

Ranking the States: LAWSUIT CLIMATE 2010



Conducted for the U.S. Chamber
Institute for Legal Reform by
Harris Interactive Inc.
www.jobsnotlawsuits.com

Oklahoma: Survey Shows State Ranks 31st in State Liability Ranking¹

Here are some possible explanations:

Oklahoma's decline in the Harris survey rankings marks a return to Oklahoma's more historic ranking.

- Oklahoma ranked 17th in 2008, but 38th in 2007, 33rd in 2006, and 32nd in 2005.

Oklahoma's 2009 comprehensive tort reform package is a huge victory for legal reform but its impact has not yet been felt.

- The Comprehensive Lawsuit Reform Act of 2009 (H.B. 1603) was signed into law by Governor Brad Henry in May 2009 and went into effect on November 1, 2009.
- Some of the many positive reforms included in the 2009 law include:
 - Strengthening venue laws to prevent forum-shopping;
 - Strengthening expert testimony standards to reduce the use of junk science in courts;
 - Limiting subjective non-economic damages to \$400,000 other than in exceptional circumstances;
 - Protecting the right to appeal extraordinary damage awards by setting a limit on the required bond;
 - Tightening discovery rules to prevent abuse;
 - Defining the scope and limits of product liability lawsuits;
 - Instituting various safeguards for class action litigation;
 - Clarifying the state's consumer protection law to ensure that consumers receive recovery for actual losses;
 - Prohibiting claims that restaurants and food makers are responsible for obesity and related illnesses;
 - Requiring medical malpractice claims to be accompanied by a certificate of merit from a qualified physician;
 - Not permitting uninjured individuals to sue for exposure to asbestos or silica if not physically impaired; and
 - Ensuring that defendants are only responsible for their proportionate share of the injury award unless they are more than 50% at fault.
- The sweeping nature of the new law was reflected by the U.S. Chamber Institute for Legal Reform's decision to present its 2009 State Leadership Award to the State Chamber of Oklahoma for its efforts in promoting reform.
- Given the magnitude and timing of these reforms, Oklahoma's reputation is likely to improve as the reforms are implemented and as perceptions gradually change over time.

The Oklahoma Supreme Court may stand as a barrier to legislative reform.

- The Oklahoma Supreme Court has nullified several tort reform measures in recent years, creating a major hurdle after enactment of legislation. Similar challenges are expected to the 2009 law. Until the recent reforms are upheld, lingering doubt as to their permanency may fuel a continuing negative perception of Oklahoma's civil justice system.
 - In 2006, the court struck down a requirement of Oklahoma's Affordable Access to Health Care Act (enacted in 2003) that claimants file an affidavit of merit from a physician supporting their medical malpractice claims.² This affidavit requirement helped to protect against frivolous claims.
 - In 2008, the court struck down the 180-day period within which a plaintiff had been required by law to file a medical malpractice complaint.³ This time limitation helped to prevent stale claims, or claims in which key evidence needed to be collected in a timely manner before spoliation.

Use of contingency-fee attorneys by the state adds to the negative atmosphere.

- The experience of the use of contingency-fee counsel in other states demonstrates that this practice often leads state officials to award lucrative contracts to friends, former partners, and political contributors, when the government attorneys could handle such matters. Yet, this practice has been allowed to continue in Oklahoma.⁴

¹ Go to www.jobsnolawsuits.com for a copy of "Ranking the States: Lawsuit Climate 2010 State Liability Systems Survey" conducted for the U.S. Chamber Institute for Legal Reform by Harris Interactive Inc.

² *Zéier v. Zimmer*, 152 P.3d 861 (Okla. 2006).

³ *Woods v. Unity Health Center, Inc.*, 196 P.3d 529 (Okla. 2008).

⁴ Order, *State of Oklahoma v. Tyson Food* (N.D. Okla. Jan. 1, 2008) (declining to certify issue of validity of contingency fee agreement to Oklahoma Supreme Court).