

RHODE ISLAND

ADJOURNMENT JULY 6

(\* denotes carryover from 1989)

Bill Number, Sponsor, Summary

Status

H5411, Rep. Read; referred to Committee on Judiciary. Provides that postjudgment interest shall accrue on both the judgment and prejudgment interest entered.\*

Passed House 5/17/89; referred to Senate Judiciary Committee 5/23/90; died in Committee with adjournment.

H5828, Rep. Fogarty; referred to Committee on Judiciary. Sets statute of limitations for personal injury and medical malpractice.\*

Died in Committee with adjournment.

H5830, Rep. Fogarty; referred to Committee on Judiciary. Abolishes the collateral source rule.\*

Died in Committee with adjournment.

H6242, Rep. Crowley; referred to Committee on Judiciary. Provides that the liability of a defendant for damages shall be several only and not joint where the defendant's act or omission constituted no more than 25 percent of the damages.\*

Died in Committee with adjournment.

H6927, Rep. Gorham; referred to Committee on Judiciary. Abolishes the collateral source rule for all tort actions and thereby permits the introduction of evidence of payments received from a collateral source.\*

Died in Committee with adjournment.

H8522, Rep. Teitz; referred to Committee on Judiciary. Prohibits the sale, directly or indirectly, of discovery documents for profit.

Passed House 4/24; amended and reported favorably by Senate Judiciary Committee 6/26; passed Senate 6/28; Governor vetoed bill 7/11.

H8630, Rep. Fogarty; referred to Committee on Judiciary. Permits the admission and consideration of evidence concerning collateral source payments in all personal

Died in Committee with adjournment.

injury, injury to property or wrongful death action.

H8672, Rep. Fogarty; referred to Committee on Judiciary. Reduces statute of limitations in personal injury actions from three to two years; creates uniform discovery rule for all tort actions.

Died in Committee with adjournment.

H8673, Rep. Fogarty; referred to Committee on Judiciary. Changes prejudgment and postjudgment interest in civil actions.

Died in Committee with adjournment.

H8751, Rep. McMahon; referred to Committee on Judiciary. Provides amount recovered in a wrongful death action would be considered an asset of the decedent's estate. Provided judgement would be for the benefit of all beneficiaries included in the decedent's will or if no will.

Died in Committee with adjournment.

H8837; Rep. McMahon; referred to Committee on Judiciary. Provides that the court may award a reasonable attorney's fee to the prevailing party in any civil action arising from a breach of contract.

Died in Committee with adjournment.

H9091; Rep. Anzeveno; referred to Committee on Judiciary. Includes the human fetus as a person for purposes of death by wrongful act.

Died in Committee with adjournment.

S264, Sen. Bevilacque; referred to Committee on Judiciary. Abolishes the assumption of the risk in all actions brought for personal injuries or injuries to property; provides for comparative fault.\*

Died in Committee with adjournment.

S714, Sen. Kelly; referred to Committee on Judiciary. Provides that all prejudgment interest occurs from the date of filing the civil action and that the rate would be equal to the average one year treasury bill rate rather than a fixed 12 percent.\*

Died in Committee with adjournment.

S1260, Sen. Badeau; referred to Committee on Judiciary. Sets standards for statute of limitations in tort actions.\*

Died in Committee with adjournment.

S1263, Sen. Badeau; referred to Committee on Judiciary. Permits admission and consideration of evidence concerning collateral source payments in all personal injury, property and wrongful death actions.\*

Died in Committee with adjournment.

S1270, Sen. Hanson; referred to Committee on Judiciary. Eliminates the collateral source rule in all personal injury, injury to property, and wrongful death actions.\*

Died in Committee with adjournment.

S2139, Permits the admission and consideration of evidence concerning collateral source payments.

Died in Committee with adjournment.

S2141, Sen. Badeau; referred to Committee on Judiciary. Modifies joint and several liability.

Died in Committee with adjournment.

S2277, Sen. Bevilacqua; referred to Committee on Judiciary. Relates to wrongful death actions.

Died in Committee with adjournment.

S2294, Sen. Badeau; referred to Committee on Judiciary. Reduces the statute of limitations in personal injury actions; creates a uniform discovery rule; creates a ten-year statute of repose for medical malpractice; lowers age at which the statute of

Died in Committee with adjournment.

limitations starts.

S2374, Sen. Acciardo; referred to Committee on Judiciary. Clarifies the effective date of 1989 enactment increasing wrongful death benefits.

Died in Committee with adjournment.

S2423, Sen. Badeau; referred to Committee on Judiciary. Relates to prejudgment interest made for pecuniary damages.

Died in Committee with adjournment.

Updated: 11/15/90

## RHODE ISLAND

### Background

The 1986 legislature passed dram shop and medical malpractice legislation. General product liability was not addressed, but a bill to create specific tobacco manufacturer liability was introduced but died without a hearing in House Corporations Committee.

The study committee created in 1986 presented its recommendations to the 1987 legislature. Provisions related to product liability, punitive damages and repeal of joint and several liability were amended out of the package. Enacted were periodic payments, prohibition on ad damnum plea, sanctions for frivolous suits and limits on liability of officers of nonprofit organizations.

All 1987 bills carried over to the 1988 session, including measures to modify joint and several liability, cap noneconomic damages, abolish the collateral source rule, set a 10-year statute of repose, and establish a government standards defense.

In 1988, the coalition's package included a comprehensive product liability bill (based on the ALEC model) which included liability defenses in products cases based on compliance with government standards; a bill to abolish joint and several liability (H8782); and H8747, to impose sanctions on frivolous lawsuits. No action was taken on these bills. They died in committee on adjournment.

### 1989 Legislation

The legislature convened on January 3 and adjourned on July 6. The coalition's packages included:

- . H5828 which would reduce the personal injury statute of limitations from three to two years and would create a uniform discovery rule for all tort actions. The bill would also create a ten year statute of repose for medical malpractice and product liability actions premised on theories of strict liability or breach of implied warranty. In addition, H5828 would lower the age at which the statute of limitations starts to run from 21 years of age to 6 years of age.
- . H5830 would abolish the collateral source rule.
- . H6242 would modify the doctrine of joint and several liability by providing for several liability when the defendant is no more than 25 percent at fault.

- . H6927 and its companion S1263, also provided for the abolition of the collateral source rule. These bills were referred to their respective Judiciary Committees. They were not reported by the April 7 (House) and May 2 (Senate) committee deadlines for action; however, they carry over for consideration in the 1990 session.
- . S1260, would provide a ten year statute of repose in product liability actions and would reduce the statute of limitations from three to two years. S1260 would also reduce the statute of limitations for liability postponing the running of the statute from 21 to six years of age.

S264, backed by the plaintiff's bar and sponsored by Senate Judiciary Committee Chairman Bevilacque, would abolish the assumption of the risk doctrine in all personal injury and property damage actions. The bill would retain the current language that requires damages to be diminished in proportion to the amount of negligence attributable to the person injured or owner of the property damaged. Senator Bevilacque, a plaintiff's lawyer, is a very powerful member of the state legislature. After several meetings with coalition representatives, there was an agreement that the bill would not move in 1989. S264 was not reported by the committee deadline; it carried over to the 1990 session.

Another bill supported by the plaintiff's bar, S1281, which would raise the minimum recovery in wrongful death actions from \$50,000 to \$100,000, passed the Senate and is pending in the House Judiciary Committee. No further action was taken on the bill and it carried over to the 1990 session.

#### 1990 Legislation

The legislature convened January 2 and adjourned July 6. In addition to the carryover legislation, 1990 tort reform legislation included H8630 and S2139, to permit evidence of collateral source payments in all personal injury and wrongful death actions; H8672 and S2294, to reduce the statute of limitations from three to two years and create a ten-year statute of repose; and, S2141, to modify joint and several liability by applying a 25/1 rule. These bills were not considered and died when the legislature adjourned. All tort-related carryover legislation also died on adjournment.

Legislation supported by the plaintiff's bar, H8522, to restrict protective orders, was approved by the legislature but vetoed by Governor DiPriete. H8522 would have prohibited a court from entering an order in a product liability action that forbids any person from disseminating information obtained through discovery which is related to design specifications, warranties, etc., to state or federal agencies or attorneys working on similar cases. Before passage, H8522 was amended by adding a provision to prohibit

the sale of discovery documents for profit. Governor DiPrete declared in his veto message, "I am opposed to this legislation because it interferes with the judicial process and the discretion of the courts as to whether or not and to what extent protective orders should be issued in product liability actions...I believe that decisions with respect to protective orders concerning matters discovered in litigation should be left to the court which is familiar with the individual case which stands before the court."

#### Prospects for Action in 1991

As a result of the November 1990 elections, the Democrats picked up four seats in the House and four seats in the Senate. The legislature is dominated by Democrats, 47 in the Senate and 87 in the House to the Republican's 5 seats in the Senate and 13 in the House. The leadership in both chambers is not favorable to tort reform.

Incumbent Governor Edward DiPrete (R) was trounced by newcomer Governor-elect Bruce Sundlun (D) with Sundlun getting 74 percent of the votes cast. Democrats made a near-sweep of the statewide elections.

The legislature and particularly the Judiciary Committees in both chambers are dominated by plaintiff's attorneys. Both House and Senate Judiciary Committee Chairmen are powerful plaintiff's attorneys. Former Senate Judiciary Committee Chair Bevilacqua, is now the Senate Majority Leader.

The TI lobbyist is not optimistic for progress in 1991 or in the foreseeable future. The business community will need to beef up its defensive resources for attacks by the plaintiff's bar in 1991, particularly with regard to protective order restriction legislation.

#### Coalition/Business Support

The state Chamber of Commerce Federation is the leader of the tort reform coalition, the Rhode Island Tort Reform Coalition, which was organized in late 1986. The coalition's membership includes hospitals, manufacturers, and professional interests.

Frank Holbrook of the Rhode Island Chamber said that the tort reform coalition was able to get some insignificant reforms through in 1988. The legislature is very anti-reform making the coalition's tort reform goals extremely difficult to achieve. The coalition will, however, introduce a package that will include portions of the product liability measures introduced last year in separate bills. The coalition also plans introduce medical malpractice reform legislation.

As a side-note, the coalition did not take a position on the 1990 protective order legislation and did not participate in its opposition.

TI Lobbyist's Involvement

The Institute's lobbyist acts as legal counsel to the coalition. The coalition has not asked for industry participation. His firm also represents the Distilled Spirits Council, the Beer & Wine Wholesalers and the Group Health Association.

The TI lobbyist lobbied for the coalition's package in 1989. He was instrumental in blocking movement on S264 (to abolish assumption of the risk). In addition, the TI lobbyist worked to defeat the protective order bill in the legislature and met with Governor DiPrete on behalf of the Pharmaceutical Manufacturers Association to urge a veto of H8522.

Sources

ATRA

Frank Holbrook, CofC Federation 401-272-1400

Kelly Sheridan, Esq., TI lobbyist

Former Governor Dennis Roberts, TI lobbyist

TI Legislative Report