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2023 TRANSPORTATION PRACTICE GROUP SEMINAR

2023 Iowa Tort Reform Legislation

Iowa Senate File 228



- NOT law yet – will be shortly.
- History:
 - Version 1 → \$2 million
 - Version 2 → \$5 million; more exceptions

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Who Does It Apply To?



- Personal injury cases “involving the operation of a commercial motor vehicle requiring a commercial driver’s license.”
- Exceptions: Does NOT apply to “common carriers of passengers,” including school buses.

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What Does It Do?



- (1) Eliminates “negligent hiring” claims *IN MOST CASES*.
- (2) Limits noneconomic damages to \$5,000,000 *IN SOME CASES*.

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(1) Eliminates “negligent hiring” claims *IN MOST CASES.*



- “Trial court shall dismiss...any claim of the employer’s direct negligence in hiring the employee driver,” **BUT ONLY IF:**
 - (A) Company admits driver was driving in scope of employment;
AND
 - (B) Company makes this admission by “**motion,**” at the proper time.
- **Issues?**
 - Retention, training, supervision?
 - Need to follow proper procedure.

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(2) Limits noneconomic damages to \$5,000,000 *IN SOME CASES.*



- **(A) What is the cap?**
- **(B) When does the cap apply?**
- **(C) Unresolved issues?**

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(2) Limits damages to \$5,000,000 *IN SOME CASES.*

- (A) What is the cap?
 - “The total amount recoverable per plaintiff against the owner or operator...for noneconomic damages” is \$5,000,000.
 - “noneconomic damages” – “damages arising from pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, loss of chance, loss of consortium, or any other nonpecuniary damages.”

(2) Limits damages to \$5,000,000 *IN SOME CASES.*

- (B) When does the cap apply? → NOT for:
 - BAC .04
 - Driver refuses post-accident testing
 - Felony
 - Cell phone
 - Speeding 15 MPH
 - “reckless driving” – “willful or wanton”
 - “disqualified from operating a [CMV]” due to lack of CDL “or otherwise”

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(2) Limits damages to \$5,000,000 *IN SOME CASES.*

- **(C) Unresolved Issues?**
 - *(I) Multiple loss of consortium claims = multiple caps?*
 - *Argument for “yes”* : “per plaintiff”
 - *Argument for “no”* : applies “regardless of the number of derivative claims”
 - *(II) Multiple caps where “owner” is different than “employer”?*
 - *(III) What fact scenarios will trigger exceptions?*
 - “disqualified from operating a [CMV]” due to lack of CDL “or otherwise”
 - “reckless driving”
 - *(IV) How often will we know cap applies pretrial?*

TAKEAWAYS



- **Good legislation...**
 - Can limit discovery.
 - Great negotiating tool.
 - Potential cap.
- **But NOT a silver bullet.**
- **Need counsel who knows how to navigate this to your advantage.**

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TAKEAWAYS



- **Need counsel who knows how to navigate this to your advantage**
 - Narrow discovery as appropriate.
 - Timely file the required “motion” to trigger the damages cap.
 - Ensure cap applies as soon as possible
 - e.g., timely file motion to kick out boilerplate claims of “recklessness”

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