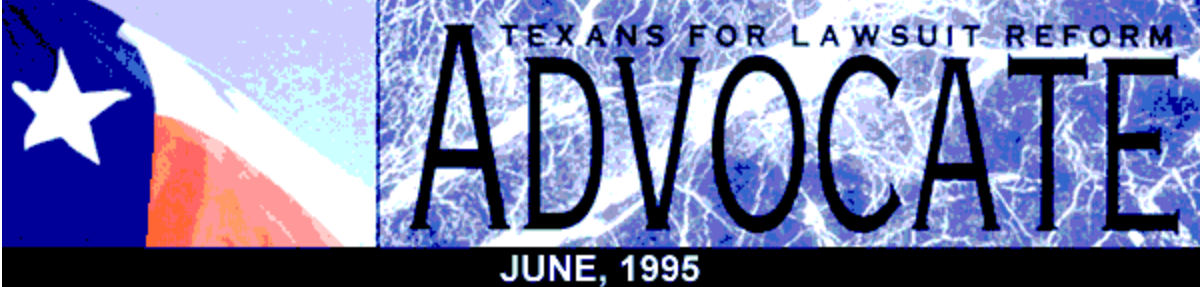


**Texans for
Lawsuit Reform**

"Working to restore balance and justice to the Texas civil justice system."

TLR
Friday, January 26,
2001



TORT REFORM PASSES!

CIVIL JUSTICE LAWS PASSED I THE 1995 LEGISLATIVE SESSION

After two years of effort by *Texans for Lawsuit Reform* (TLR), hundreds of other groups, and tens of thousands of individual Texans, eight solid tort reform bills passed the 1995 Texas Legislature and have been signed into law by the Governor. These historic reforms mark the first broad-based success since our state's civil justice laws began eroding over two decades ago.

The details of the eight bills that passed are described on the following web site. Many of the areas in which the most egregious abuses of our civil justice system take place will be vastly improved by the reforms, including punitive damages, joint and several liability, medical liability, the Deceptive Trade Practices Act, forum shopping, governmental liability, judicial fundraising and frivolous lawsuits. Dick Weekley, President of TLR, said, "It was the overwhelming sentiment among the people of Texas, including virtually every political, economic and geographic group, who propelled this agenda to success. People were simply fed up with lawsuit abuse, and they demanded reform. In 1995, they finally got it"

Leo Linbeck Jr., Chairman of TLR, emphasized though that there was more to be done. "A problem 20 years in the making cannot be resolved in just one legislative session. For Texas to truly provide a balanced and fair civil justice system, we need to finish the job next session."

[Punitive Damages \(SB 25\)](#)

[Frivolous Lawsuits \(SB 31\)](#)

[Joint and Several Liability \(SB 28\)](#)

[Limits on Governmental Liability \(SB 383\)](#)

[Venue \(Forum Shopping\) \(SB 32\)](#)

[Medical Liability \(SB 971\)](#)

[Deceptive Trade Practices Act \(SB 668\)](#)

[Reform Judicial Fundraising \(SB 94\)](#)

[Trade Association Endorsements](#)

[Disposition of 1995 TLR Bills](#)

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PUNITIVE DAMAGES (SB 25)

Sponsored by Senator Sibley and Representative Junell and T. Hunter

LAW PRE-1995 LEGISLATIVE SESSION

LAW POST-1995 LEGISLATIVE SESSION

Evidentiary Standards: Preponderance of the evidence with a finding of gross negligence, the lowest standard.

Financial Caps: Four times economic & non-economic damages with certain broad exceptions which allowed for unlimited punitive damages. In practice, the caps to which they applied.

Judicial Review: No statutory requirement.

Ensures that defendants will not be intimidated into settlements rather than risk serious financial repercussions of bankruptcy through a massive punitive damage award.

Evidentiary Standards: Requires clear & convincing evidence with a finding of malice.

Financial Caps: Except for certain intentional acts, SB 25 imposes a solid cap on punitive damages: the greater of \$200,000 or two times economic damages plus an amount up to \$750,000 award for non-economic damages.

Judicial Review: Requires that an appellate court review must state, in written opinion, the court's reasons for either upholding or modifying the award.

JOINT AND SEVERAL LIABILITY (SB 28)

Sponsored by Senator Sibley and Representatives Junell and T. Hunter

LAW POST-1995 LEGISLATIVE
SESSION

LAW POST-1995 LEGISLATIVE SESSION

Joint Liability: A defendant could have been jointly liable if the percentage of responsibility was found to be 11 percent or more; the threshold for toxic or environmental torts was any percentage greater than zero.

Plaintiff's Share of Responsibility: Put the limit at 61 percent or more in product liability cases.

Submission of Negligent Third-Parties: Only the plaintiff could name which parties were counted toward the determination of 100

Joint Liability: Is allowed only when a defendant is found to be more than 50 percent responsible, except for environmental or toxic torts, where the threshold is equal to or greater than 15 percent.

Plaintiff's Share of Responsibility: Bars a plaintiff who is more than 50 percent responsible from recovery of damages.

Submission of Negligent Third-Parties: Allows a defendant to bring into a lawsuit all responsible third parties not named by the plaintiff (except bankrupts and the claimant's employer who has provided worker's comp). A defendant will be able to join other parties who will be considered in the determination of who is responsible for the plaintiff's injuries. This change will facilitate a fairer attribution of fault.

Third Party Property Owner Liability: Third party lawsuits are barred against property owners for actions brought by an

percent of the damages.

employee of a contractor or subcontractor, so long as the property owner does not exercise control over how the work is performed and provides excellent adequate warning of any danger relating to the job site. In certain construction-related third party lawsuits, the trial judge must deduct worker's compensation benefits from any damages that are awarded.

VENUE (FORUM SHOPPING)

(SB 32)

Sponsored by Senator Montford and Representative Duncan

LAW PRE-1995 LEGISLATIVE SESSION

Establishing Venue: Venue was where the cause of action accrued, where any defendant resided or if a defendant was a corporation not incorporated in Texas, any county where the corporation had a mere agent or representative.

Forum Shopping: In cases involving multiple defendants, including non-corporate defendants, a plaintiff may have easily manipulated the system to establish a favorable venue.

- ⚡ In multiple plaintiff cases. A single plaintiff could have established venue for together plaintiffs who joined the lawsuit and intervention by other plaintiffs was freely allowed.

LAW PRE-1995 LEGISLATIVE SESSION

Establishing Venue: Established the principal place of business in the location where the firm's decision-makers conduct daily affairs – the mere presence of an agent would be insufficient. **Forum Shopping:** While the new law's abolition of "agent or representative" venue radically reduces the opportunity for corporate forum shopping, it does not directly address the possibility of sham suits against defendants to establish favorable venue.

- ⚡ In multiple plaintiff cases under SB 32, each plaintiff must independently establish venue and intervention is permitted only if a statutory standard is met. The new law also allows transfers of venues for the convenience of the parties to the lawsuit.

DECEPTIVE TRADE PRACTICES ACT

(SB 688)

Sponsored by Representatives Junell, Duncan and T. Hunter and Senator Bivins

LAW PRE-1995 LEGISLATIVE SESSION

Had no limit on the amount of a DTPA claim.

Suit Against Professionals: Generally allowed DTPA suits against professionals.

Limitations on the Types of

LAW PRE-1995 LEGISLATIVE SESSION

Adoption of a provision limiting DTPA to projects with a total value of less than \$500,000 or less than 100,000 if the claim arises out of a written contract and the plaintiff receives independent legal advice prior to the signing of the contract. Neither of these limitations apply to an action involving a residence.

Suit Against Professionals: Limited except in situations

Damages that May be Sought:

Allowed personal injury suits and recovery of both economical and non-economical damages such as mental anguish and loss of consortium and provided that all damages could be tripled.

Proportionate Liability: A defendant was jointly liable and there was no bar to a consumer's recovery, regardless of the consumer's proportionate share of negligence.

involving misrepresentation, unconscionable conduct or breach of warranty.

Limitations on the Types of Damages that May be Sought:

The new law limits recovery to "economic" damages except that damages for mental anguish are allowed if a defendant is found to have acted "knowingly" and the potential for triple damages for mental anguish is limited to situations where a defendant acted intentionally. Further, the new law disallows DTPA actions for personal injury or death.

Proportionate Liability: Brings DTPA actions under the provisions of the new joint and several liability statute (see description of SB 28's provisions that follow).

- ⚡ HB 668 accomplished eliminating the "gross disparity" standard from the definition of unconscionability.

FRIVOLOUS LAWSUITS**(SB 31)****Sponsored by Senator Lucio and Representatives Craddock and T. Hunter****LAW PRE - 1995 LEGISLATIVE SESSION**

- ⚡ Under Rule 13, a lawsuit could have precipitate sanctions only if it was found to be either groundless and brought in bad faith or groundless and brought for the purpose of harassment.

LAW PRE - 1995 LEGISLATIVE SESSION

Addresses the concern of frivolous lawsuits filed for their "nuisance" value by making it easier for judges to impose sanctions on parties who offer pleading or motions that are without merit or are intended to harass or cause delay.

- ⚡ Modeled on Federal Rule 11, broadens the opportunity for sanctions: a party's pleading or motion is required to certify that the action is not meant to harass, cause unnecessary delay, or accomplish an improper purpose and, if a violation is shown, the party may be made to pay court costs, Attorney's fees, and other costs arising from the frivolous action if due diligence was not exercised by the party.

LIMITS ON GOVERNMENTAL LIABILITY**(SB 383)****Sponsored by Representative Junell and Senator Shapiro****LAW PRE - 1995 LEGISLATIVE SESSION**

- ⚡ Provided governmental immunity to political

LAW PRE - 1995 LEGISLATIVE SESSION

- ⚡ HB 383 covers state and local government public servants (including elected or appointed officials, volunteers, employees, and commission or board members) and makes

subdivisions but to individuals associated with those political entities.

them not personally liable for damages in excess of \$100,000 (if the public servant is covered by a governmental indemnity or insurance) for damages injury, or death arising from actions taken in connection with their official acts or duties.

MEDICAL LIABILITY

(SB 971)

Sponsored by Representative T. Hunter and Senator Sibley

LAW PRE - 1995 LEGISLATIVE SESSION

Bonding and Expert Certification of the Claim: A \$2,000 bond must have been posted and the suit could not be dismissed with prejudice.

Prejudgement Interest: Prejudgment interest accrued on the amount of the judgement during the period beginning the 180th day after the date the defendant received written notice of a claim or on the day the suite was filed, whichever occurred first.

LAW PRE - 1995 LEGISLATIVE SESSION

The changes incorporated in HB 971 are designed to help ensure that claims against health care providers are based on solid and professionally corroborated evidence.

Bonding and Expert Certification of the Claim: Raises the bond to \$5,000 and requires that a plaintiff either file, within 180 days, an expert medical report certifying the claim or risk sanctions, including attorney’s fees, forfeiture of the bond, and dismissal of the suit with prejudice.

Expert Opinion Credentials: Clarifies and codifies existing case law, which says person offering an expert opinion based on accepted standards of medical care must be qualified on the basis of training or experience.

Prejudgement Interest: If a claim is settled before the 181st day after the suit is filed, no prejudgment interest applies only to past damages, not future damages.

REFORM JUDICIAL FUND-RAISING

(SB 94)

Sponsored by Senator Ellis and Representatives Madden & Denny

LAW PRE - 1995 LEGISLATIVE SESSION

⚡ There were no limits on judicial contributions by individuals law firms or members of firms, political action committees or political parties for the Texas Supreme Court Justices or other members of the judiciary.

LAW PRE - 1995 LEGISLATIVE SESSION

⚡ The goal in judicial campaign contribution reform is realized in SB 94 by capping individual contributions at \$5,000 for the Supreme Court and providing for declining amounts for other state courts based on population criteria detailed in the bill. Further limitations are placed in aggregate law firm contributions not to exceed \$30,000 for the Supreme Court and similar declining amounts for other courts based on population criteria. Political Action Committees’ contributions are limited to \$300,000 in Supreme Court races and declining amounts by population in other courts.

A candidate's personal contributions or contributions from a candidate's immediate family members are not limited, but reimbursements of those contributions is limited to an aggregate of \$100,000. Voluntary limits on expenditures also detailed in the bill.

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