

KEY LAWSUIT REFORMS AND THEIR IMPACT

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KEY FACTS

- The State Chamber has long been the champion for reforming Oklahoma’s legal system to prevent frivolous and costly lawsuits
- In 2017, Oklahoma became the first state to align its discovery code to the Federal Discovery Code
- There were twenty-six major lawsuit reforms from 2009–2014, the most of any state in the nation, and 23 of them re-passed individually in 2013 after a Supreme Court decision struck down 2009 omnibus tort reform legislation

BACKGROUND

2017 Reform

HB 1570 – Updates Oklahoma’s discovery code to more closely align with the more restrictive Federal Discovery Code. Also, repealed “Loser Pays” language requiring the loser in every lawsuit to pay the attorney fees of the prevailing party.

2016 Reform

HB 2844 – Clarifies that a lawsuit against corporate officers, directors or shareholders can only be brought for conduct, acts or contractual obligations outside their scope as an officer, director or shareholder.

2014 Reforms

HB 2837 – Patent Demand Letters

HB 2903 – Defining “Special Laws”

HB 3365 – Products Liability and Innocent Seller Protection

HB 3375 – Medical Discovery

SB 1799 – Derivative Shareholder Lawsuits

2013 Reforms

SB 404 – Transparency in Asbestos Bankruptcy Trust Claims

SB 1016 – Lawsuit Lending

Special Session – 23 individual tort reform bills (See 2009 Reforms for list of provisions)

2012 Reforms

HB 2654/SB 1665/SB 243 – Fiduciary Liability

Creates the Energy Litigation Reform Act dealing with certain rules to be applied by the courts of Oklahoma in the construction of private agreements and other contracts regarding oil and gas.

SB 1475 – Service Warranties

Creates the Service Warranty Act and clarifies that such service contracts are not insurance and that “bad faith” claims cannot be raised against them.

SB 1830 – Products Liability

Deals with the admissibility of certain evidence in products liability cases. The bill specifically provides that evidence of subsequent remedial measures is not admissible to prove a defect in a product.

SB 1196 – Small Claims Court Access

Allows cases of up to \$7,500 to go into small claims court.

HB 2419 – Liability

Prohibits liability for anyone offering a storm shelter to others in times of severe weather if the owner was acting in good faith and damage was not caused by the willful neglect or misconduct of the owner.

2011 Reforms

HB 2023 – Payment of Medical Bills

Outlines procedure for unpaid medical bills for personal injury cases. Allows for payment to be made at the level of actual payment, not what was charged.

HB 2024 – Future Damages

Upon request of a party, the court shall order that medical, health care or custodial services awarded in an action be paid in whole or in part in periodic payments rather than by a lump-sum payment. Upon request of a party, the court may order that future damages other than medical, health care or custodial services awarded in a health care liability action be paid in whole or in part in periodic payments rather than by a lump-sum payment. This section only applies when present value of the award of future damages, as determined by the court, equals or exceeds One Hundred Thousand Dollars (\$100,000.00). Payment must be made within seven years and interest shall be paid at the rate of a post-judgment award.

HB 2128 – Hard Cap on Non-Economic Damages

Establishes a \$350,000 cap on non-economic damages except in cases of gross negligence or intentional or malicious conduct. It allows a lifting of the cap when a judge and jury find (by clear and convincing evidence) that the defendant's actions were: 1) In reckless disregard for the rights of others; 2) Grossly negligent; 3) Fraudulent; or 4) Done intentionally or with malice; and it repeals the indemnity fund.

SB 272 – “No Pay – No Play” for Motor Vehicles

If a motorist does not comply with Oklahoma's compulsory auto insurance laws, he/she cannot collect non-economic damages if involved in an accident.

SB 494 – Trespasser Responsibility Act

Preempts new Restatement of Torts (which places a liability on the land owner for protection of trespassers unless they are “flagrant” trespassers) by providing that the land possessor owes no duty of care to trespassers beyond that duty spelled out in common law. Senator Barrington is considering adding the language to his bill on trespassing, which is currently assigned to the Senate Public Safety Committee.

SB 704 – Class Action Restriction & Plausibility in Pleadings

Adds a new requirement for class action lawsuits that states, “...the petition in the class action must contain factual allegations sufficient to demonstrate a plausible claim for relief.”

SB 862 – Elimination of Joint & Several Liability

Eliminates Joint & Several Liability except where the state brings the lawsuit.

SB 865 – Tax Ramifications of Awards

Jury Instructions applicable in a civil case shall include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax. Any amount that the jury determines to be proper compensation for personal injury or wrongful death should not be increased or decreased by any consideration for income taxes.

SB 837 – Employment Discrimination

Abolishes common law remedies for employment-based discrimination; sets cause of action of discrimination lawsuits.

2009 Reforms

HB 1603 (NOTE: This entire bill was struck down in June 2013 by the Oklahoma Supreme Court as being unconstitutional due to “logrolling.” All provisions were reintroduced and passed as individual bills during the special session of 2013.)

- Class Action Reforms – Streamlines process for determining classes; allows for quicker appeal of class determination; defines who can be a member of a class action lawsuit; sets up a procedure for the court to determine class attorneys and fees to be paid; allows for the court to appoint an independent attorney to represent the class in any dispute over attorney

fees; and provides that settlements in which coupons are awarded, the attorney shall also receive his fee in coupons.

- Appeals Bond Cap – Current law requires an appeals bond to be twice the verdict. The new cap is now set at \$25 million and no appeal bond is required on punitive damage appeals.
- Mandatory Dismissal for Late Service (180 days) – Mandates dismissal when service of process has not been filed within 180 days after the filing of the petition. This should result in earlier dismissals from frivolous lawsuits.
- Summary Judgment – By adopting the Federal Rules dealing with summary judgment, judges will be allowed to dismiss frivolous lawsuits earlier in the process.
- Redefining of “Frivolous” Lawsuits – Tightens up what a “frivolous lawsuit” is so a judge can dismiss it earlier in the process.
- Junk Science & Expert Witness Reforms – Adopts Federal Rules so as to restrict exactly what type of testimony a jury will hear. This should result in the exclusion of poorly crafted testimony and “experts” with wacky ideas.
- Prejudgment Interest Reforms – Saves money for businesses by not allowing “pre-judgment interest” until two years after the beginning of a lawsuit and reducing the interest rate charged.
- Joint & Several Liability – Unless a business is more than 50% at fault, the defendant business will only be charged its proportionate share of the injury award.
- Asbestos/Silicosis Reforms – Brings Oklahoma businesses in line with many other states around the country in recognizing that a lawsuit should only be brought when there is a medical claim and protects successor companies who have purchased companies with an earlier asbestos exposure.
- Cap on Non-Economic Damages – Will limit damages for pain and suffering except in egregious circumstances.
- Pleading/Award Level – This should lower the cost of lawsuits filed and put more cases in federal court where appropriate.
- Peer Review Confidentiality – Allows our medical community to “police” themselves.
- Certificate of Merit for Professional Negligence – Saves our professionals (doctors, accountants, engineers, etc.) from a lot of nuisance lawsuits by requiring an affidavit of merit within 90 days of a lawsuit being filed.

- Products Liability – Reduces the exposure of manufacturers to products liability lawsuits by ensuring that a manufacturer shall not be liable if the product is inherently unsafe and restricting admissibility of evidence.
- Forum Non Conveniens – Allows the court to move a case which should be more properly heard somewhere else in the state, thus restricting “forum shopping.”
- Gun Manufacturers Liability Protection – Protects gun manufacturers from lawsuit simply because they made the gun.
- Common Sense Consumption Act (“Cheeseburger Act”) – Protects restaurants and food manufacturers from obesity lawsuits.
- Voluntary Liability – Protects volunteers from liability.