

ARKANSAS TRUCKING ASSOCIATION ACCOUNTING AND FINANCE COUNCIL

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What Tort Reform Is and What It Means for Your Business

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What is a tort?

Conduct that

- a) constitutes a legal wrong
- b) causes harm
- c) results in civil liability

Nature of torts

- Usually involve physical harm
- Sometimes involve no physical harm
 - Damage to reputation (Libel/slander)
 - Intentional interference with contract
 - Intellectual property interests

Different types of torts

Negligence

- Unreasonable behavior that causes harm
 - Failure to do something that a reasonably careful person would do
 - or
 - Doing something that a reasonably careful person would **not** do

Intentional torts –

- Usually involve intentional conduct
- But can exist even if the impact is not intended so long as the conduct was

Limits on imposition of civil liability

- Usually no liability unless negligence actually **caused** harm
- Even where negligence caused harm, might not impose liability if harm is remote or fortuitous

Different sources of torts

- Sources of tort law
 - Primarily “the common law”
 - Judges (rather than the legislature) define:
 - a) What constitutes a tort; and
 - b) How compensation is to be measured
- Some exceptions
 - Ark. Code Ann. § 16-62-101 – “loss of life” damages

Types of Damages

- Economic damages

 - past and future lost earnings

 - past and future medical expenses

 - lost profits

- Non economic damages

 - Mental anguish

 - mental suffering resulting from emotions (i.e., grief and despair)

 - Pain and suffering

 - Loss of Life

 - Loss of Consortium

Collateral Source Rule

Do not reduce the amount of damages based on any information or belief you have that plaintiff has received, or may receive, benefits from other sources in connection with his injuries. This includes worker's compensation, Social Security, health insurance or any other benefits. Do not speculate on this.

Practical Impact

Tort Reform – basic objectives

- Limit/regularize damage awards
 - Place cap on punitive damage awards
 - Place limits on “non-economic” damage awards
- Create disincentives for lawyers to bring certain cases
- Inject legislative control/oversight over judicial functions

SJR 8 Cap on Punitive Damages

- Caps punitive damages awards at the greater of
 - \$500K; or
 - 3x compensatory damages to each claimant
- Exception for intentional conduct
- General Assembly may increase Cap with super-majority vote of each Chamber

SJR 8 Cap on non-economic damages

- \$500K cap per claimant (except in wrongful death action)
- Wrongful death beneficiaries *share* \$500K cap
- General Assembly may increase cap with super-majority vote of each Chamber

SJR 8 - Contingency fees

- Caps contingency fees at 33 1/3 % of net recovery
 - General Assembly to set process
 - for calculating the fee
 - for setting penalties for violation
 - General Assembly may adjust fee cap with 2/3 vote
 - Issue over “net” recovery vs. “gross” recovery

Changing Authority for Court Rules

Current Law – Amendment 80

- Vests Supreme Court with authority to implement all rules of “pleading, practice and procedure”
- Served as basis of *Mendoza* case under which Arkansas Trucking Association challenged the seatbelt evidence rule

Tort Reform Proposal By 3/5 vote of each Chamber, General Assembly could:

- 1) Adopt rules of pleading, practices and procedure for courts
- 2) Amend or repeal such rules previously issued by Supreme Court

IMPACT

- 1) Reduce “Nuclear” Verdicts
- 2) Manage Risk by limiting the Upside Exposure
- 3) Could impact insurance rates
- 4) Legislative Control – Pros / Cons

International Registration Plan

- Overall Regulatory Scheme
- Recurring Issues

HB 1691

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017

A Bill

HOUSE BILL 1691

4
5 By: Representative Davis

For An Act To Be Entitled

6
7
8 AN ACT TO AMEND THE LAW CONCERNING THE LICENSING AND
9 REGISTRATION OF COMMERCIAL MOTOR VEHICLES; TO IMPROVE
10 SERVICES AND MODERNIZE THE ARKANSAS MOTOR CARRIER
11 SYSTEM; TO DECLARE AN EMERGENCY; AND FOR OTHER
12 PURPOSES.

Subtitle

13
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16 TO AMEND THE LAW CONCERNING THE LICENSING
17 AND REGISTRATION OF COMMERCIAL MOTOR
18 VEHICLES; TO IMPROVE SERVICES AND
19 MODERNIZE THE ARKANSAS MOTOR CARRIER
20 SYSTEM; AND TO DECLARE AN EMERGENCY.

HB 1691

- Key Points

- Permit Online Registration / Administrative Transactions
 - Online Printing of Registration Cards
 - License Plate Logo Decals
- Carrier to maintain plate inventories
- Remove potential criminal liability for certain actions
- Upgrade to accommodate latest available technology
- Fee generating to pay for system upgrades