot be under any other theory or cause of action.

Time Limited Demands – S.B. 236

Establishes the standards to be satisfied by a third-party claimant when delivering a time-limited demand to an insurer. This includes requiring the third-party to deliver all supporting documents, records, and relevant information to provide the insurer with a fair and reasonable opportunity to investigate and evaluate the claims presented without the risk of having unfair settlement claim practices or insurance bad faith claim alleged against the insurer.

Third Party Litigation Financing – S.B. 269

Subjects TPLF to the maximum usury interest rate or a 25% fee cap, requires automatic disclosure of the agreement in litigation and requires registration with the state as well as disclosure of the officers of the company engaging in litigation financing in Montana. The legislation explicitly applies to class actions and subjects lenders to joint liability for costs and sanctions.

Texas

Vicarious Liability for Rideshare Services – H.B. 1745

Establishes a framework for arbitration and civil actions against rideshare services. The law only applies when the rideshare service is defendant, the claim alleges damages for property loss, bodily harm or death; and the claim arises from the use of the rideshare service at the time of the alleged injuries. The theory of recovery under which damages are sought arises from the driver or passenger being logged into the rideshare service, or the relationship, affiliation, or interaction

with a driver logged into the rideshare service. A rideshare service cannot be held vicariously liable for damages under this law if: (1) the plaintiff does not prove by clear and convincing evidence that the company was grossly negligent; (2) the company has fulfilled all obligations with respect to the rideshare driver as required by state law, Chapter 2402.

Utah

Asbestos Litigation Reform – H.B. 328

Address over-naming in asbestos cases and requires plaintiffs with nonmalignant conditions to demonstrate impairment pursuant to objective medical criteria. Within twenty-one days after the day on which the first answer is filed in response to the plaintiff's complaint, the plaintiff must provide the parties with a sworn declaration stating the evidence providing the basis for each claim against each defendant and include supporting documentation. 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. The court may not dismiss a plaintiff's asbestos claim upon a showing of good cause by the plaintiff. In addition, within ninety days after the day on which the plaintiff files a complaint in an asbestos action alleging a nonmalignant condition, the plaintiff must file a detailed narrative medical report and diagnosis, signed under oath by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed individual has a physical impairment for which exposure to asbestos was a substantial contributing factor.

West Virginia

Deliberate Intent – H.B. 3270

Limits the amount of noneconomic damages recoverable in a deliberate intent case to \$500,000.