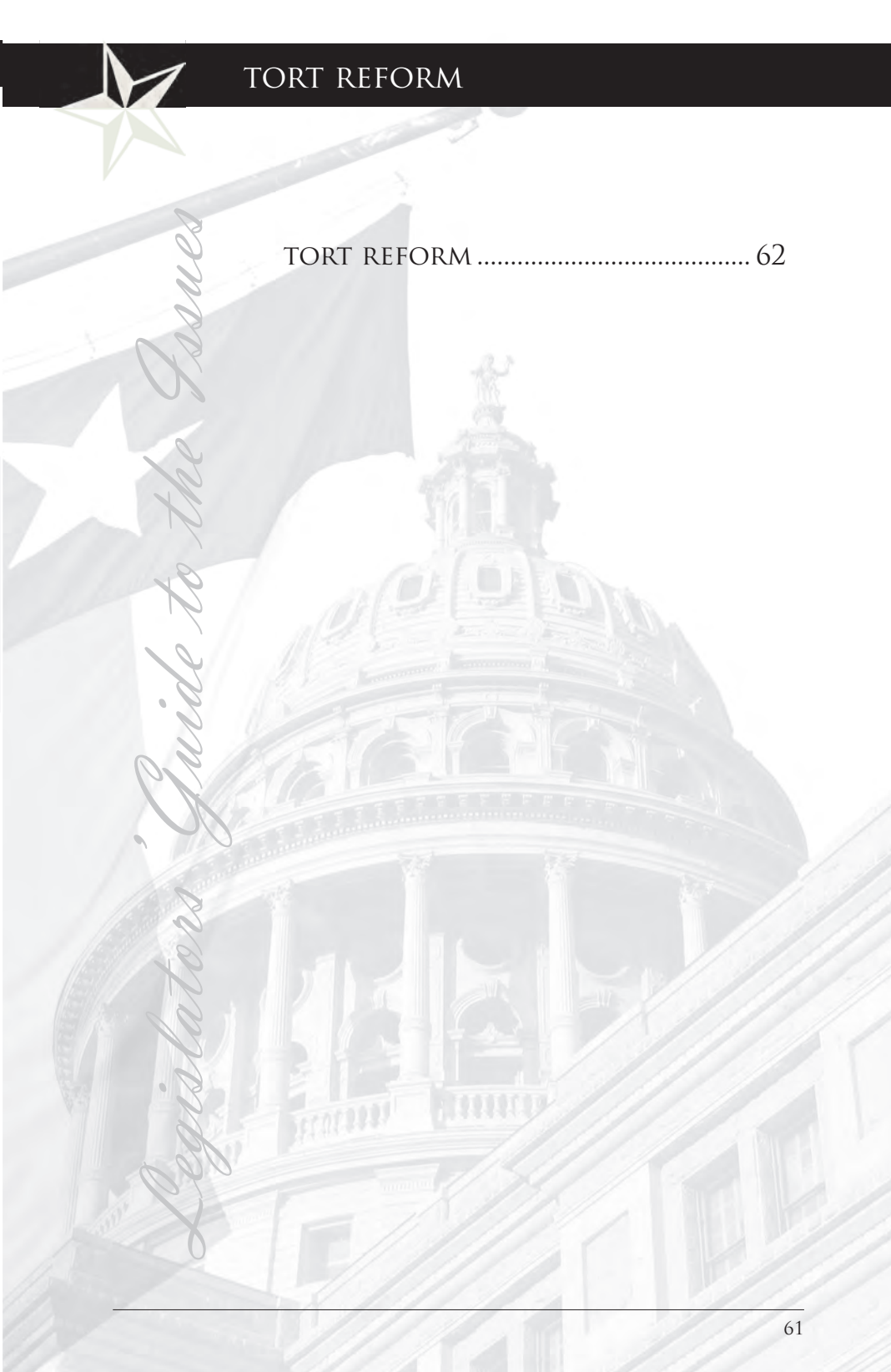




*Legislators' Guide to the Issues*

TORT REFORM ..... 62



THE ISSUE

Since 1995, Texans have embarked on an unprecedented effort to restore justice to its rightful place in Texas courtrooms. The civil justice reforms of the last 11 years are too numerous to fully catalog, but a short listing would include reforms in areas such as: venue shopping; product liability; punitive and non-economic damages; frivolous lawsuits; class action lawsuits; medical liability; and asbestos and silica litigation.

While Texans have clearly benefited from past tort reforms, more work remains to be done in completing the overhaul of the Texas civil justice system.

For instance, Texas became infamous in the late 1980s for its hospitality of lawsuits filed on behalf of residents of other states. Tort reformers worked for years to bring this abuse of the system to an end. However, their success did not mean the end to lawsuit abuse in Texas—it merely caused the plaintiff's bar to put its resources into more profitable areas.

One of the new profit centers that sprung up in Texas was asbestos and silica litigation. Texas became a favorite venue for plaintiffs in asbestos cases. Three counties, Harris, Galveston and Jefferson, led all other jurisdictions for new filings for much of the 1990s. While other states such as Mississippi and New York vied for second and third, Texas led the nation in asbestos filings for over a decade.

An even more recent example of entrepreneurial trial lawyers is the current wave of Vioxx lawsuits. In the first Vioxx lawsuit to go to trial in the country, last August an Angleton jury awarded by more than \$253 million in damages against the maker of Vioxx. The actual economic damages in the case totaled only \$400,000. Noneconomic damages, however, were \$24 million, including \$22 million for mental anguish and loss of companionship. Punitive damages were \$229 million.

Texas clearly needs to continue working on tort reforms in order to counter the ongoing efforts of entrepreneurial trial lawyers to mine profits from the tort system.

THE FACTS

- ★ A recent study by the Pacific Research Institute ranked Texas as having the best tort reform system among the 50 states.
- ★ The American Medical Association dropped Texas from its list of states that are in a medical liability crisis.
- ★ Five of the largest malpractice insurers in the Texas market have instituted rate cuts that will save doctors (and their patients) about \$50 million.
- ★ Every liability insurance provider in Texas except one had lowered premiums by 2005.



- ★ Doctors recanted more than 4,000 of 10,000 silicosis diagnoses when questioned under oath in the Corpus Christi courtroom of Judge Janis Jack. One West Virginia radiologist testified he didn't interview, conduct physical exams on or check the work records of 2,700 of the claimants in the silica cases.
- ★ Despite its successes, Texas still has an image problem; a 2005 study of 1,400 practicing corporate attorneys ranked Texas' tort system 44th in the nation.

## RECOMMENDATIONS

- ★ Improve jury selection by reducing the 10 peremptory challenges and the scope of questioning currently available to attorneys in jury selection.
- ★ Improve expert testimony by encouraging judges to use independent professionals to help them determine whether expert testimony should be admitted in court, and require that doctors who testify as expert witnesses be understood to be practicing medicine, which would give the Texas Medical Board the authority to discipline those who fraudulently testify.
- ★ Place caps on noneconomic damages by extending the current noneconomic damage caps in Texas to actions other than medical liability.
- ★ Split punitive damage awards by adopting punitive damages sharing, which directs a percentage of the damages to the state—much like a civil penalty in a regulatory enforcement case.

## RESOURCES

- *Restoring Civil Justice in Texas: Finishing What We Started* by Bill Peacock, Texas Public Policy Foundation (Apr. 2006) <http://www.texaspolicy.com/pdf/2006-04-PP-tortreform-bp.pdf>.
- *A Review Of Asbestos Litigation* by Craig Schulman, Byron Schlomach, and Bill Peacock, Texas Public Policy Foundation (Feb. 2005) <http://www.texaspolicy.com/pdf/2005-02-asbestos-I.pdf>.
- *Critical Condition: How Lawsuit Abuse Is Hurting Health Care & What Texans Can Do About It* by Chris Patterson, Colleen Whalen and John Pisciotta, Texas Public Policy Foundation (Apr. 2003) <http://www.texaspolicy.com/pdf/2003-04-29-criticalcondition.pdf>.
- *U.S. Tort Liability Index: 2006 Report* by Lawrence J. McQuillan and Hovannes Abramyan, Pacific Research Institute (June 2006) [http://www.pacificresearch.org/pub/sab/entrep/2006/tort\\_reform/index.html](http://www.pacificresearch.org/pub/sab/entrep/2006/tort_reform/index.html).
- *2005 U.S. Chamber Of Commerce State Liability Systems Ranking Study – Final Report*, U.S. Chamber Institute for Legal Reform (Mar. 2005) <http://www.instituteforlegalreform.com/harris/pdf/HarrisPoll2005-FullReport.pdf>.