



# OREGON LEGISLATIVE POLICY & RESEARCH OFFICE

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## BASICS ABOUT . . . TORT REFORM

“Tort reform” is the name given to recent efforts at overhauling the nation’s civil court procedures. The efforts take aim at what the reformers call frivolous lawsuits, exorbitant jury awards, “ambulance chasing” attorneys, and other perceived courthouse abuses. Specific tort reform proposals include limits on contingency fees for lawyers, requirements for losers to pay most court costs including the winners’ attorney fees, limits on punitive damages, penalties for frivolous litigation, and limits on joint liability.

### Brief definitions:

Defendant:	The party against whom a court action is brought.
Frivolous:	Trivial, flimsy, petty.
Litigation:	Lawsuit, legal action.
Liability:	Responsibility, accountability.
Malpractice:	Professional misconduct; unreasonable lack of skill.
Plaintiff:	The party who brings court action against another.
Prevailing party:	The winner of a lawsuit.
Punitive damages:	Awards intended to punish or deter wrongdoing.
Tort:	Court action for damages over violation of duty.

**How big is the problem?** Proponents of tort reform cite national civil liability system statistics and their effects on business and insurance rates to show the size and impact of the problem. They say statistics show that the costs and frequency of product liability, malpractice, business tort, and mass latent injury cases have grown dramatically (from 0.6 percent of gross domestic product in 1950 to 2.3 percent, \$132 billion total, in 1991). They say that exorbitant punitive damage awards serve as incentive for frivolous action, discourage settlement, leave some corporate defendants without funds to pay the ordinary costs of later plaintiffs, and cause court congestion. When large companies are overly-concerned about liability, they may withdraw worthwhile products, increase prices, put a damper on innovation, and end up at a competitive disadvantage worldwide. Proponents of tort reform argue the liability system is out of control, creating an alarming economic risk for business and the American economy. They cite the recent bankruptcies of Manville Corporation (asbestos), A. H. Robins (Dalkon Shield), and Dow Corning (breast implants).

**What do opponents say?** Opponents contend that the present court system provides the only forum for middle class persons and small business to try to obtain relief from actual and perceived abuses by government, big business, and other persons. The tort reforms currently proposed, they say, take away the fairness in the system by giving most of the power to the side with the most money. Large punitive damage awards are extremely rare, they argue, and are usually entirely justified. “Frivolous” lawsuits, they note, are often not frivolous at all. They point out that legal challenges to slavery would likely have been labeled “frivolous” by 19th century courts. They contend that “tort reform” is really just a political effort to prevent

deserving plaintiffs from obtaining justice against major corporations, a scheme to preserve corporate profits and power.

**What are the specific elements of tort reform?** Most tort reform proposals include:

- o Caps on, or elimination of, punitive damage awards.
- o Penalties for frivolous and poorly-prepared legal actions.
- o Requirements for losing parties to pay the court and attorney costs of prevailing parties.

**What is each of these tort reforms expected to accomplish?** Proponents say that capping or eliminating punitive damage awards would greatly reduce the incentive for questionable lawsuits by taking away the expectation of a big payoff beyond the documented damages. Questionable lawsuits, they say, clog the courts and cause unnecessary expenses for the defendants. The reform would stop unprincipled attorneys who take questionable lawsuits "on contingency," expecting to take a big portion of the winnings. Penalizing frivolous and poorly-prepared court action would greatly reduce the cases pending, and greatly improve the speed and efficiency of processing the remaining cases. Having the losing party pay the costs of the prevailing party will cause plaintiffs to think twice about their actions because the costs of losing would be much greater. Proponents contend that the likely result would be court actions that are more meritorious.

**What do the opponents say?** Opponents say their primary concern is access to the justice system. Oregon courts already have sanctions against frivolous action, they say, including the right to move for summary judgment. The risk of being penalized for filing a frivolous action could deter meritorious claims. If an average lawsuit costs \$500,000 to defend, they add, what citizen of average or lower income could risk losing, when the loser would be responsible for paying the costs of both sides?

**What has Oregon done about tort reform?** The 1995 Oregon Legislature passed several measures to institute a balanced package of reforms while at the same time protecting citizens' rights to bring lawsuits to redress grievances. Included in the package were provisions to

- o Limit contingency fees;
- o Mandate arbitration in most cases involving less than \$50,000;
- o Encourage settlement conferences;
- o Penalize a wide variety of frivolous lawsuits and poorly prepared court documents and motions;
- o Mandate attorney fee and court cost awards in certain cases;
- o Provide criteria for the discretionary award of court costs and attorney fees in a wide variety of other cases;
- o Modify punitive damage awards; limit attorney shares (to 20 percent) of punitive damage awards; and
- o Modify private rights of action under racketeering statutes and a number of other court procedures and evidentiary rules.

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