



## Iowa Legislative Services Agency

December 2004

### Inside this Briefing

- Overview
- Tort Law—Important Terms to Know
- Iowa Law — Selected Highlights
- 2003-2004 Iowa Reforms
- Other States — Reform Measures
- Federal Tort Reform

Purpose. Legal Background Briefings provide background information regarding a particular area of law and are updated periodically.

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Legal Background Briefing on...

## TORT REFORM

### Overview

Tort reform, also known as civil justice reform, is aimed at changing a legal system that determines fault and loss liability. A "tort" is any civil wrong in which one party (the plaintiff) who is "damaged" by an intentional or negligent act or acts of another person (the defendant) can seek legal redress, most often in the form of money damages, through the judicial system. Tort law is a combination of both common (judicially created) and statutory (legislated) law. Tort reform measures regulate access to the courts, modify liability rules, and place limits or "caps" on the amount of damage awards recoverable in a tort action.

This legal background briefing highlights major tort reform measures in Iowa since the early 1980s through changes that occurred during the recent 2004 Legislative Session and the 2004 First Extraordinary Session. In addition, this briefing defines important tort law terms and provides information about other tort reform efforts at both the state and federal levels. References in this briefing to the Iowa Code are to the 2005 Iowa Code.

## Tort Law—Important Terms to Know

**Class Action** - A mechanism through which a large number of people with a common complaint may sue or be sued as a representative of a class.

**Collateral Source Rule** - Prohibits a defendant from introducing evidence at trial that a plaintiff in a court case received compensation from an outside source not included in the court case.

**Contingency Fee** - A fee arrangement between an attorney and client whereby the attorney agrees to represent the client with the attorney's compensation set at a certain percentage of the amount recovered if the plaintiff prevails in a tort action.

**Damages** - Money paid at the conclusion or settlement of a tort lawsuit to compensate a plaintiff for monetarily determined costs of an injury.

- **Economic** - Medical costs, lost income, and other economic losses.
- **Noneconomic** - Emotional and physical pain and suffering, loss of enjoyment of life, and other nonmonetary losses.
- **Punitive** (also known as **Exemplary**) - Punishment damages aimed at egregious, malicious, and intentionally bad conduct and to deter similar future misconduct.

**Joint and Several Liability** - Allows a defendant in a lawsuit to be held fully responsible for the entire amount of the plaintiff's damages, regardless of the proportion of fault of persons found to liable.

**Negligence** - The failure of a person to use such care as a reasonably prudent and careful person would use under similar circumstances.

- **Contributory** - Bars a plaintiff with only 1 percent of fault in a negligence action from recovering anything in a tort action.
- **Comparative** - Compares one party's fault to another party's fault in a negligence action allowing partial recovery in a tort action. Classified as either pure or modified.<sup>1</sup>
- **Medical Negligence (Medical Malpractice)** - A situation where a physician fails to properly treat a medical condition and the physician's negligent act or omission is the cause of a new or aggravated injury to the patient.

**Prejudgment Interest** - Compensation for tort plaintiffs for the time that occurs between the filing of a lawsuit and the actual payment of damages.

**Product Liability** - Laws created to protect consumers from injury due to the manufacture and sale of unreasonably unsafe products; based upon the concept of liability without fault known as strict liability.

**Statute of Limitations** - A statute that sets maximum time periods during which certain actions can be brought in court.

**Supersedeas Bond** - A bond requirement that prevents a lower court from enforcing the lower court's judgment when a case has been appealed. A bond requirement also protects a plaintiff from the possibility that a judgment cannot be enforced because the debtor has become insolvent.

## Iowa Law — Selected Highlights

States vary in their enactment of different types of tort reform measures. Some state reforms regulate access to the courts, other measures emphasize procedural and evidentiary reform once a lawsuit has been filed, and yet other measures emphasize reform aimed at the transaction costs of pursuing a tort claim such as limits on attorney fees and damage awards.<sup>2</sup> Since the early 1980s, the Iowa General Assembly has enacted many different types of reform incentives, the highlights of which are detailed below.

In 1982 the Iowa Supreme Court adopted the "pure" doctrine of comparative negligence under which an injured party's recovery in court is diminished in proportion to the other party's contributory negligence.<sup>3</sup> Until that time, Iowa followed the common law doctrine of contributory negligence, which barred a plaintiff who was even minimally at fault from recovering any damages in a negligence action. In 1984, the Iowa General Assembly codified the doctrine of comparative negligence, but in a modified form. Iowa Code chapter 668, Iowa's comparative fault statute,<sup>4</sup> precludes any recovery by a plaintiff who is more than 50 percent at fault in a

negligence action.<sup>5</sup> Under this doctrine, a plaintiff's action is barred if the plaintiff's negligence exceeds the combined negligence of all other parties. Otherwise, the plaintiff's recovery is diminished in proportion to the plaintiff's degree of negligence. The legislation also eliminated the doctrine of joint and several liability as applied to joint defendants who are found to bear less than 50 percent of the total fault, created a right of contribution between two or more persons who are liable on the same indivisible claim and provided enforcement provisions, and eliminated governmental liability for failure to act in certain circumstances.<sup>6</sup>

The next major tort reform legislation occurred in 1986. Senate File 2265 amended medical malpractice litigation law relating to privileged and confidential peer review records and expert witness standards.<sup>7</sup> The legislation also created a limitation on product liability lawsuits for nonmanufacturing retailers; exempted municipal officers and employers from personal liability in a punitive damage claim except in cases of actual malice or willful, wanton, and reckless misconduct; created structured, periodic, or other nonlump sum payment guidelines in a civil case; created a state-of-the-art defense for defendants in product liability lawsuits; and created Code chapter 668A relating to the award of punitive or exemplary damages in a civil case.<sup>8</sup>

In 1987, S.F. 482 made several additional changes regarding tort liability. The legislation created a new procedure for the determination of an award of interest in tort actions, disallowing prejudgment interest on future damages.<sup>9</sup> The legislation also required the court to allow evidence of previous payment or a future right of payment of medical, rehabilitative, and custodial expenses, modifying the common law collateral source rule, and increased the burden that a plaintiff must meet for the court to authorize an award of punitive damages from a preponderance of the evidence standard to a clear, convincing, and satisfactory evidence standard.<sup>10</sup>

The next major legislative change regarding tort liability occurred some 10 years later in 1997. House File 693 amended statute of limitations provisions relating to products liability actions, medical malpractice actions involving minors, and civil actions in general involving minors and persons with mental illness.<sup>11</sup> The statute also changed the method of calculating the prejudgment interest rate, amended the comparative fault chapter by providing that a defendant found to bear less than 50 percent or more of fault in a civil action shall only be jointly and severally liable for economic damages and not for any noneconomic damages, and provided that the doctrine of contributory fault shall not bar recovery in a lawsuit to recover for the loss of consortium.<sup>12</sup>

In 2000 the General Assembly enacted legislation limiting an injured person's ability to recover noneconomic damages in tort actions arising out of motor vehicle accidents where the injured person was the operator of the motor vehicle, a passenger in the motor vehicle, or a pedestrian, and the injured person's injuries were proximately caused by the injured person's commission of any felony and the injured person was subsequently convicted of that felony.<sup>13</sup>

### **2003-2004 Iowa Reforms**

House File 2581, passed during the 2004 Legislative Session, contained a liability reform provision relating to the filing of a supersedeas bond in an appellate case. The bill provided an appeal bond limit or "cap" of 110 percent of the money judgment in cases where the judgment being appealed from is for money and specified certain criteria for the courts to consider in setting an appeal bond in excess of 110 percent. The legislation further provided an outside "cap" on an appeal bond of \$100 million, regardless of the value of the money judgment being appealed from, except in cases where the court finds the defendant intentionally diverted the defendant's assets outside the ordinary course of business for the purpose of evading payment of the judgment.<sup>14</sup> The Act also exempted the state or any of its political

subdivisions from the requirement of filing such a bond.<sup>15</sup>

### Other States — Reform Measures

While Iowa reform measures have focused on comparative fault principles and other substantive and procedural reforms, reforms in other states have been often more far-reaching. Other state tort reform efforts have included initiatives seeking to improve participant expertise in the relevant substantive area, most often in the area of medical malpractice, through such mechanisms as pretrial screening panels, specialized courts, certificates of merit, and scientific or technical evidence reform; initiatives seeking to decrease the adversarial nature of the litigation process through such mechanisms as alternative dispute resolution and mediation procedures; initiatives seeking procedural reform through such mechanisms as class action, intrastate forum shopping, and jury service reforms; and initiatives seeking to establish certain parameters relating to the assessment, determination, and payment of damage awards including providing for implementation of the collateral source rule, periodic payments, damage award<sup>16</sup> and attorney fee limits, and victim compensation mechanisms.

### Federal Tort Reform

Federal tort reform legislation, such as the products liability and medical malpractice reform proposals considered in Congress over the past several years, have been somewhat controversial.<sup>17</sup> One of the major issues involved in any federal tort reform effort is whether Congress has the authority to regulate tort reform, as tort law has traditionally been a matter for state regulation. Opponents of federal tort reform argue that Congress lacks the constitutional authority to regulate some intrastate matters.<sup>18</sup> Opponents also argue that reform measures have not been uniformly undertaken.<sup>19</sup> Proponents of federal tort reform argue for the need for uniform laws to reduce business costs, limit venue shopping, and address specialized litigation areas.<sup>20</sup>

<sup>1</sup> Matthesen, Wickert, & Lehrer, S.C. website on Contributory Negligence/Comparative Fault (<http://www.mw-law.com/chart.htm>).

<sup>2</sup> Congressional Budget Office, *The Effects of Tort Reform: Evidence From the States*, pp. 3-16, June 2004. (hereinafter *Tort Reform*)

<sup>3</sup> *Goetzman v. Wichern*, 327 N.W.2d 742 (Iowa 1982).

<sup>4</sup> As used in chapter 668, "fault" is defined as one or more acts or omissions that are negligent or reckless toward the person or property of the person or others, or that subject a person to strict liability in tort. For purposes of chapter 668, "fault" also includes breach of warranty, unreasonable assumption of risk in certain circumstances, misuse of a product, and unreasonable failure to avoid an injury or to mitigate damages. Iowa Code § 668.1(1).

<sup>5</sup> 1984 Iowa Acts ch. 1293, § 3, codified at Iowa Code § 668.3(1)(a).

<sup>6</sup> 1984 Iowa Acts ch. 1293, §§ 4, 5, 6, and 10, codified at Iowa Code §§ 668.4, 668.5, 668.6, and 668.10.

<sup>7</sup> 1986 Iowa Acts ch. 1211, §§ 14 and 16, codified at Iowa Code §§ 147.135(2) and (3) and 147.139.

<sup>8</sup> 1986 Iowa Acts ch. 1211, §§ 32, 33, 39, 41, and 42, codified at Iowa Code §§ 613.18, 668.3(7), 668.12, 668A.1, and 670.4(9) and (10).

<sup>9</sup> 1987 Iowa Acts ch. 157, § 8, codified at Iowa Code § 668.13.

<sup>10</sup> 1987 Iowa Acts ch. 157, §§ 9 and 10, codified at Iowa Code §§ 668.14 and 668A.1(a).

<sup>11</sup> 1997 Iowa Acts ch. 197, §§ 5, 6, and 7, codified at Iowa Code §§ 614.1(2A), 614.1(9), and 614.8.

<sup>12</sup> 1997 Iowa Acts ch. 197, §§ 9, 10, 11, 12, 13, and 14, codified at Iowa Code §§ 624.18, 668.3(1)(b), 668.3(2)(b), 668.3(8), 668.4, and 668.13.

<sup>13</sup> 2000 Iowa Acts ch. 1062, § 1, codified at Iowa Code § 613.20.

<sup>14</sup> 2004 Iowa Acts, 1<sup>st</sup> Ex. ch. 1001, §§ 6, 7, and 8, repealed, reaffirmed, and reenacted HF 692, 2003 Acts, 1<sup>st</sup> Ex. ch. 1, §§ 115 and 133, codified at Iowa Code § 625A.9(2) and (3) (Code Supp. 2003) and SF 2306, 2004 Acts ch. 1093, § 1. The specified provisions of these bills were invalidated by the Iowa Supreme Court on June 16, 2004, in *Rants and Iverson v. Vilsack*, 684 N.W.2d 193 (Iowa 2004).

<sup>15</sup> HF 2440, an Act limiting the amount of recovery of noneconomic damages by a plaintiff in a medical malpractice action, was vetoed by Governor Vilsack on May 14, 2004.

<sup>16</sup> Lawsuits challenging caps on the recovery of noneconomic damages have been filed in a number of states in the past few years. See [amednews.com](http://www.amednews.com), <http://www.ama-assn.org/amednews/2004/11/01/pr11101.htm>.

Although there have been challenges to many of Iowa's liability reform laws, none have been struck down as unconstitutional. See, e.g., *Prouty v. Martin* (Iowa App. Feb. 2004)(chapter 677-offer to confess judgment); *Krull v. Thermogas Co. of Northwood*, 522 N.W.2d 607 (Iowa 1994)(15-year statute of repose); *Shepherd Components Inc. v. Brice Petrides-Donohue & Associates, Inc.*, 473 N.W.2d 612 (Iowa 1991)(punitive damages-civil reparations trust fund); *Koppes v. Pearson*, 384 N.W.2d 381 (Iowa 1986)(statute of limitations-medical liability lawsuits); *Lambert v. Sisters of Mercy Health Corp.*, 369 N.W.2d 417 (Iowa 1985) (collateral source rule).

<sup>17</sup> H.R. 2813, 108th Congress (Small Business Liability Reform Act of 2003), H.R. 5, 108th Congress (HEALTH Act of 2003).

<sup>18</sup> Cohen, Henry. *Federal Tort Reform Legislation: Constitutionality and Summaries of Selected Statutes*. Congressional Research Service, updated Feb. 23, 2003.

<sup>19</sup> *Tort Reform*, pp. 2-4.

<sup>20</sup> *Id.*