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State Reporter
Special Report

Product Liability/Tort Reform 1987

This is our third issue of the State Reporter Special Report on Tort, Insurance and Product Liability Reform. In 1986, 41 states passed a version of tort reform legislation aimed at easing burdens on constituents. As you can see in this 50-state summary, doctors, local governments, bars, boards of directors, and volunteers lead the list of those getting concerted help from state legislators by a combination of political clout and compelling horror stories.

There is no question that this issue is swirling with ever increasing intensity throughout all 50 state capitols. Businesses are increasingly seeking legislative formulas for relief from insurance woes. However, the political effectiveness of trial lawyers in thwarting tort reform efforts cannot be overestimated.

SPI's State Government Affairs Department will continue to update this report because this subject is a major concern of our members and because tort reform activity is centered in the states.

This April summary is a snapshot of legislative events that are often in flux. For this reason, we will publish the next issue in early July. By then, many final chapters will have been written on this issue for 1987.

To become an active participant in this debate which has far reaching social and economic impacts, call the contact person listed for each state. It takes the active and personal involvement of individuals working collectively to achieve results in what is invariably a tough legislative battle. SPI's issue surveys tell us that our members are part of a broad spectrum of the public and private sectors reeling from the rising costs and unavailability of insurance. To have an impact, get personally involved by communicating with your legislator and providing grass roots support for your local state coalition.

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State-by-State Summary of Product Liability/Tort Reform Legislation as of April 15, 1987

ALABAMA

(Session: April 23, 1987 - August 3, 1987)

Governor George Wallace (D) signed into law in April, 1986 four tort and insurance related Acts. The legislation HB 178, HB 202, SB 239 and SB 369 grants immunity from suit to the Board of Medical Examiners, the Medical Licensure Commission and the Board of Dental Examiners; requires insurance companies which sell medical liability insurance to report to appropriate state licensing agencies any judgement or settlement resulting from a claim for personal injury caused by an error, omission or negligence in the performance of professional services; sets out the form, content and confidentiality of all reports made by an insurance company and prescribes penalties for failure to make required reports. It establishes a self-funded insurance pool for any group of two or more counties which will provide coverage for each member county and its officers and employees to protect them from liability for tort claims where liability does not already exist.

Governor Wallace's tort reform committee, appointed May 1986, has submitted their findings on the insurance crisis to newly elected Governor Guy Hunt (R). Their recommendations focus on changes in the civil justice system and the insurance industry and include provisions requiring an injured person's lawyer to file an affidavit showing investigation of the case; charging court costs to people who file frivolous lawsuits; allowing lawyers to add defendants after a suit is filed; giving the Insurance Department more power to regulate property and casualty companies and include underwriting profits and investment income in the company's profit and loss statements, and forcing insurance companies to have substantive reasons for cancelling insurance policies.

Governor Hunt supports a combination of tort and insurance reform based on the belief that tort reform alone will not lower insurance rates. He has created two new advisory groups to study insurance rates and civil liability laws. State Senator Charles Bishop (D) is expected to introduce his own tort and insurance reform legislation by April.

A package of bills that would limit jury awards and attorney's fees in civil lawsuits and other procedures changes passed the House in 1986, but were not considered by the Senate. The bills are expected to resurface in April. House Speaker Jimmy Clark (D) and Lt. Governor Jim Folsom (D) support changes in the state's civil liability laws. Clark said he would consider backing insurance reform.

A strong business coalition comprising the Alabama Farm Bureau, the Alabama Retail Association, the Alabama Medical Association, the Business Council of Alabama, and the realty, railroad and homebuilder industries have been actively supporting tort reform legislation

Contact: E. Clark Richardson
Alabama Civil Justice Reform Committee
468 S. Perry Street
Montgomery, AL 36104
205/834-6000

ALASKA

(Target Adjournment: May 19, 1987)

SB 377, enacted during the 1986 legislative session, capped noneconomic damages at $500,000 in all cases, modifies joint and several liability, sets strict requirements for punitive damages and allows for periodic payments. HB 506, also enacted, authorizes municipalities and school districts to self insure jointly or purchase coverage on a group basis. HB 2418 authorizes the establishment of a joint underwriting association for medical malpractice coverage.

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The legislature is currently considering two reform bills. HB 7, in the House Health, Education and Social Services Committee, provides immunity from liability for acts or ommissions committeed in the "good faith" performance of official duties by volunteer guardians acting under the supervision of the Office of Public Advocacy. HB 88, which places a cap on civil actions, limiting recovery to three times the actual damages, is in the House Labor, Commerce and Judiciary Committee.

Contact: Frank Mears
Citizens Coalition for Tort Reform, Inc.
738 H Street, Suite 300
Anchorage, AK 99501
907/276-1135

ARIZONA

(Target Adjournment: April 22, 1987)

On November 4, Arizona voters defeated Proposition 103, which would have granted the legislature authority to establish limits on attorney's fees, establish amounts to be paid for punitive, pain and suffering damages; and set payment plans for damages and continued care of the injured.

In 1986, Governor Evan Meacham signed two of seven bills passed by the legislature. The two enacted bills include provisions from HB 2377 which establishes penalties for unjustified actions and raises limits for mandatory arbitration. HB 2170 applies to dram shops and releases tavern owners from liability as a result of intoxicated patrons. HB 2375 modifies insurance regulations to allow self-insurance for nonprofit organizations and schools and pooling for political subdivisions.

The Governor signed January 12, 1987, SB 1036 abolishing joint and several liability. HB 1051, the "Arizona Volunteer Immunity Act," passed the legislature and is awaiting the Governor's signature. The bill incorporates provisions of HB 1112, HB 1077 and HB 2082 and eliminates liability for directors and officers of profit and nonprofit organizations. SB 1034 which allows for the application of a collateral source rule passed both the Senate and House. However, the bill was then dropped by sponsors because of Senate and House amendments which required defendants to reveal their assets. . The House passed HB 2079 which requires clear and convincing evidence of intentional, aggravated or outrageous conduct as a prerequisite for a jury award of punitive or exemplary damges. The bill is now before the Senate Judicary Committee and the Senate Rules Committee.

The House Judiciary Committee is considering HB 2274 which relieves manufacturers or sellers from liability incurred from the intended use of a product, unless the product itself is defective or if the manufacturer or seller fails to provide warning against danger or hazard in use or misuse of the product. Presently under scrutiny of the Senate Judiciary and Rules Committees, HB 2081 reinstates judicial authority for medical malpractice and regulates the Arizona Medical Malpractice Board.

The Senate Insurance, Retirment and Aging Committee is considering SB 1023 which provides immunity from suit to boards of public schools, private schools and civic organizations.

Contact: Sue Glawe
Arizona Chamber of Commerce
1366 E. Thomas, Suite 202
Phoenix, AZ 85014
602/248-9172

BOR 007478

ARKANSAS

(Target Adjournment: Not set)

The House has passed several bills which are now being considered by Senate committee: HB 1035 would exempt fire fighters, board members, and administrative employees of volunteer fire departments from civil liability; HB 1077 would grant tort immunity to directors of nonprofit corporations for negligent acts of employees or other directors; HB 1098 would protect the State from liability for actions of the National Guard during duties; HB 1181 would provide immunity from certain types of liability for directors of nonprofit corporations providing mental retardation services; HB 1217 would grant conditional tort immunity for auxiliary police officers.

Other bills being considered by the House and Senate: HB 1058 would protect directors of for-profit and nonprofit corporations from civil liability for negligence; HB 1099 would provide immunity from malpractice suits for National Guard legal personnel; HB 1133 would extend liability in dram shop cases to any person selling intoxicants contrary to the law; SB 164 imposes penalties for frivolous lawsuits; SJR 6 would exempt from liability any elected officials for state and local authorities and board members of nonprofit corporations; HB 112, the "Arkansas Volunteer Immunity Act" eliminates liability for qualified volunteers.

Insurance legislation has been drafted for the elimination of punitive damages as related to insurance, the creation of a competetive insurance rate structure, prohibition of midterm cancellation without 60 days notice and/or justifiable cause and the creation of a joint underwriting association.

Contact: Bob Lamb
Arkansas Chamber of Commerce
Box 3645
Little Rock, AR 72203-3645
501/374-9225

CALIFORNIA

(Target Adjournment: Not set)

Proposition 51, named "The Fair Responsibility Act of 1986," was approved by California voters on June 3, 1986 by a 62 to 38 percent margin. It requires defendants in civil liability actions to pay non-civil economic damages according to the degree of individual fault. This doctrine replaced the so-called "deep pocket" rule which can require a defendant only fractionally liable for an injury to pay all damages.

Over 100 bills have been introduced pertaining to tort/insurance reform. The California Tort Reform Coalition is supporting the passage of ten bills. AB 986 caps noneconomic damages at $250,000 and extends the Medical Injury Compensation Reform Act of 1975 (MICRA) limitation on noneconomic damages to all personal injury and wrongful death actions. AB 1212 limits liability for government entities for design of public improvements. AB 1561 extends four provisions of MICRA to all personal injury and wrongful death actions. The provsions include limitations on attorney contingency fees, abolition of the collateral source rule, $250,000 cap on noneconomic losses and periodic payments for judgements in excess of $50,000. SB 865, SB 1661, SB 1662, and SB 1663 incorporate these same changes. SB 282 revises punitive damage laws by requiring proof beyond reasonable doubt that the defendant was guilty of oppression, fraud or malice, by providing that an employer shall not be liable for punitive damages for acts of an employee unless the employer authorized or ratified the wrongful act, with knowledge of its wrongfulness and by redefining malice, oppression and fraud relative to punitive damages.

SB 821 defines product liability actions to include only strict liability in tort, negligence, misrepresentation and breach of warranty; and limits liability of manufacturers or seller to certain occasions: when the product deviates from the manufacturer's standards or specifications, when the product fails to contain adequate warnings and instructions, when the product was designed in a defective manner and when the product breaches an expressed warranty. SB 821 also eliminates design defect liability unless there is a feasable and practical alternative design and eliminates liability

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for a failure to provide adequate warning if the unsafe aspect is an inherent characteristic that would be recognized by an ordinary person. SCA 27 requires a unanimous jury verdict to award punitive damages. Hearings for these bills are expected in May.

The coalition is comprised of the California Taxpayers Association, state Chamber of Commerce, state Manufacturers Association, state Medical Association, County Supervisors Association of California, League of California Cities, California Hospital Association, Association for California Tort Reform and key segments of the insurance industry.

Another key bill AB 1522 comprehensively revises punitive damages by limiting awards to twice economic damages, requiring proof of actual malice or fraud by clear and convincing evidence to make an award; permitting only judges to determine the amount of damages; prohibiting multiple awards and prohibiting awards where a product, structure, or service complied with government standards.

The Assembly Judiciary Committee is currently considering AB 245, which provides penalties for frivolous lawsuits and unnecessary delays; AB 315 which modifies joint and several liability by requiring courts to disclose financial agreements to third parties; AB 363 which calls for 75 percent of noneconomic damages in excess of $5,000 to be paid to the State Comptroller for the Consumer Protection and Education fund; and AB 483 prohibits sliding scale recovery fees unless a notice of intent is given to nonsignatory tortfeasors.

Contact:

Gene Livingston
Association for California Tort Reform
1130 K Street, Suite 250
Sacramento, CA 95814
916/442-1111

COLORADO

(Target Adjournment: June 2, 1987)

In 1986, several tort and insurance reforms were enacted. SB 70 eliminates the doctrine of joint and several liability and limits the liability of a defendant to his proportionate share of negligence or fault. SB 67 reduces awards from specific collateral sources: limits damages for noneconomic loss to $250,000 except in cases where there is clear and convincing evidence, in which case up to $500,000 can be awarded: and eliminates awards for derivative noneconomic loss except in cases with clear and convincing evidence. HB 1197 ties punitive damages to actual damages in a one-to-one ratio with two-thirds paid to injured parties and one-third to the state general fund.

Eight measures addressed the limitation of liability for certain individuals. SB 76 extends good Samaritan laws to limit the liability of individuals, business and corporations, directors of nonprofit organizations and government entities when they volunteer their time without pay or enforce a policy or regulation to protect another person. SB 86 limits the liability of vendors to $150,000 if liquor has been served to an intoxicated patron or a minor. HB 1185, 1186, and 1187 limit liability of employers, directors and officers in regards to reservoirs. SB 1192 limits liability of manufacturers of firearms when products are operated properly. HB 1196 clarifies immunity of public entitites and their employees. HB 1025 limits a homeowner's liability when property is entered illegally.

Insurance reforms included measures to lengthen notice provisions for midterm cancellations of commerical and medical malpractice policies from 45 or 60 days to 90 days, to require a 90 day notice of a unilateral premium increase or coverage reduction and an explanation for that action, and to allow cancellations and coverage deductions with just cause. The Insurance Commissioner is now authorized to promulgate rules requiring insurers to file supplemental reports. Permissive public hearings are allowed to review rates and investigate availability and affordability problems.

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This session, four major pieces of tort reform legislation are currently under review in the Senate and House Committees. HB 142, held in the Senate Business Affairs Committee, allows shareholders and members of nonprofit and profit corporations to limit the liability of directors and officers regarding their fiduciary "duty of care." SB 80, before the House Health and Environment Committee, provides immunity from liability for volunteers, associations, organizations or nonprofit corporations providing services for youth or sporting programs. HB 1184, before the House Judiciary Committee, revises joint and several liability so that joint liability is imposed on parties who conciously and deliberately commit a tortious act and permits jury instruction on determining percentage of negligence or fault. SB 22 requires arbitration for any civil action that involves monetary damages of less than $50,000 and imposes penalties for frivolous lawsuits.

Contact: Sondra Donnell
Consulting Engineers Council
of Colorado
940 Wadsworth Blvd., #305
Denver, CO 80215
303/237-6878/237-6980

CONNECTICUT

(Target Adjournment: June 3, 1987)

HB 6134, enacted in 1986, requires each defendant to pay damages proportionate to his share of fault and requires each defendant to pay his pro rata share of the damages attributable to an insolvent defendant. It also reduces awards by amounts received through collateral sources and limits attorney's contingency fees, provides penalties for frivolous suits and imposes periodic payments on future economic and noneconomic damages exceeding $200,000.

Public Act 86-338, also enacted in 1986, affects the insurance industry by increasing from 30 to 60 days notice of nonrenewal of commercial and personal liability insurance policies and for rate or coverage changes for insured risks paying an annual premium of $50,000 or less. It establishes eight grounds for cancellation of policies including nonpayment of premiums, substantial loss of reinsurance, and material misrepresentation. Cancellations are prohibited unless one or more of these grounds are substantiated. An interim legislative study committee was mandated to analyze underwriting standards, classification systems and premium development techniques.

The Senate Judiciary Committee this year approved SB 1015 which would restore joint and several liability. In addition, several tort reform bills are pending before the legislature. HB 5367 provides immunity from liability for municipal officers and employees. This bill, if passed, would reverse the decision in Norwich v. Silverburg, 200 Conn. 367, which held that a municipality is not required to indemnify officers and employees when they are sued for negligence. HB 6685 restores prior law concerning periodic payments, lump sum payments, structured settlements, joint and several liability and collateral sources. HB 6696 imposes a $250,000 cap on damages awarded against nonprofit organizations. HB 6726 revises current statute Chapter 568 so that if an employee wishes to file a product liability claim against a third party to recover damages, an employer would be required to provide all relevant and required information requested by the employee. HB 6390 provides immunity from liability for certain municipal employees.

Contact: Kyle Lynne Ballou
Coalition on Tort Reform
c/o Connecticut Business and Industry Association
370 Asylum Street
Hartford, CT 06103-2022
203/547-1661

BOR 007481

DELAWARE

(Target Adjournment: June 30, 1987)

SB 65, currently before the Senate Insurance Committee, establishes sealed container defenses for product liability. Under the bill, product sellers have a valid defense if the product was acquired and then sold by the seller in a sealed container and in an unaltered form, if the seller had no knowledge of the defect, if the seller could not have discovered the defect while exercising reasonable care, if the seller did not manufacture, produce design or designate the specifications for the product and if the seller did not alter, modify, assemble or mishandle the product.

In 1986, Governor Michael Castle signed two bills to limit liability of volunteers as well as directors and officers of corporations. SB 533 limits personal liability of directors of corporations in cases where directors are accused by shareholders of violating their "duty of care." HB 601 limits liability for volunteers for actions resulting in connection with nonprofit organizational activity with the exception of vehicular accidents. The Governor also signed HB 411 which indemnifies little league coaches, staff and umpires.

The Delaware Insurance Commissioner issued new regulations for all insurance companies that write either property or casualty claims. The new regulations require insurance companies to report annual losses, paid claims, reserves commissions and advertising expenses to the State Insurance Commissioner. The regulations, mandated by HB 444 enacted in 1986, alters cancellation and nonrenewal notice requirements for commercial, municipal and professional liability policies by requiring 60 days notice of cancellation and prohibits cancellation or nonrenewals unless one or more of ten approved reasons exists.

Contact: Ruth Mankin
Delaware Chamber of Commerce
One Commerce Center, Suite 200
Wilmington, DE 19801
302/655-7221

FLORIDA

(Target Adjournment: June 5, 1987)

SB 465, enacted in 1986 and called the "Tort Reform and Insurance Act of 1986," caps non-economic damages at $450,000; limits punitive damage awards; replaces joint and several liability with proportional share awards; allows periodic payments; and reduces awards received by the amount received from collateral sources. The law also mandates a forty percent rollback in commercial insurance premiums.

Any action on tort reform this session will be contingent on the Florida Supreme Court upholding the constitutionality of last year's reforms. Plaintiff insurers and three industry trade groups are challenging certain provisions of the bill's tort and insurance reform measures such as limitations on noneconomic damages and insurance rate freezes. The Court is expected to announce its decision any day.

The interim tort reform study commission is expected to release a preliminary report this month and their final recommendations in March 1988. Legislators may decide to wait for that final report before passing any further reforms. However, three bills are now being prepared for introduction this session. The measures will propose lowering the general damages cap from $450,000 to $250,000 and removing the 1990 sunset provisions from last year's tort reform law. The Project for Civil Reform has helped draft a bill to ease liability for directors and officers of profit and nonprofit ogranizations by changing the burden of proof requirements to "clear and convincing" evidence and by applying liability in cases of willful and wanton conduct.

Contact: S. James Brainerd
Project Civil Reform, Inc.
3159 Shamrock South
P.O. Box 12129
Tallahassee, FL 32317-0129
904/893-8289

BOR 007482

GEORGIA

(Adjourned March 12, 1987)

The legislature moved quickly this year and passed a major tort reform package consisting of HB 1 and SB 2, which is now awaiting the Governor's signature. The legislation calls for revision of the collateral source rule, judicial modification of awards, and a $250,000 cap on punitive damages except in those cases involving products. In all punitive award cases including product liability cases, 75 percent of the award would go to the state treasury and 25 percent to the plaintiff. The bill requires stringent burden of proof for punitive damages and modifies joint and several liability by allowing apportionment of damages among defendants where plaintiffs are in some way responsible for damages and injuries claimed. The bill exempts directors and officers of nonprofit organizations from liability. SB 2 pertains to medical malpractice and would require the filing of an affidavit from an expert witness in professional malpractice cases and the modification of the statute of limitations for minors in medical malpractice cases.

In addition, two director and officer liability bills SB 113 and HB 209 and two product liability bills HB 29 and SB 140 have made it to the Governor and are expected to be signed. HB 29 provides that product liability actions against manufacturers for negligence must be taken within 10 years of the sale of the product with exceptions for products which cause disease and birth defects and for negligence arising out of willful, reckless or wanton conduct.

In 1986, the legislature defeated two wide-ranging tort reform bills developed by the Coalition and, instead, established a joint study committee on liability cost containment. The legislature enacted bills authorizing local governments and school boards to join together to secure liability insurance, requiring insurance companies to provide more information on reserves,placing tighter restrictions on cancellation and renewal of policies by insurance companies; compelling plaintiffs found to have filed frivolous suits to pay defendants' fees and costs, clarifying the sovereign immunity of municipal corporations, establishing immunity for governmental employees and officials and establishing assigned risk pools for certain property/casualty insurance risks.

The Georgia Liability Crisis Coalition, which has been instrumental in the passage of these bills is a sixty-member business and professional group that was formed to push for major tort reform during the 1986 legislative session. This umbrella group represents 60,000 individual members, including doctors, dentists, nurses, midwives, and the Business Council of Georgia.

Contact:

Andy Downs
The Business Council of Georgia
1280 S. Omni International
Atlanta, GA 30335
404/223-2264

HAWAII

(Target Adjournment: Not Set)

In a special session, the Hawaii legislature on July 29, 1986 approved a major tort/insurance reform bill. The new law sets a cap of $375,000 on "pain and suffering" awards; abolishes the concept of joint and several liability; permits periodic payment of awards; discourages collateral source awards; directs courts to limit both plaintiffs' and defendants' attorney fees to "a reasonable amount"; and mandates arbitration on tort actions involving claims up to $150,000. The legislation also calls for rollbacks in liability insurance premiums.

The legislature is not likely to consider any major reform bills this session since last year's reforms were significant. There is an effort underway to repeal rollback of medical insurance rates.

Contact:

Ed Shimizu
The Chamber of Commerce of Hawaii
735 Bishop Street, Suite 220
Honolulu, HI 96813
808/531-4111

BOR 007483

IDAHO

(Adjourned March 31 1987)

On March 26, 1987, the legislature passed SB 1223 and sent it to the Governor, where it is expected to be signed. The bill incorporates provisions of HB 136 proposed by the Idaho Reform Coalition. SB 1223 allows for periodic payments for damage awards greater than $100,000; calls for pretrial bifurcation of punitive damages; provides immunity for directors and officers of charitable nonprofit organizations; sets prejudgement interest at 11 percent and places a cap of $400,000 on noneconomic damages. It also eliminates joint and several liability with three exceptions: when individuals are acting in concert; if the injury or tort is a result of toxic or hazardous substance or waste, but only if the use of the waste or hazardous substance was used in violation of a state or federal law; and in product liability cases concerning the manufacture of pharmaceutical or medical devices.

In 1986, legislation limiting dram shop and social host liability (SB 1439) and placing limits on attorney contingency fees (HB 1469) was enacted.

Contact: Ken McLure
Idaho Liability Reform Coalition
277 North 6th Street
Boise, ID 83701
208/342-6571

ILLINOIS

(Target Adjournment: June 30, 1987)

The Illinois Manufacturers Association is expected to support a package of bills similar to the 1986 package addressing the affordability of insurance. Other bills would modify joint and several liability and would send punitive damages in cases with proven malice to the state treasury and rehabilitation department.

In 1986, the legislature enacted Illinois SB 1200 which modifies joint and several liability. A defendant who is less than twenty-five percent at fault shall not be jointly and severally liable for damages other than past and future medical and medically related expenses. (not applicable to medical malpractice actions). The law also modifies the collateral source rule and allows collateral source payments to be introduced for determining deductions in damage awards for medical expenses, with a $25,000 deduction. Under a comparative negligence provision, a plaintiff who is more than 50 percent responsible for his injury would not be permitted to collect damages in cases of negligence or product liability.

Several key provisions of a 1985 medical malpractice reform law were held unconstitutional by the Cook County Circuit Court.

Contact: William E. Dart
Illinois Coalition on the Insurance Crisis
Illinois Manufacturers Association
175 W. Jackson Boulevard
Chicago, IL 60604
312/922-6565

INDIANA

(Target Adjourment: April 30, 1987)

In 1986 four were enacted: SB 393 mandates that attorney fees be paid by the plaintiff if the case is determined to be frivolous; SB 394 permits the introduction of collateral source evidence in personal injury cases and requires that juries be told of the "tax consequences of awards"; SB 1276 limits the liability of volunteer firefighters; and HB 1255 creates a political subdivisions risk management commission covering civil liability. Dram shop liability has been abolished, except where a defendant furnishes alcohol to a visibly intoxicated person or where a plaintiff can show

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that the service was a proximate cause of injury, and directors of non-profit corporations have been given immunity for acts and omissions not covered by liability insurance coverage.

This session, the Senate passed SB 401, an evidence bill which proposes a state of the art defense and SB 490, which requires clear and convincing evidence for punitive damages and protects defendants from multiple punitive damage awards.

The House killed several tort reform bills including HB 1332 which prohibits punitive damages, except in cases of proven fraud, malice or oppression and HB 1339 which has courts address product liability cases under the concept of comparative fault rather than strict liability. HB 1340 would have established standards for product liability by making defendants liable for failing to exercise reasonable care and requires courts to set standards of qualification for "expert" witnesses.

Contact: Debbie Whitstein/Ernie Williams
Indiana Forum for Civil Justice
Indiana Chamber of Commerce
1 North Capitol Street
Indianapolis, IN 46204
317/634-6407

IOWA

(Target Adjournment: May 29, 1987)

Last year the legislature passed SB 2265 which gives retailers immunity from strict liability, allows for a state-of-the-art defense, imposes a penalty for frivolous suits, modifies punitive damage awards, allows for periodic payments, authorizes the use of peer review committee and structured settlements for medical malpractice claims and creates the Iowa Legal and Liability Insurance Study Commission.

After a six month study period, the Study Commission has submitted its report to the legislature recommending a $200,000 cap on pain and suffering awards, allowance for informing juries of prior collateral source payments, a 10-year statute of repose on products and professional services, structured settlements, limitations on liability of directors and officers for nonprofit groups, changes in current law for frivolous lawsuits and revision of the Iowa Medical Examiners' information requirements for medical malpractice allegations, claims and settlements.

The Iowa Alliance for Liability Reform is preparing a package of bills on punitive damages, disclosure of contingency fees and possibly a separate product liability bill.

The Iowa Association of Business and Industry formed a major coalition, called the Project Civil Justice Reform Iowa Coalition, to substantially revise the law as it applies to product liability.

Contact: Don Hauser
Iowa Association of Business and Industry
717 Mulberry Street, Suite 706
Des Moines, IA 50309
515/244-6149

KANSAS

(Target Adjournment: April 22, 1987)

The legislature targeted medical malpractice reform as a top priority in 1986 and, as a result, passed bills setting caps of $1 million for damage awards and $250,000 for noneconomic judgements against health care providers. Juries must itemize noneconomic damage awards and all settlements are to be paid periodically. SB 512 prohibits cancellation of business and professional liability insurance policies except in agreed-upon terms.

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This year, Governor Mike Hayden signed SB 26 which expands liability protection for corporate directors and officers and allows shareholders of a corporation to include within its Articles of Incorporation a provision exempting from liability its directors, stockholders, policyholders or members. The exemption would not apply in cases of breach of duty or loyalty, approval of unlawful dividends or acts of omissions committed in bad faith.

The interim Special Committee on Tort Reform and Liability Insurance has proposed several tort reform bills. Among them, HB 2021, which is awaiting the Governor's signature, requires itemized verdicts for damages for personal injury except for medical malpractice and that the verdicts distinguish between noneconomic and economic losses and present and future damages. The bill caps noneconomic damages in wrongful death actions at $100,000. HB 2022, also on the Governor's desk, provides for arbitration of tort claims.

SB 27, supported by the Kansas Bar Association, the Kansas Coalition for Tort Reform and the Kansas Association of School Boards, grants immunity from negligent acts committed by directors and officers of charitable organizations. The organizations would remain liable both for negligence attributed to the organizations and to the director or officer.

Legislation affecting punitive damages, collateral sources and noneconomic damages is held up in committee.

Contact: L.M. Cornish
Coalition for Tort Reform
Glenn, Cornish, Hanson & Karns
900 Merchants National Tower
Topeka, KS 66601
913/232-0545

KENTUCKY

(No regular session in 1987)

In 1986, SB 249, permitting bona fide trade associations to pool together to self-insure for general liability coverage, passed both houses and was signed by the Governor. HR 139 also passed, setting up a tort reform task force, appointed by the leadership of the General Asssembly, to study the issue. The General Assembly does not reconvene until January 1988.

The Kentucky Insurance and Liability Task Force continues to meet and gather information concerning the affordability and availability of liability insurance. Members of the Kentucky Trial Lawyers Association, the Kentucky Tort Reform Association, and the Kentucky Insurance Service Organization were present at the last meeting and discussed the joint underwriting process and self-insurance.

Contact: Tony Sholar
Kentucky Chamber of Commerce
P.O. Box 817
Frankfort, KY 40602
502/695-4700

LOUISIANA

(Session: April 20 - Late July)

When the legislature convenes on April 20, a number of tort reform bills are expected to be introduced covering strict liability, product liability, joint and several liability comparative negligence and prejudgement interest.

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In 1986, HB 2155, which limits liability of servers and sellers of liquor, was enacted. In addition, the House passed Resolution 22 which establishes a committee to study the affordability and availability of liability insurance and mandates the committee to prepare draft bills by April 1987.

Contact: Jim McCrary
Louisiana Liability Task Force
2426 One American Place
Baton Rouge, LA 70825
504/388-9061

MAINE

(Target Adjournment: June 17, 1987)

In 1986, the Maine Medical Association was successful in pushing a medical malpractice bill through the legislature. For dram shop cases, a law currently exists which limits the liability of sellers of liquor. LD 2080 granted immunity to alcohol servers unless minors which were served can prove that they were negligently served and capped awards against alcohol servers at $250,000 excluding medical care and treatment expenses. In addition, a commission was established to examine other tort reform issues in the interim and make a final report by January 1988.

This year the Maine Liability Crisis Alliance proposed tort reform legislation contained in LD 539. The bill recommends a $250,000 cap on noneconomic damages, modification of joint and several liability, abolition of the collateral source rule, amendments to prejudgement and postjudgement interest rates, immunity from liability for officers and directors of nonprofit organizations, revision of product liability defenses and prohibition of ad damnum. The House Judiciary Committee announced that it does not plan to act on the legislation until January 1988 when the interim commission presents its report.

Contact: Stephen Clarkin
Maine Chamber of Commerce and Industry
126 Sewell Street
Augusta, ME 04330
207/623-4568

MARYLAND

(Adjourned April 13, 1987)

Just minutes before an April 7 1986 midnight deadline, the Maryland General Assembly approved a $350,000 limit on "pain and suffering" awards in personal-injury cases. Also passed was a measure to make lawsuits against doctors more difficult to file by requiring that evidence be presented in advance of a suit and SB 600 which provides personal immunity for directors of charitable organizations. To ascertain the impact of their legislation, the lawmakers enacted a provision requiring insurance companies to report certain information to next year's assembly.

This year, Governor Schaefer's (D) adminstration introduced a package of legislation aimed at bringing down the cost of liability insurance. The House Judiciary Committee killed two of the most important bills: one eliminating the collateral source rule and the other insulating directors of corporations from having to pay damages when they are sued for negligence. The House passed amended versions of two other adminstration bills. One bill reduces the statute of limitations so that a minor cannot sue an obstetrician for injuries discovered after age 16. The second bill would limit to $250,000 the amount an individual suing a local government can recover in damages.

Other administration bills would eliminate joint and several liability (HB 105), discourage frivolous law suits (SB 20), and revise current product liability law (HB 1101). HB 1101 would prohibit awards for noneconomic damages in the absence of any physical injury, illness or death; establish a defense of "practical technological feasibility;" and release product sellers from liability for failure to warn a user about an "obvious" product danger and

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if the alleged cause of harm complied with standards, conditions or specification established by state or federal law. Damage awards would require clear and convincing evidence. It would widen the definition of product sellers to include all those involved in placing a product into the stream of commerce such as manufacturers, distributors and leasors; and would clarify the term "unavoidably dangerous."

House leaders have introduced a new collateral source bill which varies slightly from the original administration version killed in the House Judiciary Committee. The House Judiciary Committee, despite urgings of Governor Schaefer and the sponsor, House Speaker R. Clayton Mitchell (D), has refused to reverse its vote on the collateral source measure.

The Senate passed SB 528 which eliminates liability of manufacturers of firearms for injuries inflicted with those weapons.

Contact: Stephen Alexander
Maryland Chamber of Commerce
60 West Street, Suite 405
Annapolis, MD 21401
301/269-0642

MASSACHUSETTS

(Target Adjournment: January 5, 1988)

In 1986, Governor Michael Dukakis (D) signed HB 6172 which limits noneconomic damages to $500,000 in medical malpractice cases except where a jury finds substantial impairment or disfigurement. A sliding cap has been applied to attorney fees.

The Governor's Task Force on Liability Issues introduced a package of legislation aimed at tort and insurance reform. Tort reform provisions would modify joint and several liability, extend the theory of comparative fault to cases involving product liability, impose penalties for frivolous lawsuits and defenses, clarify liability of municipalities and employees of charitable organizations, create liability standards for recreational facilities and require itemized verdicts. Insurance industry reforms include adoption of a flex rating system, formation of a market assistance plan, modification of advance notice requirements concerning policy nonrenewals and mid-term cancellations and clarification of regulations pertaining to the Division of Insurance. Most of these provisions are included in HB 5142. Other bills currently being considered include two insurance industry reform bills sponsored by Representatives Cohen and Woodward and an aggressive tort reform bill sponsored by Representative Pierce.

Contact: Richard Averbush
Massachusetts Roundtable
250 Boylston Street
Boston, MA 02116
617/267-0881

MICHIGAN

(Target Adjournment: Not Set)

Michigan's comprehensive tort reform law, enacted July 8, 1986 capped noneconomic damages at $225,000 in medical malpractice cases, except in cases of injury to the reproductive system or loss of a "vital bodily function". Joint and several liability is limited in other cases except product liability.

This session, the legislature passed SB 18, which provides immunity from liability for directors and other agents of for-profit organizations. SB 19, which provides immunity for directors of nonprofit organizations, is tied up in the House Judiciary Committee due to the introduction of numerous amendments and substitutions.

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The Michigan Chamber plans to have a comprehensive tort reform bill introduced in the next few weeks. The bill addresses joint and several liability for product liability in regards to compliance with nongovernmental standards, state of the art defenses and safe harbors for products requiring governmental approval. The bill provides for absolute defense if the product was altered by anyone other than the manufacturer or if the user was under the influence of alcohol or drugs, sets a statute of repose at 15 years and provides for limited life of certain products. The bill addresses contributory negligence of plaintiffs, sets standards for expert testimony and sets contingency fee restrictions for these witnesses. The coalition expects action on the bill in late summer.

Contact: Rick Gratten
Michigan State Chamber of Commerce
Committee for Civil Justice Equity
200 N. Washington Square, Suite 400
Lansing, MI 48933
517/371-2100

MINNESOTA

(Target Adjournment: May 18, 1987)

Chapter 455 of the Laws of Minnesota 1986 modified the tort laws and created a state insurance company to make insurance available to those who cannot obtain insurance. Significant changes were made in the medical malpractice area and the municipal liability area through expansion of municipal immunities. A $400,000 cap was enacted on "intangible losses," exclusive of pain and suffering.

In 1986, the traditional collateral source rule was abolished. Admission into evidence of collateral source payments is permitted, but only the court may review such evidence. Offset is provided for, but collateral sources having rights of subrogation are excluded. Plaintiffs are no longer permitted to include pleas for punitive damages in their complaints and the plaintiff must make a prima facie showing of liability before an amendment of pleadings to allow a claim for punitive damages may be permitted. Courts are allowed to award costs in frivolous suits. Future damages are exempted from prejudgement interest.

In addition, changes in insurance regulations and provision modifications created a state risk management fund; required insurers to submit annual reports on liquor and product liability and medical malpractice; created a state-run joint underwriting association for day care providers, foster homes, group homes and sheltered workshops; authorized the Commissioner of Insurance to utilize a definition of "less than 5 insurers writing more than 75 percent of the coverage" as noncompetetive; and authorized the joint underwriting association to issue medical malpractice insurance to hospitals and nursing homes unable to get coverage.

This session, HF 34 unanimously passed the House and would allow corporations to limit or eliminate the personal liability of directors in the articles of incorporation except in violations of fiduciary duty of loyalty or where directors receive an improper benefit or knowingly violate a criminal law.

HF 141, which improves the 1986 law affecting the liability of directors and officers of nonprofit corporations and limits the liability of cooperatives, passed the House and is now in the Senate Judiciary Committee. SF 1381, which allows a judge to require parties to mediate civil disputes, was passed out of the Senate Judiciary Committee.

Contact: Shirley A. Brantingham
Minnesota Civil Justice Coalition
Minnesota Association of Commerce and Industry
480 Cedar Street, 300 Hanover Building
St. Paul, MN 55101
612/292-4670

BOR 007489

MISSISSIPPI

(Adjourned April 5, 1987)

In 1986, the legislature authorized the Commissioner of Insurance to establish a plan for the availability of certain general liability insurance policies. It also passed a bill granting immunity from liability to sellers and servers of alcohol; however, the bill was vetoed by the Governor on the grounds that it was unfair to grant such immunity to one particular group. Ironically, the state provided immunity for government employees and officials and modified the sovereign immunity status of the state government in 1985. A statute of limitations on suits filed against the state also was enacted in 1985.

The 1987 session produced no tort reforms. The House killed several bills that had been passed by the Senate. The legislation would have established penalties for frivolous suits, modified joint and several liability, revised the jury system and reduced the statute of limitations from 6 to 3 years. SB 2820, a product liability bill, would have established defenses for absolute liability including state of the art defenses, defenses in cases where a product is by its nature unavoidably dangerous, defenses based on misuse or alteration and definitions for an "open and obvious" danger. The bill would have prohibited enterprise liability by requiring proof that the product was produced by the defendant manufacturers.

Before the session began, thirty-five statewide associations, known as Mississippians for Tort Reform, formally petitioned the Judiciary Committee to allow tort reform legislation to be debated on the floors of the Senate and House during the session.

Contact: Dan Boley
Mississippi Manufacturers Association
720 N. President Street
Jackson, MS 39225
601/948-1222

MISSOURI

(Target Adjournment: June 15, 1987)

Governor John Ashcroft (R) signed SB 663, a medical malpractice bill which establishes a $350,000 cap on pain and suffering awards, modifies joint and several liability, and allows periodic payments for awards over $100,000. SB 742, also enacted, limits attorney contingency fees and establishes a product liability act.

This session, HB 700 passed the legislature. The bill modifies joint and several liability, allows for a credit of punitive damages previously paid by the defendant as a result of the same conduct, allows jury awards of damages to be reduced by the court, applies the doctrine of comparative fault to product liability cases and establishes a state of the art defense in product liability law. The bill also addresses prejudgement interst, abolition of the ad damnum clause, the collateral source rule, environmental liability, additur and remittur clauses and newspaper liability. Insurance reforms under this bill address flex rating, cancellation and nonrenewal requirements, modification of reporting requirements and surplus line regulations.

Other bills introduced this session include: SB 76 which limits liability of state services for recreational facilities; HB 55 which grants immunity to directors, trustees or members of nonprofit organizations from suits arising from the operation of the organization; and HB 99 which provides immunity to all directors, trustees or members of governing bodies of profit and nonprofit corporations.

Contact: Chris Wrigley
Association Industry of Missouri
Missouri Business Coalition for Litigation Reform
P.O. Box 1709
Jefferson City, MO 65102
314/634-2246

BOR 007490

MONTANA

(Target Adjournment: April 22, 1987)

In March 1986, Governor Ted Schwinden (D) signed into law two insurance acts, SB 2 and HB 16. SB 2 authorizes bond issues for local government self-insurance funds. HB 16 authorizes the Insurance Commissioner to establish a market assistance plan, and if necessary, a joint underwriting association for liability insurance coverage. SB 22, which sets a limit on tort liability for damages to $750,000 for each claim and 1.5 million for each occurrence.

On November 4, 1986, Montana voters supported Constitutional Initiative CI-30, a tort reform initiative amending the state constitution and thus authorizing the legislature to determine the rights and remedies for injuries and damages. The initiative came in response to the Montana court's decision to strike down tort reform legislation on grounds of unconstitutionality.

This session the Governor signed HB 240 which regulates and defines insurance bad faith actions. Bills awating the Governor's signature include: SB 380 which provides for product liability defenses authorizing assumption of risk and misuse of product defenses; HB 167 which limits recovery of damages for emotional distress; HB 344 which modifies the statute of limitations applicable to minors in medical malpractice suits; SB 49 which immunizes directors and officers of nonprofit organizations from liability unless action is willful or wanton; SB 51 addresses comparative fault and uses a 50 percent level to determine joint and several liability; and SB 375 regulates actions for wrongful death and survivorship.

Several other bills are now in conference committee. HB 567 abolishes the collateral source rule. HB 241 provides standards in wrongful discharge actions, limits availability of suits and damages. HB 442 revises punitive damage laws by eliminating implied malice and constructive fraud as basis for awards and calls for the judge to approve awards granted by the jury.

Contact: Jim Whitehead
Montana Chamber of Commerce
P.O. Box 1730
Helena, MT 59624
406/442-2409

NEBRASKA

(Target Adjournment: June 1, 1987)

Governor Kay Orr (R) has signed LB 137 which allows for the indemnification of corporate directors, officers and employees. LB 258 which establishes procedures for lawsuits against employees of political subdivisions has been advanced for final engrossment.

The Judiciary Committee is currently considering LB 261 which would award court costs and attorney fees against any attorney who brought or defended a frivolous lawsuit; allocate awards to be assessed against offending attorneys and other parties; allow the court to decide whether an attorney or other party had unnecessarily expanded proceedings through improper conduct; including abuses of civil discovery procedures; determine a list of 11 elements to be considering in determining awards; and provide a closing provision concerning fee negotiation.

The Judiciary Committee killed LB 425 which would have limited economic damages to $250,000, imposed fines for frivolous lawsuits, eliminated the collateral source rule, abolished joint and several liability, limited corporate director liability, and proposed an absolute ten year statute of limitations in all negligence actions, including medical malpractice.

In 1986, then Governor Kerry (D) signed LB 1184. LB 1184 relates to the cancellation of insurance policies and requires that every policy which insures against loss or damage to property or against liability from any cause, must contain a cancellation provision. It also requires the insurer to give the insured 60 days written notice prior to cancellation or nonrenewal of a policy, except that the insurer may give 10 days written notice in the event of

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nonpayment of premium. It provides that no policy of fire, marine, or liability insurance which has been in effect for 60 days shall be cancelled by the insurer. Exceptions apply in cases of fraud, misrepresentation, and nonpayment of premiums; or at the determination of the Director of Insurance.

Contact: Dave Parker
Project Justice
1201 Lincoln Mall #102
Lincoln, NE 68508
402/475-5100

NEVADA

(Target Adjournment: Not set)

The Nevada legislature's Joint Judiciary Committee held hearings March 2-4, 1987 to examine proposed changes in Nevada tort law. The Committee considered four bills which would abolish joint and several liability; allow periodic payment of judgements; limit compensation for noneconomic damages for pain and suffering to $250,000 or the amount awarded in economic damages, whichever is greater; and provide for the admissibility into evidence of collateral sources of payment to ensure that juries are fully informed of a claimant's true compensation.

Contact: Fred Davis
Coalition for Availability and Affordable Insurance
Greater Reno-Sparks Chamber of Commerce
Box 3499
Reno, NV 89505
702/786-3030

NEW HAMPSHIRE

(Target Adournment: June 30, 1987)

New Hampshire HB- 513-FN enacted in 1986, requires defendants to pay damages according to proportional share of fault; outlaws punitive damages; provides penalties for frivolous suits; caps non-economic damages at $875,000; reduces statute of limitations for personal actions from six years to three years and sets standards and requirements for attorney contingency fee agreements. The bill also applies liability caps of $500,000 per occurrence and $150,000 per person to municipalities, limits the liability of directors and officers of charitable organizations, defines good business practice for purposes of defense in liquor liability lawsuits so that intoxicated drivers will need to show gross negligence in suits against sellers and servers; and sets out the burden of proof in medical malpractice actions.

This session, the tort reform coalition proposed three major bills. SB 135 determines awards for noneconomic damages according to formula based on the person's annual average wages and life expectancy. SB 88 sets up periodic payments. Both these bills have been placed in an interim study commission. SB 136, which passed the Senate, abolishes joint and several liability and allows for apportionment of damages. The bill is now in the House Judiciary Committee. The coalition is determined to get a House vote on the measure and is generating support from legislators through educational programs.

A number of bills reducing liability were introduced in the House. HB 237 provides immunity from liability to volunteers of nonprofit organizations. HB 514 extends immunity to directors and officers of charitable organizations for damages arising out of personal actions. HB 301 immunizes from liability volunteer coaches and officials of nonprofit associations which conduct athletic programs recognized by the Amateur Athletic Union or the National Collegiate Athletic Association. The bills were sent to an interim study commission or were killed by the House Judiciary Committee which is opposed to tort reform. Some of these bills will be reintroduced next year.

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BOR 007492

HB 405, which creates a presumption of negligence in the event of nuclear accident caused by the operation, design, construction, or maintenance of a nuclear power plant, passed the House and is now in the Senate. In HCR 3, the New Hampshire General Court urges Congress to amend the Price-Anderson Act to provide full and timely compensation for all parties injured by any nuclear action and thus make the federal government strictly liable for all damage and injury caused as a result of any activity relating to nuclear power.

Contact:

Yvonne Nanasi
New Hampshire Business
and Industry Association
23 School Street
Concord, NH 03301
603/224-5388

NEW JERSEY

(Target Adjournment: January 12, 1988)

SB 1678 was enacted in 1986 and grants immunity to volunteer unpaid athletic coaches if these individuals have participated in league-established safety training programs.

The New Jersey Assembly passed a number of tort reform bills that the Assembly Republicans introduced as a package last May. The bills -- AB 2400, AB 2401, AB 2402, AB 2403 and AB 2404 allow for structured settlements for awards exceeding $300,000; a $500 million per claimant or $1 million per occurrence cap on judgements entered against a public entity; immunity for volunteers and public officials; arbitration for all liability claims of $20,000 or less; rate fillings based on New Jersey loss experience; and a graduated cap on "pain and suffering" awards in the private sector. These bills are now before the Senate.

SB 2805, Product Liability Law Reform, finally passed out of the Senate Judiciary Committee after being held in committee for hearings for the past five months. The bill goes to the Senate floor April 23. The bill would restore state of the art defense for manufacturers and allow the court rather than the jury, to determine punitive damages. Punitive damages would be awarded only in cases of willful wrongdoing and would take into consideration the effect of punitive damages on the ability of the company to continue operations. It would protect against frivolous or unreasonable product liability suits and would place limits on damage awards.

Other introductions include Assembly bills 2357-2365 which would apply various tort and regulatory reforms in the area of municipal liability. Besides establishing an excess insurance fund, the bills would modify joint and several liability and provide for structured settlements.

The Senate has put forth two packages. Majority Democrats have developed a major package, SB 2312-2323, of insurance reform bills and selected civil justice reform measures. SJR 40 also calls on the federal government to take over regulation of the insurance industry. Minority Republicans have a six-bill package of insurance and civil justice modifications and reforms. Hearings on liability insurance may occur during the summer.

Governor Thomas Kean promised to submit to the legislature a proposal to completely overhaul New Jersey's product liability laws. The proposal will probably require insurance companies to force policyholders to comply with certain safety standards; give the Insurance Department jurisdiction over self-insurers, risk exchanges, and surplus line companies and revise existing financial requirement laws for insurance companies.

Contact:

Donald L. McCambridge
New Jersey State Chamber of Commerce
Five Commerce Center
Newark, NJ 07102
201/623-7070

Bob Stewart
SPI's Legislative Agent
188 West Main Street
Penns Grove, NJ 08069
609/299-2171

BOR 007493

NEW MEXICO

(Adjourned March 21, 1987)

In 1986 the legislature amended an existing statute by capping the tort liability of alcohol servers at $50,000 for one person's injuries, $100,000 for two persons, and $20,000 for property damage. The state's risk management program also was expanded to include property/casualty liability coverage to local governments. A legislative committee will be established to study the liability insurance issue. An attempt to limit attorney fees was defeated.

This session , the legislature passed four bills. SB 26 limits the liability of corporate directors and officers. SB 5 exempts certain directors of nonprofit corporations from liability. SB 412 makes provisions concerning self-insurance. SB 164 eliminates joint liability and provides for several liability in certain circumstances.

Contact: Mark Douglass, President
Association of Commerce and Industry
4001 Indian School, NE, Suite 333
Albuquerque, NM 87110
505/265-5847

NEW YORK

(Target Adjournment: July 1, 1987)

A tort reform measure which limits joint and several liability for certain personal injury actions was signed July 30, 1986 by New York Governor Mario Cuomo (D).

The law (L. 1986, c. 682) provides for apportioned damages for non-economic losses in certain cases where the defendant is less than fifty-one percent liable. It also provides for structured payments of damage awards exceeding $250,000 and creates a new standard by which an appeals court can find that an award is excessive.

A separate part of the new law changes the state's statute of limitation in toxic tort cases, allowing plaintiffs to file suit within three years of discovering an illness. Previously, a plaintiff had to file within three years of exposure to a toxic substance. The toxic tort provisions also revive certain time-barred claims for one year.

While the law imposes restrictions on joint and several liability, it also establishes several exceptions to the new rule, such as for cases where defendants acted with reckless disregard for the safety of others or where they willfully or intentionally acted in concert with others.

Under the new law, the Appellate Division of the State Supreme Court can find that an award is excessive or inadequate if it "deviates materially from what would be reasonable compensation." Previously, the award must have "shocked the conscience" for such a determination to be made.

The structured payment provision of the law allows an award to be paid in even installments over a period of up to ten years. It applies to the portion of awards over $250,000 in personal injury, property damage, and wrongful death actions.

The New York Business Council is presently drafting a bill on directors and officers liability insurance. The Council expects reform efforts to be targeted at the environmental area, assumption and risk, and directors and officers insurance, rather than broad or general bills. The legislature will probably concentrate efforts on specific industries. The legislature seems content with the package enacted last year and is interested in examining its effect before enacting more legislation.

Contact: Elliot Shaw
The Business Council of New York State
152 Washington Avenue
Albany, NY 12210
518/465-7511

BOR 007494

NORTH CAROLINA

(Target Adjournment: Not set)

In 1986, the legislature authorized the state insurance commissioner to establish a joint underwriting association and extend the state's FAIR plan to all areas of the state. Tort reform was not a major issue during the 1986 "short" session.

North Carolina could take a step backwards on reform if two proposed bills become law. SB 65 and SB 66 would replace the existing contributory negligence system with a comparative fault system. SB 66 is in the Senate Judiciary Committee. HB 65 was passed by the Senate and has been referred to the House Judiciary Committee.

Contact: Richard S. Brantley
North Carolina Independent Insurance Agents
P.O. Box 10097
Raleigh, NC 27605
919/828-4371

NORTH DAKOTA

(Target Adjournment: May 1, 1987)

Although the legislature did not meet in 1986, the interim Senate Judiciary Committee drafted legislation for the 1987 session addressing tort reform and liability insurance issues. SB 2056 modifies joint and several liability so that uncollectable judgements would be reapportioned according to the party's percentage of negligence. SB 2055 reduces the statute of limitations from six to three years. SB 2057 provides immunity to ambulance services acting in good faith. SB 2058 allows juries to award exemplary damages for breach of obligation. HB 1047 creates joint underwriting associations. HB 1048 empowers the Commissioner of Insurance to adopt rules governing individual or pooled self-insurance plans.

Governor George Sinner (D) has signed HB 1332 which caps the amount recoverable from government entities at $50,000 and grants immunity from liability to employees of political subdivisions unless there is clear and convincing evidence that the employee was acting outside the scope of his duties or in a reckless, willful, wanton or grossly negligent manner.

The legislature passed HB 1571 which contains a comprehensive reform of the state's tort laws. The bill establishes a pure comparative fault rule for product liability cases, where fault involved either negligence, strict product liability or breach of warranty; modifies the comparative fault rule to ensure that contributory fault will not bar recovery unless the fault is great or greater than the fault of the other parties involved; requires separate findings for damages in the form of past economic damages, future economic damages, and noneconomic damages; apllies a collateral source rule, includes additur and remittur clauses, provides for periodic payment for custodial care in excess of two years with payments ceasing upon the death of the recipient; requires that requests for exemplary damages be entered prior to the commencement of court action and allows post-trial review of judgements.

Contact: Dale Anderson, President
Greater North Dakota Association of Commerce and Industry
808 Third Avenue south
Fargo, ND 58108
701/237-9461

OHIO

(Target Adjournment: December 31, 1988)

Governor Richard Celeste vetoed SB 330, the state's insurance/tort reform and product liability bill on December 19, 1986. The Senate attempted to override his veto, but failed by one vote. The Senate and House, determined to enact some significant legislation, introduced the same bill in the 1987 session as HB 1 and SB 11. These bills change insurance regulatory laws to make liability insurance more available and modify laws dealing with joint and several liability, product liability and punitive damages.

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HB 1 passed the House on February 11, 1987 stripped of its product liability provisions and is now in the Senate Select Committee on Tort Reform. The Committee is also considering SB 102 which establishes a wide range of product liability defenses and a statute of repose.

HB 235, which establishes criteria for bringing product liability actions against manufacturers, passed the House on April 1 and has been sent to the Senate where it is expected to be joined with HB 1. The Speaker of the House, in a rare move, asked legislators to support this bill which had undergone many drafts and hearings. The bill defines a product liability claim as one that arises from: the design, formulation, production, construction, creation, assembly, rebuilding, listing or marketing of a product; any warning or instruction, or lack of warning or instruction associated with a product; or any failure of the product to conform to any relevant representation or warranty. The bill states that a manufacturer is liable for compensatory damages in product liability claims only if the there is a preponderance of evidence that the product was defective, did not provide adequate warning or instruction, or did not conform to a representation made by its manufacturer and if the defective aspect of the product was a proximate cause of harm. In the event that the plaintiff is unable to establish direct evidence that the product was defective, circumstantial or other evidence will be sufficient. The bill calls for judges to determine the amount of punitive damages and distinguishes between the defenses of assumption of risk and contributory negligence.

Contact:

William T. Blair
Ohio Chamber of Commerce
35 E. Gay Street, 2nd Floor
Columbus, OH 43215-3181
614/228-4201

OKLAHOMA

(Target Adjournment: June 10, 1987)

The Senate Rules Committee killed the comprehensive tort reform bill supported by the Governor and Oklahomans Against Lawsuit Abuse. SB 134, defeated by an 11-11 committee vote covered joint and several liability, product liability, collateral sources and capped noneconomic damages at $250,000. In the case of punitive damages, the bill designated that one-third of an award would go to the plaintiff, and two-thirds would be split between the state and the country governments.

Tort reform bill SB 183 passed the Senate and is now in the House Judiciary Committee. It is expected to be amended to include some provisions taken from SB 134 concerning joint and several liability and periodic payments. The bill addresses medical malpractice, sets the statute of limitations on cases for minors, strengthens professional peer review procedures and includes an ad damnum clause.

Product liability bill HB 1227 passed the House and is now in the Senate Judiciary Committee. The bill establishes defenses to absolute liability, including defenses based on misuse or alteration of a product, application of the state of the art defense, compliance with governmental standards, open and obvious dangers and unavoidably dangerous products. The legislation prohibits enterprise liability by requiring profit that the particular product that caused the harm was produced by the defendant manufacturer.

S. 488, signed by the Governor in June, 1986, limits punitive damages to the amount of economic damages and allows judges to direct juries to itemize verdicts.

Contact:

David Bickham
Oklahoma's Against Lawsuit Abuse
P.O. Box 14543
Oklahoma City, OK 73105
405/843-8221

BOR 007496

OREGON

(Target Adjournment: July 13, 1987)

Three bills proposing tort, insurance and court procedure reform emerged from recommendations of the itermin Joint Task Force on Liability Insurance. Each bill, SB 323, SB 324, SB 325 had to be passed in order for the others to be enacted. The insurance reform bill SB 324 passed. SB 323 and SB 325 were killed by the Senate Judiciary Committee. SB 323 included provisions to limit liability for directors and officers of profit and nonprofit organizations; to cap noneconomic damages at $500,000, and to eliminate joint and several liability for noneconomic damages. One provision goes backward by changing comparative negligence to pure negligence thus allowing plaintiffs who are more than 50 percent at fault to sue. SB 325 addressed court procedures and frivolous law suits, had been sent back to the Judiciary Committee after a tie vote on the Senate floor.

The Citizen's Coalition package of recommendations had been adopted in one minority report attached to SB 323. A similar report from the Governor's Task Force report was put aside upon election of a new governor. A package developed by the Oregon Trial Lawyers Association concentrated on increasing the authority and clout of the State Insuraqnce Commissioner's Office. With all tort reform bills dead, a special committee will be formed to give the issue further study.

Contact: Joan Sells, Executive Director
Civil Initiative for Equity in the Legal System
4000 Kruse Way Place
Building 2, Suite 225
Lake Oswego, OR 97034
503/636-0865

PENNSYLVANIA

(Target Adjournment: November 30, 1988)

In 1986, HB 1391, which provides for 30 day notice of cancellation and 60 day notice of premium increase, was enacted. HB 1625, also passed, provides immunity for referees.

No significant tort reform bills have been introduced so far this session. The tort reform coalition, Truth and Fairness in Litigation, is waiting for a meeting with the new governor on this issue before proposing any tort reform measures. The coalition will meet next week to determine future plans.

The House Insurance Committee concluded a report this January concerning tort/insurance reform. The Committee will recommend the following provisions to the House Judiciary Committee: clarification of laws addressing punitive damages; creation of structured settlements for cases involving catastrophically injured persons; a requirement that municipalities defend and indemnify their public officials and employees from liability arising under Federal law and adoption of a state court rule patterned after Federal Rule 11 of the Federal Rules of Civil Procedure.

Proposed insurance reforms would require more detailed disclosure, create a Statuatory Market Assistance Plan, allow self-insurance pools for local government and create a standby joint underwriting association if the assistance plan fails.

Senate bills introduced include: SB 175, which grants civil immunity to employees of local agencies and removes the self-insurance and risk management provisions of the Pennsylvania Code applying to these agencies; SB 192, which amends the state insurance code to require that objective data be used in determining premium rates for individual policyholders and for rates charged within the state generally; SB 193 requires data collection for every insurer licensed to write commercial property or casualty insurance within the state; SB 195, which creates a property and casualty insurance joint underwriting association to provide liability coverage for political subdivisions, day care centers, officers and directors of nonprofit organizations and other groups; and SB 378, which reinstates the doctrine of sovereign immunity except in certain cases.

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HB 214, introduced this session, requires medical malpractice insurers to report within 30 days settlements, awards or judgements where the insurer is liable for more than $100,000.

Contact: Fred Fox
Pennsylvania State Chamber of Commerce
Truth and Fairness in Litigation
222 N. Third Street
Harrisburg, PA 17101
717/255-3252

RHODE ISLAND

(Target Adjournment: May 25, 1987)

Tort reform was designated as a top priority in 1986 by the Rhode Island Chamber of Commerce Federation. To promote its legislative agenda, the Chamber created a Special Commission to study all aspects of tort reform, with particular emphasis on malpractice insurance, product liability, dram shop liability, and caps and limitations on attorney fees and awards.

SB 22891, enacted in 1986, relates to medical malpractice and establishes reporting requirements for every insurer providing professional liability insurance to licensed physicians and dentists on settlements or arbitration award of claims or any action for damages for death or personal injury. It also established a joint underwriting association for the provision of medical malpractice coverage.

This session, Governor Edward DiPrete has introduced legislation based on the recommendations of his Blue Ribbon Commission on Liability Insurance. The proposals include modification of joint and several liability and collateral source benefits, structured settlements for awards exceeding $150,000, itemization of verdicts, penalties for frivolous lawsuits and defenses, payment of punitive damage awards to the state, revision of prejudgement interest payments and a $250,000 cap on noneconomic awards.

The House Judiciary Committee is currently considering product liability bill HB 6014. The bill states that no manufacturer or seller of a product would be liable for product damages caused by a product designed in a defective manner or a failure to provide adequate warning if the unsafe aspect of the product is an inherent characteristic recognizable by an ordinary person; establishes a defense to product liability action if the product complied with federal or state standards; and requires claimants to prove the existence of a technological feasible alternative design which would have prevented the harm without substantially impairing the usefulness or desirability of the product to the users. In addition, no product seller, who is not a manufacturer of a product, could be held liable for damage unless the seller failed to exercise reasonable care with respect to the product, the product fails to conform to an expressed warranty made by the seller or the product is unreasonably dangerous and the manufacturer is not subject to process or able to pay a judgement.

The Senate passed SB 507 which relates to governmental tort liability. The Senate Judiciary Committee has recommended the passage of SB 531, SB 924 and SB 925. SB 531 limits the immunity of directors and officers of nonprofit organizations. SB 924 limits joint and several liability. HB 925 caps awards for non-economic damages.

Contact: Francis Holbrook
Rhode Island Chamber of Commerce Federation
91 Park Street
Providence, RI 02908
401/272-1400

BOR 007498

SOUTH CAROLINA
(Target Adjournment: June 4, 1987)

In-state insurance companies are upset by a "gentlemen's agreement" law which went into effect in September, 1986. The new law will replace a domestic preference tax, imposed on out-of-state insurers, with an "equalized" rate for both domestic and foreign insurers. The "gentlemen's agreement" involves a promise by out-of-state insurers that, when the new law takes effect, they will drop lawsuits seeking refunds for discriminatory taxes paid under protest.

HB 2266, enacted in 1986, restores some of the state's sovereign immunity by reestablishing approximately 20 categorical, qualified immunities.

The House passed this year HB 2610 which reduces the statute of limitations from six to three years; limits the statute of limitations for medical malpractice cases to seven years; provides a definition of punitive damages in civil actions; provides for the general application of the rule of comparative negligence in certain tort actions; provides for joint and several liability of joint tortfeasors; amends current law relating to liability and recovery against sellers of defective products; and provides for liability and damages for frivolous lawsuits. The bill is now in the Senate Judiciary Committee.

Several other tort reform bills are being considered this session. HB 2016 establishes a joint underwriting association for professionals licensed and regulated by the state. HB 2027 creates a health insurance pool. HB 2008 abolishes civil liability actions for wrongful birth. HB 2037 calls for penalties for frivolous lawsuits. HB 2399, supported by the Southe Carolina Civil Justice Coalition, revises joint and several liability and rules for collateral sources, reduces the statute of limitations from six to three years, and caps noneconomic damages at $250,000. SB 17 and SB 126 provide immunity from liability to state and local government for losses resulting from government maintenance, security or supervision of natural resources.

Two joint resolutions have been introduced. JRS 39 provides immunity to political subdivisions. JRS 34 provides the General Assembly with the authority to issue remedies for torts committed by the state, its political subdivisions and employees.

Contact: Edward Poliakoff, Steering Committee Chairman
South Carolina Civil Justice Coalition
Nelson and Mullins
P.O. Box 11070
Columbia, SC 29211
803/799-2000

SOUTH DAKOTA
(Adjourned March 31, 1987)

In 1986, the Governor signed a bill establishing a public entity pool to secure liability coverage. The legislation requires that $2 million be transferred in 1988 from the self-insurance pool to the general revenue fund to repay start-up costs. Other laws passed during the session establish a $1 million cap on malpractice awards, require pretrial hearings to determine if there is a factual basis for a punitive damage claim to be litigated, and establish procedures for periodic payments on judgements exceeding $100,000.

In 1987, the Governor signed ten tort reform bills. SB 263 modifies the doctrine of joint and several liability. SB 282 allows profit corporations to limit the personal liability of a director. HB 123 limits a landowner's liability if he makes his land available to the public at no charge for recreational activity. HB 1076 provides for indemnification of owners or operators of high voltage lines when statutory safety requirements are violated. HB 1089 adopts a model risk retention act. HB 1141 limits the time for bringing malpractice actions against licensed public accountants. HB 1317 and SB 98 limit the liability of directors, trustees, officers and volunteers of nonprofit corporations, organizations, certain hospitals, and governmental entities. SB 221 waives sovereign immunity for

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any public entity to the extent that it participates in a risk sharing pool. SB 223 excludes landowners from liability for injuries suffered by trespassers on flooded land. The Governor vetoed HB 1205, which repeals the periodic payments act.

The House passed HB 1210 which clarifies the time of commencement of the period of limitation in certain professional malpractice actions. The Senate passed SB 147 which permits the recovery of costs and attorney fees in certain suits against certain political divisions.

Contact: Dean Randall
Retailers Association
329 E. Dakota Avenue
Pierre, SD 57501
605/224-5050

TENNESSEE
(Adjourned April 17, 1986)

Tennessee in 1986 limited the civil liability of bars and other servers of alcoholic beverages; provided immunity from suit for directors of nonprofit organizations as well as all members of boards, commissions, agencies, authorities of governmental entities; provided immunity for local education agency employees; raises the capital surplus requirements of insurance companies in Tennessee; and prohibits cancellation of or a failure to renew commerical risk insurance policies with some exceptions.

Two major bills are being considered in special tort reform subcommittees. Omnibus bill SB 1119/HB 931 known as the "Access to Goods, Insurance, and Other Services Act of 1987" includes provisions to eliminate joint and several liability, abolish punitive damages, create a sliding scale for contingency fees, cap noneconomic damages, provide periodic payments for awards over $100,000, limit landowners liability and provide for assumption of risk; and limit liability of volunteers, directors and officers of nonprofit organizations. The bill is supported by the Tennessee Association for Civl Justice Reform. The Governor's Task Force on Tort and Liability Insurance Reform recommended provisions which have been incorporated into SB 913. SB 913 resembly SB 1119 with a few minor changes. The bills are expected to be passed to the House and Senate Judiciary Committees by next week.

Due to the controversial nature of this legislation, provisions of the omnibus bill have been introduced as separate bills to improve their chances of being considered individually by the legislature. Most of these bills are in House and Senate Judiciary Committees.

Contact: Carter Witt
Tennessee Manufacturers Association
226 Capitol Boulevard, Suite 800
Nashville, TN 37219
615/256-5141

TEXAS
(Target Adjournment: June 1, 1987)

The interim Joint Committee on Liability Insurance and Tort Law issued a report calling for extensive changes in both insurance regulations and tort law. Representative Mike Toomey is expected to introduce legislation reflecting these recommendations. Tort reform proposals include a sliding scale for attorney contingency fees, periodic payment plan for awards exceeding $100,000, application of a collateral source rule, system of comparative responsibility, penalties for frivolous lawsuits, reduction of the statute of limitations for minors to eight years, abolition of joint and several liability, no prejudgement interest on damage awards, a $250,000 cap on noneconomic damages, and a $100,000 cap on punitive damages or three times the actual damages. Punitive damages would be awarded with only clear and convincing evidence. Half of any puntive damage award would go to the state, with the remaining half

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divided between the plaintiff and his attorney. The Committee recommends immunity from liability for public officials, directors of nonprofit organizations, and for owners of property used for recreational or profit uses. The Committee also supports limitation of liability for manufacturers of childhood vaccines, clarification of the Texas Tort Claims Act and extension of governmental immunity for persons working under contract with the Texas Department of Health.

The Committee proposes a measure granting the Texas Supreme Court direct and expeditious review of any lower court ruling that held proposed tort legislation unconstitutional and an amendment to the Texas State Constitution providing authority to define or regulate tort procedures and statutes to the full degree permitted under the U.S. Constitution.

Proposed insurance reforms include revision of current rate and statistical data reporting requirements, restrictions on cancellation and nonrenewal of policies, a reinsurance exchange, a joint underwriting association for nonprofit organizations, statutory authority for a Market Assistance Plan, allowing life insurance companies to provide reinsurance and revision of reporting requirements to the Texas State Board of Medical Examiners.

HJR 37, being considered in the House State Affairs Committee, amends the Texas State Constitution to regulate the recovery of exemplary damages in cases arising from personal injury, property damage, death or tortious conduct. HB 283 revises the Texas Medical Malpractice Act by redefining the Peer Review Committees, clarifying the grounds for disciplinary action, requiring mandatory reporting of peer review proceedings, expanding immunity provisions for peer review participants and increasing funding for enforcement of these provisions.

Contact: Mary Miska
Texas Civil Justice League
400 West 15th Street
Austin, TX 78701
512/478-0775

UTAH

(Adjourned February 25, 1986)

In 1986, the Governor signed legislation modifying the judicial code relating to comparative negligence, specifying the duties of jurors and judges, and abolishing joint and several liability. Market assistance plans and joint underwriting associations were authorized. SB 111 put a $250,000 cap on noneconomic damages in medical malpractice judgements and SB 155 established structured settlements for medical malpractice judgements only. Also enacted was a cap of $100,000/$300,000 on damages in dram shop actions with a one-year statute of limitations.

This session SB 47 passed the legislature and gives immunity from liability to directors of for-profit organizations and directors and officers of nonprofit organizations. HB 145, which also passed, limits liability in alcohol asnd drug testing of employees. Four other bills, SB 171, SB 172, SB 173 and SB 174, were heard in committee and then sent to an interim study commission. The bills would have modified the collateral source rule, capped punitive damages at $500,00, capped noneconomic damages at $250,000 and modified assumption of risk for real property tort damage. The four bills were opposed by the bar association and supported by the Utah State Chamber.

Contact: Gary Hansen
Utah State Chamber
1758 400 South #600
Salt Lake City, UT 84111
801/364-3631

BOR 007501

VERMONT

(Target Adjournment: May 1, 1987)

Bills dealing with tort reform did not pass the Vermont legislature in 1986. However, two joint underwriting agreement bills did pass. The first allows manufacturers and businesses to pool resources for the purpose of obtaining insurance and the second does the same for municipalities. A dram shop bill was scrapped during the last day of the session.

The House Judiciary Committee is currently reviewing HB 183 which allows a state of the art defense in product liability cases, clarifies and refines several liability, changes the collateral source rule, limits punitive damages, establishes a sliding scale for attorney contingency fees, requires itemization of awards and penalizes frivolous lawsuits.

Contact: Joe Choquette
Vermont Petroleum Association
P.O. Box 566
Montpelier, VT 05602
802/223-3496

VIRGINIA

(Adjourned February 29, 1987/ In Special Session)

In 1986 an ad hoc interim study on tort reform concluded that the issues were too complex and far-reaching to be resolved by the 1986 legislature. Therefore, a formal Joint Subcommittee was created to conduct an in-depth study of tort reform during the interim period between the 1986 and 1987 legislative sessions. However, in January 1986, Governor Baliles did sign HB 1185 which grants immunity to boards of directors who act in good faith.

In addition, provisions of the Virginia Tort Claims Act were extended to apply to transportation districts, providing a cap of $25,000 or the amount of insurance coverage carried and prohibiting awards of prejudgement interest and punitive damages in actions against transportation districts.

In February, 1987 the legislature passed an amended version of SB 402 which provides a $350,000 cap on punitive damage awards. The legislature also enacted a package of tort reform bills recommended by the Joint Subcomittee on Liability Insurance and Tort Reform. Reforms include limitations for frivolous lawsuits and the number of exemptions from jury duty, change in the statute of limitations for medical malpractice for minors, and immunity from liability for local government entities except in cases of gross negligence or misappropriation of funds.

A cap was placed on the liability of directors and officers of profit organizations to $100,000 or the amount of their annual compensation. The liability of directors and officers of nonprofit organizations was lowered to the lesser of the previous 12 month's compensation or the amount set in the bylaws. Volunteer directors were granted immunity from civil liability with the exception of acts of willful misconduct. The measure also grants immunity from liability to operating room personnel called on in emergency to deliver babies.

Insurance reforms included the creation of a joint underwriting association for medical malpractice to shift the ultimate insurance risk from participating physicians to liability insurers, requirement that liability insurance carriers report annually to the State Corporations Commission all liability claims for personal injury and property damage and the authorization of the State Corporation Commission to require the use of Virginia loss experience in ratemaking by insurance companies and to monitor the effectiveness of competition in regulating insurance rates.

A second Virginia Circuit Court and a U.S. District Court have declared that the state's medical malpractice law is unconstitutional. The law provides a $1 million cap on damage awards. The Circuit Court ruled that the cap interferes with a victim's right to a jury trial and suggested that the statute be amended to meet the state constitutional standards

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Contact: John D. Munford
Virginians for Law Reform
P.O. Box 1994
Richmond, VA 23216
804/644-7887

WASHINGTON

(Target Adjournment: April 27, 1987)

In 1986, the state legislature adopted and the Governor signed into law a far-reaching and comprehensive package of tort law changes (SB 4630) which eliminates joint and several liability, except for hazardous and solid waste disposal sites, business torts, and manufacturers of generic products; authorizes structured settlements for all judgements exceeding $100,000 and accelerates the statute of limitations for contractors. The legislation also placed a cap on noneconomic damages using a statutory formula. Immunity has been provided for school board members and directors of hospitals. Voluntary intoxication of a plaintiff by means of alcohol or drugs which is responsible for more than fifty percent of an injury is now a complete defense in wrongful death actions.

Insurance reforms in 1986 included measures to establish a voluntary assistance plan, authorize joint underwriting associations and self-insurance mechanisms for provision of liability coverage for day care providers, authorize self-insurance for local governments and require prior notice to policyholders of canellation and 20 days notice for rate changes before policy renewal anniversary dates.

This session, the Governor has signed HB 98 which provides civil liability exemptions for the state militia. The legislature passed SB 5972, which limits the liability of participants involved in the health care peer review process and SB 6048, which revises provisions on civl actions and liabilities.

The House passed HB 140 which relates insurance and civil liability; HB 590 which limits the civil liability of local government officials; HB 662, which relates to product liability actions involving firearms or ammunition and HB 877, which relates to prejudgement interest.

The Senate passed SB 5102 which allows a corporation's articles of incorporation to eliminate or limit the personal liability of a director or its shareholdrs.

Contact: Bill Robinson
Carney, Stephenson, Badley, Smith,
Mueller & Spellman
2300 Columbia Center
701 5th Avenue
Seattle, WA 98104
206/622-8020

WEST VIRGINIA

(Adjourned March 14, 1987)

The West Virginia Tort Claims Act has been enacted and is applicable to the state, to municipalities, subdivisions and government employees. It prohibits awards of punitive damages against the state; places a cap on damages of $500,000/$1,000,000; covers both governmental and proprietary activities, and abolishes liability for torts relative to certain fact situations, (for example, maintenance of state highways and road signs, licensing and inspection decisions, methods of providing police protection, injuries to incarcerated criminals, acts of independent contractors, product liability actions). It also eliminates joint and several liability for individual defendants who are 25 percent or less responsible.

For medical malpractice cases a $1,000,000 cap on noneconomic damages has been enacted on damages; all malpractice actions must be brought within ten years of the injury; the period for which minors' causes of actions are

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preserved has been shortened; malpractice actions accruing for a minor under ten years of age must be brought within two years or by the child's twelfth birthday, whichever is later; greater peer review powers have been granted to the Board of Medicine; mandatory pretrial conferences are now required; frivolous suit sanctions are provided, and expert witness standards are specified.

No comprehensive tort reform bills were enacted in the 1987 session. The House Judiciary Committee did not pass out of committee HB 2916, the Civil Justice Reform Act of 1987, which included provisions on attorney contingency fees, punitive damages, collateral sources, periodic payments, product liability, an ad damnum clause and comparative negligence. SB 266, which allows stockholders of corporations to release their directors from liability for breaches of fiduciary duty, passed the House, but stalled in the House Judiciary Committee. SB 404 which provides immunity from liability for qualified directors of certain governmental and nonprofit entities passed the Senate and received no action in the House Judiciary Committee. HB 3019, companion to SB 404, was never released from the House Judiciary Committee.

Contact: John D. Hurd
West Virginia Coalition for Civil Justice
West Virginia Chamber of Commerce
P.O. Box 2789
Charleston, WV 25330
304/342-1115

WISCONSIN

(Target Adjournment: Not set)

In a 1986 special session, the legislature enacted medical malpractice legislation which caps noneconomic damages at $1million, creates a sliding scale for attorney contingency fees, and eliminates the pretrial screening panels by replacing them with a voluntary, non-binding mediation process. Insurance reform bill AB 8, also enacted, authorizes the establishment of risk sharing pools for liability insurance coverage for public and private sector entities, increases minimum capital and surplus requirements, and increases from 30 to 60 the days required for notice for mid-term cancellations.

This session, the Assembly Trade Industry and Small Business Committee and the State Bar are supporting the passage of AB 301 which provides total immunity from liability for directors and officers of profit and nonprofit organizations. Several bills relating to the insurance industry have been introduced. AB 5 requires the collection of data by the Commissioner of Insurance from each insurer licensed to offer commercial liability within the state. AB 6 requires insurers or rate service organizations to file proposed rates with the Commissioner of Insurance for approval prior to use.

The Wisconsin Coalition for Civil Justice plans to introduce legislation encompassing five tort reforms: the elimination of joint and several liability, the elimination of punitive damagess in cases of intentional tort, the prohibition of double recovery in compensation for an injury, a cap of $250,000 on noneconomic damage awards, and court review of attorney contingency fees.

Legislation limiting liability of certain individuals has been introduced. SB 32 extends immunity from liability to private property owners who lease their premises for recreational activities. AB 36 creates a good samaritan law and provides immunity to persons who provide assistance or advice in the prevention, cleanup, and disposition of hazardous substance emergencies.

SB 44 requires that corporations indemnify a director or officer if he has been successful on the merits for the defense of a proceeding to which the director was named because of his association with the corporation.

Contact: James Buchen
Wisconsin Coalition for Civil Justice
Wisconsin Association of Manufacturers and Commerce
30 W. Miffin Street
Madison, WI 53703
608/258-3400

BOR 007504

WYOMING

(Adjourned March 7, 1987)

In 1986, the legislature passed 13 tort/insurance reform bills. HB 44 modifies the state's sovereign immunity and liability limits. SB 17 repeals the doctrine of joint liability. HB 14 penalizes frivolous lawsuits. HB 39 grants mmunity from liability to officers, commissioners or board members of government and nonprofit entities for any action, omission or inaction of the government or corporate body. HB 15 provides for an affidavit of noninvolvement as a means to obtain early dismissal of suits against defendants who are clearly not involved in a tort case. HB 40 establishes pretrial screening panels for medical malpractice suits. HB 12 modifies the standards of care to determine medical malpractice. HB 13 eliminates the liability of individuals legally selling alcohol for damages caused by individuals consuming the alcoholic beverages.

Insurance reform bills SF 69, SF 73, SF 21, SF 26, HB 38 created state and local government self insurance programs and establish pools for state and local government entities; placed tighter restrictions on cancellations and renewal of policies; created statutory definitions of unfair insurance claim practices; prohibited midterm cancellations with some exceptions such as nonpayment of premiums and requires 10-45 days notice to policy holders; and requires a 45 days notice with a statement of reasons for nonrenewals.

Bills signed by the Governor in 1987 include HB 84 which requires insurers to provide insureds upon written request or with any notice of cancellation or nonrenewal, all information on both open claims and claims involving the insured which have been closed within the previous three years; and subjects insurers who violate this provision to monetary penalties or license revocation or suspension; HB 233 which provides immunity from liability to all individuals offering volunteer fire services for property damages when such services are performed in good faith; and SB 216 which provides procedures for the formation and operation of risk retention groups as well as definitions which clarify who qualifies under the bill.

Contact: Ray Johnson or Larry Beure
COURT
P.O. Box 1348
Laramie, WY 82070
307/745-4835

BOR 007505