



# Texans for Lawsuit Reform

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



Thursday, January  
25, 2001



*Senator Florence Shapiro addressing  
the luncheon honoring her leadership  
on tort reform.*

## SENATORS SHAPIRO AND LUCIO HONORED

Senator Florence Shapiro, (District 8, Plano and Dallas) and Senator Eddie Lucio, (District 27, Rio Grande Valley) were both honored by TLR's Board of Governors and community leaders at separate luncheons in Dallas and Brownsville in June for their leadership on tort reform in the 1995 legislative session.

Senator Shapiro (with Representative Rob Junnell) sponsored HB 383, Limits on Governmental Liability. This law covers state and local government public servants (including elected or appointed officials, volunteers, employees, and commission or board members) and makes 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.

Senator Lucio (with Representatives Tom Craddick and Todd Hunter) sponsored SB31, Frivolous Lawsuits. This law makes it easier for judges to impose sanctions on parties who abuse the civil justice system.

Dick Weekley, President of Texans for Lawsuit Reform, presented inscribed awards to the Senators with words of praise and thanks to them for their support and efforts in bringing about these much needed reforms.



*Senator Eddie Lucio accepts an award  
for his leadership on tort reform from  
President of Texans for Lawsuit  
Reform, Dick Weekley.*

## HOMEOWNERS' AND LANDOWNERS' LIABILITY

During the 1980s, a series of changes to the law---mainly through court decisions---greatly increased the risk of an unfair lawsuit against property owners. Traditional rules that kept people from recovering a judgment when they voluntarily assumed a known risk were abolished. It became much easier for businesses to be held liable for criminal acts that occur on their property, even if the crimes were perpetrated by individuals with no connection to the business. While the Legislature took positive steps to protect rural landowners from lawsuits arising from certain recreational activities, these sensible safeguards were not specifically applied to urban landowners and most athletic or educational activities.

In each of these areas, the Legislature will have an opportunity to make positive changes during the 1997 session.

While it is easy to understand society's desire to heal victims of crime---particularly violent crimes---and appropriately punish those who are responsible, suing property owners who had no plausible connection to the crime is an inappropriate and unjust solution. The following example of this type of lawsuit shows why it is a misguided approach to dealing with criminal behavior.

(continued next page)

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Endorsements received through August 20, 1996 for 11.R's  
1997 Legislative Agenda:

## ***Statewide Trade Association Endorsements***

Associated Builders & Contractors of Texas  
Associated General Contractors - Texas Building Branch  
Association at Chemical Industry of Texas  
Automotive Wholesalers at Texas  
Consulting Engineers Council of Texas  
Independant Bankers Association of Texas  
Lumberman's Association at Texas  
National Federation Independent Businesses  
Printing Industries Association of Texas  
Rural Rental Housing Association of Texas  
Southwest Association  
Southwest Meat Association  
State Firemen's and Fire Marshals' Association of Texas  
Texas Air Conditioning Contractors Association  
Texas and Southwestern Cattle Raisers Association  
Texas Apartnment Association Inc.  
Texas Association of Builders  
Texas Association of Business and Chamber of Commerce  
Texas Association of Nurserymen  
Texas Association of Realtors  
Texas Chemical Council  
Texas Cotton Ginners' Association  
Texas Food Industry Association  
Texas Grain & Feed Association  
Texas Heathh Care Association  
Texas Hospital Association  
Texas Hotel and Motel Associallon  
Texas Medical Association  
Texas Osteopathic Medical Association  
Texas Risk Retention Association  
Texas Rental Association  
Texas Seed Trade Association  
Texas Sign Manufacturers Assoc.  
Texas Society of Certified Public Accountants  
Texas Society at Professional Engineers  
Texas Society of Professional Surveyors

## ***Local Trade Association Endorsements***

Apartment Association of Greater Dallas  
Apartment Association or Southeast Texas  
Associated General Contractors of America, Inc./Austin  
Associated General Contractors, Inc /Houston  
Associated General Contractors/Dallas  
Associaiton at Consulting Municipal Engineers of Houston  
Austin Apartment Association  
Austin Board of Realtors  
Building Owners and Managers Association of Austin  
Builders Association of Fort Worth & Tarrant County  
Consulting Engineers Council of TX, San Antonio Chapter  
Greater Dallas Associaiton of Realtors  
Greater Houston Builders Associatian  
Greater Houston Hospital Council  
Gulf Coast Grocery Assn. of Texas  
Home Builders Assoc. of Southeast Texas  
Houston Apartment Association  
Houston Assoc. of Insurance Agents  
Houston Assoc. of Life Underwriters  
Houston Association of Realtors  
Institute of Real Estate Management/Houston  
Jefferson County Medical Society  
Lubbock Apartment Association  
Mechanical Contractors Assoc. of Houston  
San Antonio Apartment Association, Inc.  
Texas Capital Area Builders Association  
Texas Society of C.P.A.'S - Houston Chapter  
Tritech Regional council

### ***Chamber of Commerce Endorsements***

Arlington Chamber of Commerce  
Bellville Chamber of Comrnerce  
Canton Texas Chamber of Commerce  
Denlson Area Chamber of Commerce  
DeSoto Chamber of Commerce  
Eastland Chamber of Commerce  
Everman Area Chamber of Commerce  
Glddings Chamber of Commerce  
Greater Austin Chamber of Commerce  
Greater Dallas Chamber of Commerce  
Greater Houston Partnership  
Greater Killeen Chamber of Commerce  
Greater New Braunfels Chamber of Commerce  
Greater Orange Area Chamber of Commerce  
Greenville Chamber of Commerce  
Hallettsville Chabber of Comm. & Agriculture  
HarkerHeights Chamber of Commerce  
Houston County Chamber of Commerce  
Humble Area Chamber of Commerce  
Longview Partnership  
Marble Falls-Lake LBJ Chamber of Commerce  
North Houston Association  
Pampa Chamber of Commerce

Raymondville Chamber of Commerce  
Shamrock Chamber of Commerce  
South Montgomery County-Woodlands  
South San Antonio Chamber of Commerce  
Taft Chamber of Commerce  
Westchase Business Council  
Wharton Chamber of Commerce

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## Statewide Committee

(Continued from previous page.)

R.C. Allen, Corpus Christi  
 Lonnie Arrington, Beaumont  
 Bob Barnes, Odessa  
 Dick Barnett, Tyler  
 Louis Beecherl, Dallas  
 Jack Blanton, Houston  
 Frank N. Boggus, Rio Grande Valley  
 Hugo Bustamante, El Paso  
 Dr. Donald M. Carlton, Austin  
 David Carrabba, College Station  
 Milton Carroll, Houston  
 Jack Cawood, Rio Grande Valley  
 Ray Clymer, Wichita Falls  
 Jan Collmer, Dallas  
 John Coppedge, M.D., Longview  
 Frank Deaderick, Odessa  
 David H. Dewhurst, Houston  
 Eddie Forshage, Rio Grande Valley  
 Lupe Fraga, Houston  
 Claude Freeman, Lubbock  
 Elizabeth Ghrist, Houston  
 Bill Greehey, San Antonio  
 Mitch Hart, Dallas  
 Bill Hartley, Tyler  
 Roger Hemminghaus, San Antonio  
 Robert Hewitt, Victoria  
 Lyda Hill, Dallas  
 Roger Hirl, Dallas  
 Paul Howell, Houston  
 Ray L. Hunt, Dallas  
 John G. Hurd, San Antonio  
 Clark Johnson, Ft. Worth  
 Roane Lacy, Sr., Waco  
 Kenneth Lay, Houston  
 Lowell H. Lebermann, Austin  
 Jim Leininger, M.D., San Antonio  
 Cadell Liedtke, Midland  
 Leo Linbeck, Jr., Houston  
 Wales Madden, III, Amarillo  
 Darius R. Maggi, M.D., Denison  
 Max Mandel, Laredo  
 Jeffrey A. Marcus, Dallas  
 Drayton McLane, Temple  
 John Mark McLaughlin, San Angelo  
 Robert McNair, Houston

A waitress in a topless dance club who had just gotten off work came into a grocery store around 3:00 AM to do some late night shopping. She was carrying a large amount of cash, presumably her tips from that evening's work. At the checkout counter, she began a conversation with a man who noticed her large quantity of money, a fact corroborated by the checkout clerk. They continued talking on the way out of the store and went to her car. Once they got in the car, the man turned violent, pistol-whipping and robbing her. This incident occurred at a store in a neighborhood with a safe reputation. The woman sued the grocery store chain, alleging the incident was caused by insufficient security. Although they felt the claim was without merit, the grocery store chain's management decided the economically prudent course was for them to settle out of court.

As this real-life example shows, it is not right for a responsible business exercising normal security precautions to be coerced into settling with a plaintiff when the business' only connection to the crime was to own the property upon which it occurred. The Legislature can remedy this defect in the law by holding landowners responsible for the criminal acts of other people only when they actually know of a serious risk and consciously refuse to take reasonable steps to protect or warn premises users.

Until recently, Texas law held that a person could not recover for injuries arising from a dangerous on-premises condition if the person appreciated and voluntarily exposed himself to the condition. Recovery was barred under a well-established defense known as "assumption of the risk."

Under current law, however, the fact that a plaintiff voluntarily exposes himself to a risk does not, in itself, prevent a defendant from being held liable. It is only a factor the jury can consider when assigning responsibility for the injury. A common sense approach to the law would hold that a person who voluntarily takes on a known risk should not be allowed to hold a landowner liable for any injuries that may result. During the next session, Texans for Lawsuit Reform will be

Anne H. McNamara, Dallas  
Walter Mischer, Sr., Houston  
George P Mitchell, Galveston  
Michael Morgan, Laredo  
Beth & Reed Morion, Houston  
Peter O'Donnell, Jr., Dallas  
R.E. Parker, Corpus Christi  
Howard T. Pebley, Jr., McMlen  
Charles R. Perry; Odessa  
Lee Pfluger, San Angelo  
T. Boone Pickens, Dallas  
Buck Prewitt, Temple  
Samuel "Mendy" Rabicoff, Longview  
A.W. Riter, Jr., Tyler  
John V. Roach, Ft. Worth  
Jonathan Rogers, El Paso  
Robert D. Rogers, Dallas  
Frederick E. Rowe, Jr., Dallas  
Robert B. Rowling, Dallas  
Kenneth E. Ruddy, Beaumont  
Robert S. Scheurer, Wichita Falls  
Milton Scott, Houston  
David R. Seim, Lubbock  
Allan Shivers, Jr., Austin  
Harold C. Simmons, Dallas  
William T. Solomon, Dallas  
Phil Springer, College Station  
F.L. Stephens, San Angelo  
Gerald A. Sullivan, Galveston  
Charles Teeple, Austin  
Rice Tilley, Jr., Ft. Worth  
Richard Trabulsi, Jr., Houston  
James Trantum, Temple  
Terry Tubb, M.D., Midland  
J. Virgil Waggoner, Houston  
Richard Ware, II, Amarillo  
Johnny R. Warren, Midland  
Richard W. Weekley, Houston  
F.M. Young, Waco  
H.B. Zachry, San Antonio

recommending the reinstatement of "assumption of the risk" as a rock-solid defense in all premises liability cases.

State law should promote, rather than impede, the use of private land for recreational, charitable, and educational activities. The Texas Recreational Use law offers protection to certain types of private landowners who allow specific kinds of activities to occur on their property. However, this positive statute can be improved to encourage a much larger population of private property owners to make their land available to worthwhile activities and non-profit organizations, particularly those benefiting children.

While defenders of the status quo might argue further changes are unnecessary, several real-life examples prove otherwise. The Houston YMCA has been turned down so many times because of liability concerns it has simply stopped asking private landowners for permission to come on their land for activities like youth soccer. These refusals have occurred even though the YMCA has liability insurance, in a similar vein, a Houston marathon runners' training program wishing to conduct educational seminars in a church basement was turned away because of fears of being sued.

To solve these problems and make the current statute truly effective, TLR recommends broadening it to explicitly cover both rural and urban property owners and all recreational activities, including athletics and educational programs. Most other states have already adopted this broad-based approach.

When the Legislature convenes in Austin next January, Texans for Lawsuit Reform will be advocating reasonable and necessary changes to premises liability law.

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