

2015 State Tort Reform Enactments

Alabama

S.B. 80 (Cam Ward-R) – Innovator Liability

Effectively overturns the Alabama Supreme Court's decision in *Wyeth v. Weeks* and provides that a manufacturer is not liable, under any theory, for damages resulting from a product not designed, manufactured, sold or leased by the manufacturer. It also states that if a manufacturer's design is copied without express authorization, the manufacturer is not subject to liability for any injury, death or property damage caused by the manufacturer's product even if the use of the design is foreseeable.

Arizona

H.B. 2374 (Kate Brophy-McGee- R) – Wrongful Death

Stipulates that if a person is found guilty of intentionally causing the death of the decedent, he is deemed to have predeceased the decedent and is disqualified from recovering wrongful death benefits.

H.B. 2603 (Sonny Borrelli-R) – Asbestos Trust Transparency

Provides for additional notice requirements in an asbestos personal injury claim, as well as certain transparency requirements for asbestos trust claims previously made by the plaintiff.

S.B. 1048 (John Kavanaugh-R) – Vexatious Litigants

Provides that in a civil action, if an applicant who is granted a deferral or waiver is found to be a vexatious litigant, the court shall order the applicant to pay the deferred or waived fees and costs.

Arkansas

S.B. 204 (Elizabeth English-R) – Transparency in Private Attorney Contracts

Regulates state contingency fee contracts with private attorneys, and requires transparency of all state contingency fee contracts with private attorneys.

S.B. 882 (Jason Rapert-R) – Lawsuit Lending

Lawsuit lending alignment bill that would place the industry under the state's usury laws.

Indiana

S.B. 306 (Rodric Bray – R) – Trespasser Liability

Provides that a person who possesses real property does not owe a duty of care to a trespasser, except to refrain from willfully or wantonly injuring the trespasser.

H.B. 1192 (Kevin Mahan-R) – “Pay to Play”

Specifies that an insurer may not pay noneconomic damages on a motor vehicle insurance claim for a loss incurred by an uninsured motorist who is at least 18 years old. It also provides that a person who sustained bodily injury or property damage as a result of the accident but who was uninsured at the time may not recover noneconomic damages from the person who was operating the other vehicle unless he was convicted of a crime.

Maryland

H.B. 164 (Kathleen Dumais – D) – Appeal Bond Reform

Limits the amount a defendant can be required to pay to secure the right to appeal to \$100 million.

Missouri

S.B. 239 (Dan Brown-R) – Noneconomic Damages Limit

Replaces English common law causes of action for medical malpractice claims with statutory causes of action, and provides for limits on noneconomic damages for those statutory causes of action. Limits noneconomic damages to \$400,000, and \$700,000 in catastrophic cases. It also places a limit of \$700,000 in wrongful death cases.

Nevada

S.B. 244 (Greg Brower-R) – Transparency in Private Attorney Contracts

Establishes transparency requirements governing a contingent fee contract for legal services provided to the State of Nevada or an officer, agency or employee of the State.

S.B. 134 (Michael Roberson-R) – Appeal Bond Reform

Limits appeal bonds to the lesser of \$50 million or the amount of the judgment. It also includes a small business exception of \$1 million or the amount of the judgment.

S.B. 160 (Michael Roberson- R) – Trespasser Liability

Restores the traditional common law duty of limited care for all defendants in trespasser cases.

Ohio

S.B. 38 (Bill Seitz – R) – Transparency in Private Attorney Contracts

Provides for transparency in contracts between the state and private attorneys when contracting on a contingency fee basis. Contains tiered limits on the aggregate contingency fees that the private attorneys are allowed to receive from the state.

Oklahoma

S.B. 789 (Anthony Sykes-R) – Phantom Damages

Provides for the admissibility of the full amount paid as the full amount in question regarding medical bills used for damages calculations. It also states that if no bills have been paid, then the amount billed shall be admissible at trial subject to the limitations regarding any lien filed in the case.

South Carolina

H.B. 3266 (David R. Hiott-R) – Trespasser Liability

Establishes the “Trespasser Responsibility Act,” which provides that a landowner owes no duty to trespassers except to refrain from causing willful or wanton injury. The act establishes an exception to the “no duty” general rule for artificial improvements made to land that are likely to injure a trespassing child if reasonable care is not taken to prevent the potential harms.

Texas

H.B. 1492 (Doug Miller – R) – Asbestos Trust Transparency

Provides for additional notice requirements in an asbestos personal injury claim, as well as certain transparency requirements for asbestos trust claims previously made by the plaintiff.

H.B. 1692 (Kenneth Sheets – R) – Forum Non Conveniens

Changes Texas law for in-state plaintiffs relative to *forum non conveniens*, and allows for a trial court to dismiss a claim under such a theory provided substantial deference has been given to the in-state legal resident plaintiff.

Utah

H.B. 34 (Kay McIff-R) – Noneconomic Damages

Limits the amount of damages recoverable in personal injury actions when the injured person dies before judgment or settlement of causes unrelated to the action. Provides that in no event shall an award of general damages against a wrongdoer or insurer exceed a specified amount of available liability, uninsured or underinsured motor vehicle coverage.

S.B. 233 (Stuart Adams-R) – Transparency in Private Attorney Contracts

Enacts provisions relating to contingent fee contracts between the attorney general and private attorneys. Places tiered limits on the amount of contingency fees a private attorney can receive.

West Virginia

H.B. 2002 (Danny Wagner-R) – Comparative Fault

Predicates actions for damages upon comparative fault principles. Abolishes joint liability and implement several liability and provides that the fault of a nonparty may be considered if the plaintiff entered into a settlement agreement with the nonparty or if the defendant party gives notice no later than 180 days before the trial date that a nonparty was wholly or partially at fault.

H.B. 2010 (Kayla Kessinger-R) – Judicial Elections

Requires the election of justices of the State Supreme Court of Appeals, circuit court judges, family court judges and magistrates to be on a non-partisan basis.

H.B. 2011 (Robert Hanshaw-R) – Workers’ Compensation

Establishes liability and defenses for employees and employers making a claim to the Workers' Compensation Fund where an injury is self-inflicted or intentionally caused by the employer.

S.B. 3 (Corey Palumbo-D) – Trespasser Liability

Codifies existing common law in West Virginia regarding the duty of care land owners owe trespassers. Provides that a possessor or real property owes no duty of care to a trespasser except in limited circumstances.

S.B. 6 (Ryan James Ferns-R) - Medical Liability

Links the noneconomic damages limit to the Consumer Price Index, requires appellate courts to review the standards applied to admitting expert testimony de novo, and excludes amounts written off a medical bill by a thirty party from the definition of a “collateral source.”

S.B. 13 (David Clay Nohe- R) – Open and Obvious Doctrine

Reinstates the open and obvious doctrine. Limits civil liability of a possessor of real property for injuries caused by open and obvious hazards and reinstates and codifies open and obvious doctrine of common law as it existed prior to judicial abolition.

S.B. 315 (Jeff Mullins-R) - Consumer Protection Act Reform

Amends West Virginia’s Consumer Protection Act and provides that no award of damages under the CPA may be made without proof that the person seeking damages suffered an actual out-of-pocket loss that was proximately caused by a violation of the statute. Provides that either party in a CPA action has the right to demand a jury trial. Specifies that it is the intent of the Legislature that, in construing this statute, the courts be guided by the policies of the Federal Trade Commission and interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1) of the Federal Trade 10 Commission Act (15 U. S. C. §45(a)(1)).

S.B. 344 (Charles Trump-R) – Punitive Damages

Establishes limitations on certain types of compensatory damages, and on punitive damages in employment claims.

S.B. 411 (Tom Takubo-R) – Asbestos Trust Transparency

Creates the Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act.

S.B. 421 (Charles Trump) – Punitive Damages

Requires a plaintiff, in order to recover punitive damages, to establish by clear and convincing evidence that the defendant acted with actual malice or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. Limits the award of punitive damages to \$500,000 or four times the amount of compensatory damages, whichever is greater.

Wisconsin

S.B. 21 (Joint Committee on Finance) – False Claims

Repeals Wisconsin’s “False Claims for Medical Assistance Act.”

Wyoming

H.B. 108 (David Miller-R) Trespasser Liability
Codifies the common law of trespass in Wyoming.