

Measure: SB156

Author: Representative Dan Sullivan

Subject: Tort

Provisions:

Section 1: States that in class action lawsuits, “if a request for an award of attorney fees is made, the court shall appoint an attorney to represent the class upon request by any members of the class in a hearing on the issue of the amount of attorney fees only. Said attorney shall be independent of the attorney or attorneys seeking attorney fees in the class action and said independent attorney shall be awarded reasonable fees by the court on an hourly basis out of the proceeds awarded to the class.”

Section 2: Where a party is required to use a “qualified expert” to prove liability, the plaintiff shall file within sixty days of filing the petition an affidavit attesting to the fact that the plaintiff has consulted with an expert and obtained a written opinion that clearly shows that the plaintiff’s claim is meritorious. The opinion shall also state what acts or omissions the expert believes establishes liability. Allows the court to grant an extension of time to the plaintiff, not to exceed 90 days from the date the petition is filed to file affidavit. If no affidavit is filed by the end of the extension of time granted, the court shall, upon motion of the defendant and unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

Upon written request of any adverse party in any action not arising out of contract, the party shall, within 10 business days after receipt of such a request, provide the adverse party with a copy of the written opinion of the expert and an authorization from the party for the release of all medical records related to the plaintiff for a period of ten years prior to the incident that is at issue. If the plaintiff fails to provide the opinion and the release, the court shall, upon motion of the defendant and unless good cause is shown for such failure, dismiss the action.

Section 3: New law requires notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax.

Section 4: States that “in all cases the jury shall render a general verdict, ~~and the court may in any case at the request of~~ unless the parties thereto, or either of them shall have requested, in addition to the general verdict, ~~direct that~~ the jury to find upon particular questions of fact, to be stated in writing by the party or parties requesting the same. Upon receipt of a request for a finding upon particular questions of fact, the court shall so direct the jury.”

Section 5: Sets out new requirements of when a lawsuit may be dismissed.

Section 6: Changes computation of the prejudgment interest from the “prime rate, as listed in the first edition of the WSJ published for each calendar year” to the “rate equal to the average US Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year.”

Section 7: Amends language as it pertains to bonds while an appeal is pending and the final order is for payment of money, by mandating that the amount of the bond not exceed \$25 million. If the party posting the supersedeas bond is an individual or business with 250 employees or less on the date of the judgment, the bond shall not exceed \$1,000,000.

Section 8: Reduces to 120 from 180, the numbers of days within which, a service of process must be made upon a defendant.

Section 9-10: Redefines “frivolous” to mean the action or pleading was “knowingly asserted in bad faith, or without any rational argument based in law or facts to support the litigant’s position.”

Section 11: Requires a conscious decision by a potential class action member to include himself/herself in a class. This is the opposite of what current law allows, so as it currently stands a person may be part of a class action without being aware of such.

Section 12: Sets out the conditions under which a claimant or defendant can move for summary judgment.

Section 13: Amends language to: restrict the types of opinions a lay witness may provide; provide grounds for under which scenarios an expert witness may testify; provide that the court shall determine an expert’s admissibility prior to the introduction of such evidence; mandates pretrial disclosure of expert testimony.

Also adds language which states that interlocutory appeal of a ruling on the admissibility of expert evidence shall be available at the discretion of the appellate court; provides considerations for the court during such an appeal.

Since the proper construction of expert evidence admissibility framework is a question of law, the court of appeals shall provide a new standard of review in determining whether the trial court fully applied the proper legal standard in considering the admissibility of expert evidence. The provisions of this section are severable.

Section 14-16 Adds language stating that nothing in the Consumer Protection Act shall apply to: claims seeking damages for conduct that results in bodily injury, death, or damage to property other than the property that is the subject of the practice claimed to be a violation of the Consumer Protection Act

Amends existing language to read that for any action for damages for a violation of the Consumer Protection Act, the consumer must show injury in fact and loss of money or property as a result of the violation. This also specifies that the consumer has a right to *actual* damages sustained.

Section 17: Sets out the definitions for both “future damages” and “future earnings”. Establishes that this section only applies where the “present value of the award of future damages...equals or exceeds \$100,000”. States that upon request of a party, “the court shall order that medical, health care, or custodial services awarded in an action be paid in whole or in part in periodic payments rather than a lump-sum payment.”

Sets out how periodic payments are to be funded.

States that “on the death of the recipient, money damages awarded for loss of future earnings shall continue to be paid to the estate of the recipient of the award without reduction.

Section 18: Modifies joint and several liability, by removing the language “A defendant shall be jointly and severally liable for the damages recoverable by the plaintiff if the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than fifty percent (50%).”

Section 19: As it relates to collateral source: Requires the court to admit into evidence any showing that a plaintiff received compensation for the injuries or harm that gave rise to the cause of action from a source wholly independent of the defendant...and may any such sum to be deducted from the amount of damages that the plaintiff recovers from the defendant. Claims subject to a right of subrogation or to compensation resulting from the proceeds of life insurance shall not be subject to this section.

Section 20: Caps all non-economic damages at \$300,000 with respect to the personal injury. Adjusts the cap annually through an automatic inflation adjustment and allows the cap to be lifted. Exception to this cap is gross negligence or malice.

Section 21: Relating to loss of earnings: If any plaintiff seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any state or federal income tax law.

Section 22: Amends law to state that failure to secure a child is admissible as evidence in a civil action case.

Section 24: Clarifying language stating that in medical peer review proceedings, peer review information shall be private, confidential, privileged and not subject to discovery.

Section 25-37: Creates the “Uniform Emergency Volunteer Health Practitioners Act” providing liability protection to volunteer health practitioners.

Sections 38-42: Deals with quality assessments and assurance committees in skilled nursing or nursing facilities. States that such quality assessment and assurance committee records shall be confidential and privileged, and that such records shall not be disclosed to any person or entity. Specifically states that these records are “privileged for purposes of state judicial proceedings in civil matters and for purposes of state administrative proceedings, including with respect to discovery and subpoenas. Further states that the person who reviews or creates these records may not be permitted or required to testify in any civil or administrative proceeding with respect to the information in those records.

Exempts from liability “any person acting as a member of or staff to such committee, and any person who participates with or assists such committee regarding its activities” with respect to the quality assessment and assurance activities of such quality assessment and assurance committee.

Also states that any facility’s “Minimum Data Set”, along with any statements of deficiencies, may not be admitted into evidence in any state judicial or administrative proceeding unless:

1. The deficiency determination is final, adjudicated and has been appealed;
2. The deficiency determination or Minimum Data Set (MDS) related documentation is otherwise admissible under the State Rules of Civil Procedure, as applicable; and
3. The statements of deficiencies, plans of correction or Minimum Data Set (MDS) related documentation are directly related to the harm allegedly caused to the patient that is the subject of the proceeding.

Sections 43 to 48: Creates the “School Protection Act,” which provides liability protection to educators

Section 49: Changes law to state that “Any action for damages based in tort shall be brought within eight (8) years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose and all actions which are not brought within eight (8) years after the act or omission giving rise to the claim are time barred.”

Section 50: States that peer review information shall be private, confidential and privileged except for providing relevant peer review information to a state agency or board which licensed the professional. Factual statements, opinions and conclusions presented during a peer review process shall not be subject to discovery or admissible at trial, nor may the recommendations made and action taken as a result of any peer review process be subject to discovery or admissible at trial. No person involved in a peer review process may be permitted or required to testify regarding the peer review process in any civil proceeding or disclose by responses to written discovery requests any peer review information.

Section 51: Deletes old definition language dealing with the term “volunteer” that restricted a volunteer “~~where the person does not offer that type of service, care, assistance, advice or other benefit for sale to the public~~ and replaces it with new language: provided, being legally entitled to receive compensation for the service or undertaking performed shall not preclude a person from being considered a volunteer.

Sections 52-55: New law creates the Common Sense Consumption Act, which protects against obesity lawsuits for restaurants, food manufacturers and growers.

Sections 56-59: Exempts gun manufacturers, distributors and sellers who “lawfully” manufacture, distribute or sell firearms from liability for “any injury suffered”. Does not exempt such firearms from product liability actions if appropriate.

Section 60: Repealer – Repeals 5 O.S. Supp. 2007, Section 7.1 – Requiring an evidentiary hearing on attorney fees in class action lawsuits.

Section 61: Repealer – Repeals 47 O.S. Supp 2005, Section 12-420 – The prohibition of use or nonuse of seat belts being submitted into evidence in any civil suit.

Section 62: Repealer – Repeals 47 O.S. Supp 2005, Section 12-420 – The prohibition of use or nonuse of seat belts being submitted into evidence in any civil suit.

Section 63: Repealer – Repeals 63 O.S. Supp. 2007, Section 6602 – Licensing and appointment of health personnel and emergency powers of public health authority.

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