

OHIO'S NEW SENATE BILL 80 AFFECTS MEDICAL MALPRACTICE CASES

On January 6, 2005, Governor Robert A. Taft signed into law Senate Bill 80 (S.B. 80). The tort reform provisions in S.B. 80 will take effect on **April 6, 2005**, and will undoubtedly prompt an increase in tort filings as that date approaches.

S.B. 80 is the most recent addition to the Ohio General Assembly's tort reform effort, and broadly targets most tort claims. This comprehensive set of laws fills certain gaps left by previous tort reform legislation that focused more narrowly on medical malpractice claims, joint and several liability, prejudgment interest, and cases involving nursing homes, silica and asbestos.

How Does S.B. 80 Affect Medical Malpractice Cases?

This new bill includes several provisions applicable to medical malpractice cases, including caps on punitive damages, expanded post-verdict review of compensatory damage awards, expanded definitions and penalties for frivolous conduct, and changes in jury instructions regarding taxability of damages.

Conversely, the provisions in S.B. 80 addressing the statute of limitations, statute of repose, caps on non-economic compensatory damages, and the admissibility of collateral source evidence are *not applicable* to medical malpractice cases, because those issues were previously codified (for medical malpractice cases only) in S.B. 281 (effective April 11, 2003).

I. Punitive Damage Caps (Ohio Revised Code § 2315.21)

- If you are a *large* non-manufacturing employer (greater than 100 employees) the cap on punitive damages is two times the compensatory damages.
- If you are a *small* non-manufacturing employer or an individual (less than or equal to 100 employees), the punitive damage cap is the lesser of:
 - Two times compensatory damages
 - OR**
 - 10% of the defendants' net worth;
 - up to a maximum of \$350,000.

II. Post-Verdict Review of Damages (Remittitur) (Ohio Revised Code § 2315.19)

- Judge must review evidence supporting an award of compensatory damages if defendant challenges it as excessive.
- Judge must consider whether there was:
 - Passion or prejudice;
 - Improper consideration of the wealth of the defendant;
 - Improper consideration of defendant's misconduct ("punishing" defendant);
 - An attempt to circumvent the cap on punitive damages;
- Judge must also consider whether verdict is excessive compared to other similarly situated plaintiffs;
- If judge upholds the challenged award, the court must set forth reasons in writing.

**III. Jury Instructions: Taxability of Damages
(Ohio Revised Code § 2315.01)**

- Judge must tell the jury whether plaintiff will be taxed on compensatory, punitive, and/or exemplary damages.

IV. Court Costs and Fees to Victims of Frivolous Conduct (Ohio Revised Code § 2323.51)

- “Frivolous conduct” expanded to include improper purpose, delay, increase in the cost of litigation, allegations without evidentiary support, and denials without factual support, along with harassing and/or maliciously injuring another;
- Party affected by frivolous conduct can file a motion for court costs, attorney fees, and reasonable expenses in connection with the action/appeal within 30 days after final judgment.

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