ATRA **American Tort Reform Association**
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2005 State Tort Reform Enactments

Alabama

Jury Service Reform – SB 87 (special session)
Provided the right to one automatic postponement with the requirement that service be rescheduled within six months of the original summons. Protected small businesses (defined as having five or fewer full time employees) by requiring the court to postpone and reschedule the service of an employee of a small business if another employee of that employer is already serving. Limited the frequency of service to no more than once every two years. Prohibited an employer from taking any adverse employment action against an employee solely because the person serves on a jury. Clarified that employers may not require an employee to use annual, vacation, or sick leave time for the period in which he or she leaves. Set stricter for prospective jurors to be excused from service. Increased the maximum fine for contempt for failure to appear from $100 to $300.

Alaska

Medical Liability Reform/Noneconomic Damages Reform – SB 67
Lowered the limit on noneconomic damages in medical liability cases to $250,000. In the most severe cases involving disfigurement, severe permanent physical impairment, and wrongful death, the limit on noneconomic damages is $400,000. The previous limit on noneconomic damages ranged from $400,000 to $1 million, depending on the severity of the injuries.

Arizona

Jury Service Reform – HB 2305
Amended criteria for perspective jurors to be excused from service by permitting a person who is at least 75 years of age to have the option of being temporarily or permanently excused from service. Provided that a judge or jury commissioner may temporarily excuse a prospective juror for good cause, such as a lack of transportation or absence from the jurisdiction. Included technical changes to the statement required for verification of the medical need for an excuse due to a mental or physical condition that makes the prospective juror unfit for service.

Connecticut

Government Retention of Personal Injury Lawyers – HB 7502 (section 104)
Required proposals or requests for qualification and negotiation procedures for any contract between the Attorney General or state agency and private attorneys

in which the contingency fee is reasonably expected to exceed $250,000. Specified that the Attorney General is to develop such procedures and qualifications.

Florida

Asbestos/Silica Litigation Reform – HB 1019
Established minimum medical criteria, based on American Medical Association recommendations, for filing asbestos and silica claims. Revised statute of limitations for filing asbestos and silica claims. The period for filing claims begins only after a patient has demonstrated symptoms of illness. Prohibited the award of punitive damages in asbestos/silica claims. Increased standards for establishing venue in all asbestos and silica cases.

Asbestos/Successor Liability Reform—CS/SB 2228
Applied provisions of the bill to corporations that are successors and became a successors before January 1, 1972. Provided that cumulative successor asbestos-related liabilities of a corporation are limited to fair market value of total gross assets of transferor determined as of time of merger or consolidation. Provided methods by which to establish fair market value of total gross assets.

Street Light Repairs/Liability – HB 135
Limited liability for certain public and private entities that provide street lights, security lights, or other similar illumination. Provided for procedures for notice and repair of malfunctioning streetlights as a condition for limited liability. Limited the liability of public utility or electric utility that discontinued service to the streetlight.

Georgia

Asbestos/Silica Litigation Reform – HB 416
Established minimum medical criteria (based on AMA guide to the evaluation of permanent impairment) for the filing of asbestos and silica claims and established criteria for dismissal of pending claims. Provided that, in general, asbestos and silica claims may only be brought or maintained by Georgia residents

Class Action Reform – SB 19
Specified detailed procedures for the filing and certification of class action lawsuits. Provided for the interlocutory appeal of class action certifications..

Comprehensive Civil Justice Reform – SB 3

Comparative Negligence
Provided for comparative negligence amongst all parties for all cases.

Expert Witness Standards
Strengthened expert witness rules and adopted the *Daubert* standard in civil cases.

Forum Non Conveniens
Allowed courts to dismiss cases with little or no connection to the venue under the doctrine of *forum non conveniens*.

Joint and Several Liability
Eliminated joint and several liability.

Medical Liability Reform/ Expressions of Sympathy
Provided that expressions of sympathy, regret, apology, etc. by healthcare providers are inadmissible as evidence and shall not constitute an admission of liability.

Medical Liability Reform/Emergency Medical Situations
Provided that in claims arising out of the provision of emergency medical care against a hospital emergency department, no physician or health care provider shall be liable unless it is proven by clear and convincing evidence that the physician or health care provider's actions showed gross negligence.

Medical Liability Reform/Noneconomic Damages Reform
Limited noneconomic damages to $350,000 per healthcare provider, with an overall aggregate limit of $1.05 million.

Offer of Judgment
Provided for offer of judgment for all cases. An offering party may obtain litigation costs, including attorney's fees, if the final judgment is not at least 25 percent more favorable than the offer.

Venue Reform
In cases involving multiple defendants, if defendants who reside in the county where the action is pending are discharged from liability, the non-resident defendant may require that the case be transferred to a county or court in which venue would otherwise be proper.

Obesity Litigation Reform – HB 196
Exempted from civil liability manufacturers, producers, packers, distributors, carriers, holders, sellers, marketers, and advertisers of food (as defined in 21 U.S.C. 321 (f)) or an association of one or more such entities for claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known conditions allegedly caused or likely to result from the long-term consumption of food. The liability exemption does not apply if the claim is based on a material violation of a state or federal adulteration or misbranding requirement. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling or sale of food and the violation was committed knowingly and willfully. Provided that discovery and all other proceedings shall be stayed during a motion to dismiss.

Illinois

Medical Liability Reform – SB 475
Limited noneconomic damages in medical liability cases to $500,000 per physician and $1 million per hospital. Provided that expressions of grief, apology, including a statement that the healthcare provider is sorry for the outcome to the patient, is inadmissible as evidence. Amended the Good Samaritan Act to apply civil immunity protections to retired physicians who provide services without compensation. Required insurance companies to reveal some of the factors used to determine rates; allowed physician disciplinary histories to be posted on the Internet; and allowed for an increased number of state investigators to look into medical malpractice claims.

In an action against a medical professional, defined an expert witness who: (1) is board certified or board eligible in the same or similar specialty as the defendant; (2) has devoted a majority of work time to the practice, teaching, or University based research in relation to the type of care or treatment at issue in the claim; (3) is licensed in the same profession with the same class of license as the defendant if the defendant is an individual; (4) in a case against a nonspecialist, an expert shall demonstrate familiarity with the standard of care and shall provide evidence of active practice, teaching, or university research. If retired, an expert must provide evidence of completion of continuing education for three previous years. An individual must have actively practiced, taught, or engaged in university research, or any combination thereof, during the past five years to qualify as an expert witness.

Kansas

Appeal Bond Reform – HB 2457 (sub)
Provided that if the appellant proves by a preponderance of the evidence that setting the supersedeas bond at the full amount of the judgment will result in the appellant suffering an undue hardship or a denial of the right to appeal, the court may reduce the amount of the bond as follows: (1) if the judgment is less than or equal to $1 million, the supersedeas bond shall be set at the full amount of the judgment; or (2) if the judgment exceeds $1 million in value, the supersedeas bond shall be set at a total of $1 million plus 25 percent of any amount in excess of $1 million.

Obesity Litigation Reform – SB 75
Exempted from civil liability manufacturers, producers, packers, distributors, carriers, holders, sellers, marketers, and advertisers of food (as defined in 21 U.S.C. 321) or an association of one or more such entities for claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known conditions allegedly caused or likely to result from the long-term consumption of food. The liability exemption does not apply if the claim is based on a material violation of a state or federal adulteration or misbranding requirement. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing,

marketing, distribution, advertising, labeling or sale of food and the violation was committed knowingly and willfully. Provided that discovery and all other proceedings shall be stayed during a motion to dismiss.

Kentucky

Obesity Litigation Reform – SB 103
Exempted from civil liability manufacturers, packers, distributors, carriers, holders, sellers, marketers, or advertisers of food, as defined in KRS 217.125 or 21 U.S.C. 321, for claims arising out of weight gain, obesity, health conditions associated with weight gain or obesity, or other generally known conditions allegedly caused by or allegedly likely to result from long-term consumption of food. The liability exemption does not apply if the claim is based on a material violation of state or federal adulteration or misbranding requirement. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling or sale of food and the violation was committed knowingly and willfully. Provided that discovery and all other proceedings shall be stayed during a motion to dismiss.

Louisiana

Limitation of Damages Against the State – SB 258
Limited all damages against the state and political subdivisions to $500,000 for personal injury and wrongful death (exclusive of property damages, medical care and related benefits and loss of earnings or loss of support, and loss of future support). The intention of this legislation was intended to explain the original intent of the legislature, notwithstanding the contrary interpretation of the Louisiana Supreme Court in *Locket v. the State of Louisiana, Department of Transportation and Development*, 2003-1767 (La. 2/25/04) 869 So.2d 97.

Maine

Obesity Litigation Reform – LD 645
Exempted from liability manufacturers, distributors or sellers of food, or an association of one or more such entities, for claims of obesity or obesity related illness. The liability exemption does not apply if the manufacturer or distributor failed to provide nutritional information as required by an applicable state or federal statute, rule or regulation or has materially false or misleading information to the public.

Maryland

Jury Service Reform – HB 1185
Increased juror compensation from $15 to $50 per day, after the fifth day of service. Provided leave time protections for employees.

Minnesota

Government Retention of Personal Injury Lawyers – HF 1481 (Article 2, Sec. 5 {8.065})

Specified that the attorney general may not enter into a contract for legal services in which the fees and expenses paid by the state, or can reasonably be expected to exceed $1 million unless the attorney general first submits the proposed contract to the Legislative Advisory Commission, and waits at least 20 days to receive a possible recommendation from the commission.

Missouri

Comprehensive Civil Justice Reform – HB 393

Appeal Bond Reform

Limited the amount a defendant can be required to pay to secure the right to appeal to $50 million.

Collateral Source Rule Reform

Modified the collateral source rule to allow the actual amount of paid medical expenses to be introduced into evidence rather than the amount billed.

Joint and Several Liability Reform

Provides that joint and several liability applies if a defendant is 51 percent or more at fault. In such circumstances, the defendant is jointly and severally liable for the amount of the judgment rendered against the defendant. If a defendant is found to be less than 51 percent at fault, the defendant is only responsible for the percent of the judgment he or she is responsible for.

Medical Liability Reform/Expressions of Sympathy

Prohibited statements, writings, or benevolent gestures expressing sympathy by medical providers from being admitted into evidence.

Medical Liability Reform/Noneconomic Damages

Limited noneconomic damages in medical liability cases to $350,000 regardless of the number of defendants in the case.

Medical Liability Reform/Statute of Limitations for Minors

Specified that actions against physicians and other health care providers for malpractice must be brought within two years of a minor's eighteenth birthday.

Medical Liability Reform/Volunteer Immunity

Provided civil immunity from damages for physicians who provide uncompensated medial care (volunteer services).

Post Judgment Interest Reform

Specified that post-judgment interest is to be calculated at an interest rate equal to the Federal Funds Rate plus five percent.

Prejudgment Interest Reform
Specified that prejudgment interest is to be calculated at an interest rate equal to the Federal Funds Rate plus three percent.

Punitive Damages Reform
Limited punitive damages to $500,000 or five times the judgment, whichever is greater. Limit does not apply to certain cases involving housing discrimination.

Venue Reform
Established venue in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in all tort actions in which the plaintiff was first injured in Missouri. Established venue in all tort actions in which the plaintiff was first injured outside Missouri: (a) For corporate defendants, in any county where the registered agent is located or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in the county of the plaintiff's principal place of residence on the date the plaintiff was first injured; and (b) for individual defendants, in any county of the defendant's principal place of residence in Missouri or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in the county containing the plaintiff's principal place of residence on the date the plaintiff was first injured. Specified that in wrongful death actions the plaintiff is considered first injured where the decedent was first injured by the wrongful acts or negligent conduct alleged in the action. Specified that in a spouse's claim for loss of consortium the plaintiff claiming consortium is considered first injured where the other spouse was first injured by the wrongful act or negligent conduct alleged in the action. Specified that the court must transfer venue to the county unanimously chosen by the parties if all parties agree in writing to a change of venue. If parties are added after the date of the transfer and they do not consent to the transfer, the cause of action will be transferred to a county in which venue is otherwise appropriate.

Montana

Medical Liability Reform/Expressions of Sympathy – HB 24
Provided that statements of sympathy, apology, etc. by medical providers are inadmissible as evidence of liability in medical liability cases.

Medical Liability Reform/Expert Witness Standards – HB 64
Provided that an expert witness: must be a licensed health care provider in at least one state; routinely treat or routinely treated within the previous five years the subject matter of the malpractice claim; and demonstrate a familiarity with the standards of care and practice as related to the subject matter of the malpractice claim. In cases involving treatment recommended by a physician, an expert witness may not testify on issues of negligence or standards of care unless the witness is also a physician. In addition, a witness qualified as an expert in a medical specialty that is unrelated to the malpractice claim may only testify if it can be proven that the standards of care and practice in the two specialties are substantially similar.

New Hampshire

Medical Liability Reform/Pretrial Screening Panels – SB 214
Created a pre-trial screening panel requiring all medical liability cases go before a three person panel: a judge, an attorney & a health care practitioner of the same or similar specialty as the defendant. SB 214 does not restrict anyone's right to a jury trial. The panel helps plaintiffs with smaller cases because panel expenses are less. SB 214 required the panel to decide negligence based on a preponderance of evidence (more likely than not), thus encouraging the dropping of non-meritorious cases or quicker settlement of meritorious cases. Only unanimous decisions by the panel are admissible in any future trial. S.B. 214 also created a legislative oversight committee that will look at data over the next few years to determine if the new panel system is working. The bill required liability insurers to report certain data to the New Hampshire Department of Insurance annually.

New Mexico

Jury Service Reform – SB 240
Provided for: automatic postponement, allowing summoned jurors to reschedule service within six months of the original date; small business protections, allowing jurors who work for employers with fewer than five employees to postpone service if another employee is summoned within the same time period; leave time protection; and an expansion of juror source lists to include income tax filers. The legislation included a hardship standard, defining that an excused juror must demonstrate that participating in their service would (1) be required to abandon another person under the person's care or supervision due to the extreme difficulty of obtaining an appropriate substitute caregiver during the period of jury service; (2) incur costs that would have a substantial adverse impact on the payment of necessary daily living expenses of the person or the person's dependent; or (3) suffer physical hardship that would result in illness or disease. Hardship would not exist solely because a prospective juror will be absent from employment.

North Dakota

Appeal Bond Reform – SB 2273
Limited the amount a defendant can be required to pay to secure the right to appeal to $25 million.

Obesity Litigation Reform – HB 1241
Exempted from civil liability producers, processors, manufacturers, packers, distributors, carriers, holders, sellers, marketers, trade associations, and advertisers of food (as defined in 21 U.S.C. 321 (f)), or an association of one or more those entities, for claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known conditions allegedly caused by or allegedly likely to result from long-term

consumption of food. The liability exemption does not apply if the claim is based on a material violation of state or federal adulteration or misbranding requirements. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling or sale of food and the violation was committed knowingly and willfully. Provided that discovery and all other proceedings shall be stayed during a motion to dismiss.

Oregon

Obesity Litigation Reform –HB 2591
Exempted from civil liability persons involved in the selling of food (as described in ORS 616.210) for a claim of injury or death caused by the consumption of food. The liability exemption does not apply if the food-related condition was caused by: adulterated food (as described in ORS 616.235), reliance on information that has been misbranded (as described in ORS 616.250), a violation of 21 U.S.C. 301 prohibiting adulterated or misbranded food, or for any other violation of any other state or federal law related to the manufacturing, marketing, distribution, advertisement, labeling or sale of food and the violation was committed knowingly and willfully.

South Carolina

Comprehensive Civil Justice Reform – H 3008

Advertising Restrictions
Made using a nickname in attorney advertising a violation of the Unfair Trade Practices Act.

Frivolous Lawsuits
Provided for sanctions against lawyers and parties who bring frivolous claims, including reporting lawyers to the Commission on Lawyers Conduct and required the Supreme Court to keep a public record of frivolous sanctions.

Joint and Several Liability Reform
Provided that joint and several liability does not apply to defendants less than 50 percent responsible of the total fault. In the calculation of total fault, comparative fault of the plaintiff is to be included. If the plaintiff is found to be 50 percent or greater at fault, the plaintiff shall then be barred from recovery. Defendant's less than 50 percent at fault shall only be responsible for its proportional share of the damages based on its percentages of liability.

Post Judgment Interest Rate Reform
Reduced post judgment interest from a flat 12 percent to the prime rate plus four percent.

Statute of Repose/Construction Defect Cases
Reduced the time within which an action arising from defective or unsafe construction may be brought from 13 years to eight years after the date of substantial completion of the improvement.

Venue Reform
Specified that claims can only be brought where the most substantial part of the action arose or in the defendant's principal place of business. In cases against a non-resident defendant, the action must be brought where the most substantial part of the cause of action occurred, or where the plaintiff resides at the time the action arose. Civil actions against (i) a domestic corporation or (ii) a foreign corporation required to possess and possessing a certificate of authority from the Secretary of State must be brought and tried in the county where the defendant has its principal place of business at the time the cause of action arose, or where the most substantial part of the cause of action occurred. Civil actions against a foreign corporation that does not possess a certificate of authority from the Secretary of State must be brought and tried in the county where the most substantial part of the cause of action occurred, or where the plaintiff resides at the time the cause of action arose.

Comprehensive Medical Liability Reform – S 83

Expert Witness Standards Reform
In an action against a professional (such as physicians, medical professionals, architects, CPAs, etc.), increased the standard for admitting expert witness testimony by defining an expert witness as one who: (1) is qualified as to the acceptable standard of conduct of the professional whose conduct is at issue; (2) is licensed by an appropriate regulatory agency; (3) is board certified; and (4) has actual professional knowledge based on active practice for at least three to five years, has taught for at least half of his professional time for at least three to five years, or any combination thereof for at least three to five years. In such actions against a professional, the plaintiff must file an affidavit of an expert witness which specifies at least one negligent act or omission and the factual bases for each claim, unless the basis of the claim does not require specialized knowledge or experience to evaluate the conduct of the defendant. Provided that in any other civil action, expert witness is defined as one who has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding evidence and determining a fact or issue in the case.

Joint and Several Liability
Specified that if there are multiple defendants in a civil action, joint and several liability does not apply to any defendant 50 percent or less responsible for the damages. Furthermore, specified that comparative fault is included in the calculation of total fault in the case. If the plaintiff is found to be greater than 50 percent responsible for the total fault, then the plaintiff is completely barred from recovering damages. A defendant found to be less than 50 percent responsible is only responsible for its proportional share of damages based on its percentage of liability. Retained the right of the "empty chair" defense where a defendant

retains the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged damages and may be liable for any or all damages alleged by another party.

Medical Malpractice Reform – Emergency Situations
Provided that a physician is not liable for claims arising out of an emergency situation unless the physician was grossly negligent. Provided that a physician is not liable in a claim arising out of obstetrical care rendered in an emergency situation where there is no previous doctor/patient relationship or where the patient has not received prenatal care, unless the physician was grossly negligent.

Medical Malpractice Reform – Mediation
Required that prior to filing an action, the plaintiff must file a Notice of Intent to File Suit, and the parties must participate in a court-supervised mediation. If the matter is not resolved through mediation, the plaintiff may initiate the action within 60 days of the end of mediation or prior to the expiration of the statute of limitations, whichever is later.

Medical Malpractice Reform – Noneconomic Damages
Limited noneconomic damages in medical liability cases to $350,000 per provider, with an overall aggregate limit of $1.05 million.

Texas

Asbestos/Silica Litigation Reform – SB 15
Established medical criteria for all pending and future asbestos claims, including a requirement that all claimants submit a qualifying medical report with a pulmonary function test that demonstrates physical impairment. Provided that all pending asbestos claims that have not been scheduled for trial within 90 days after the effective date, except for cases involving cancer, are subject to the multi-district litigation court process. Assured that the most seriously ill—those suffering from mesothelioma or other malignancy caused exposure to asbestos or silica—will receive expedited trials and adequate compensation for their injuries. Required that each asbestos case be tried on its own merits, not as a "bundle" of claims that may include a few truly sick claimants and dozens of unimpaired claimants. Shut down the "mass screening" of potential asbestos and silica claimants that has resulted in tens of thousands of unimpaired asbestos claims in the courts.

***Forum Non Conveniens* – HB 755**
Restored the discretion of trial court judges to dismiss lawsuits with little or no connection to Texas under the doctrine of *forum non conveniens*.

Jury Service Reform—SB 1704
Increased juror pay in both civil and criminal cases from not less than $6 per day to not less than $40 per day, beginning on the second day of service. The increased compensation is to be financed by a $4 fee placed on individuals convicted of a crime. Provided prospective jurors with one automatic

postponement from service, in which case service must be rescheduled within six months after the date of the original summons.

Obesity Litigation Reform – HB 107
Exempted from civil liability trade associations, livestock producers, agricultural producers and manufacturers, sellers, marketers, distributors, and advertisers of food (as defined in 21 U.S.C. 321 (f);(g);(i)) for claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known conditions allegedly caused by or allegedly likely to result from long-term consumption of food. This liability exemption includes actions brought by a person other than the individual whose weight gain, obesity, or health condition the action is based. It also includes any derivative action brought by or on behalf of any individual or any representative, spouse, parent, child, or other relative or individual. The liability exemption does not apply for a violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling or sale of food and the violation was committed knowingly and willfully. The liability exemption also does not prohibit an action from being brought under Chapter 431, Health Safety Code; or by the attorney general under Section 17.47, Business & Commerce Code. Provided that discovery and all other proceedings shall be stayed during a motion to dismiss.

Settlement Credits Reform – SB 890
Restored dollar-for-dollar settlement credit in a multiple defendant civil action.

Washington

Condo Liability – HB 1848
Addressed construction defect disputes in multi-unit buildings.

Employer Reference – HB 1625
Provided civil liability protections for employers who provide job references about current and former employees.

West Virginia

Joint and Several Liability Reform – SB 421
Eliminated joint and several liability for defendants 30 percent or less at fault. In such situations, defendants pay only percentage of fault as determined by the jury. Provided that if a claimant has not been paid after six months of the judgment, defendants 10 percent or more responsible are subject to reallocation of uncollected amount. Defendants less than 10 percent at fault or whose fault is equal to or less than the claimant's percentage of fault are not subject to reallocation.

Medical Liability Reform/ Expressions of Sympathy – HB 3174
Provided that no statement, affirmation, gesture or conduct of a healthcare provider who provided healthcare services to a patient, expressing apology, sympathy, commiseration, condolence, compassion or a general sense of

benevolence, to the patient, a relative of the patient or a representative of the patient and which relate to the discomfort, pain, suffering, injury or death of the patient shall be admissible as evidence of an admission of liability or as evidence of an admission against interest in medical liability civil actions.

Medical Liability Reform/Innocent Prescriber – HB 2011
Provided that no health care provider is liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription drug or use of a medical device that was prescribed or used by a healthcare provider in accordance with instructions approved by the U.S. Food and Drug Administration regarding dosage and administration of the drug, the indications for which the drug should be taken or device should be used, and the contraindications against the drug or using the device. The liability exemption does not apply if: (1) the health care provider had actual knowledge that the drug or device was inherently unsafe for the purpose for which it was prescribed or used or (2) a manufacturer of such drug or device publicly announces changes in the dosage or administration of such drug or changes in contraindications against taking the drug or using the device and the health care provider fails to follow such publicly announced changes and such failure proximately caused or contributed to the plaintiff's injuries or damages.

Opportunity to Cure – SB 456
Provided that no action may be brought until the consumer has informed the seller or lessor in writing and by certified mail of the alleged violation and provided the seller or lessor 20 days from receipt of the notice of violation to make a cure offer. The consumer shall have 10 days from receipt of the cure offer to accept the cure offer or it is deemed refused and withdrawn. If a cure offer is accepted, the seller or lessor shall have 10 days to begin effectuating the agreed upon cure and such must be completed within a reasonable time. Any applicable statute of limitations shall be tolled for the 20-day period or for the period of time the effectuation of the cure offer is being performed, whichever is longer. Nothing in this section shall be construed to prevent a consumer that has accepted a cure offer from bringing a civil action against a seller or lessor for failing to timely effect such cure offer. Where an action is brought, it shall be a complete defense that a cure offer was made, accepted and the agreed upon cure was performed. If the finder of fact determines that the cure offer was accepted and the agreed upon cure performed, the seller or lessor shall be entitled to reasonable attorney's fees and costs attendant to defending the action.

No cure offer shall be admissible in any proceeding unless the cure offer is delivered by a seller or lessor to the person claiming loss or to any attorney representing such person prior to the filing of the seller or lessee's initial responsive pleading in such proceeding. If the cure offer is timely delivered by the seller or lessor, then the seller or lessee may introduce the cure offer into evidence at trial. The seller or lessor shall not be liable for such person's attorney's fees and court costs incurred following delivery of the cure offer unless the actual damages found to have been sustained and awarded, without consideration of attorney's fees and court costs, exceed the value of the cure offer.

Workers' Compensation Reform – SB 744
Strengthened requirements necessary for an employee to prove injury as a results of the employer's "deliberate intentions" under West Virginia Code §23-4-2, which preserves an action where the employee is injured through the deliberate intention of the employer (under West Virginia Code §23-2-6, employers in good standing with the Workers' Compensation fund are immune from suits by injured workers, except as provided under §23-4-2). The five part test for proof of deliberate intention in §23-4-2(d) was strengthened by doing the following: (1) made clear that §23-4-2 governs actions by employees against their employers arising from workplace injuries, whether a workers' compensation claim was filed or not. Section §23-4-2(c) is amended to reflect that it applies whether a claim is filed or not, and §23-4-2(d)(2)(E) reflects that claims must satisfy the statutory requirements of compensability whether a claim is filed or not; (2) the second of the five part test, §23-4-2(d)(2)(B), is amended to require actual knowledge before the injury of the specific unsafe working condition and high degree of risk. This replaces the prior language of "subjective realization and appreciation."; (3) the third element, which encompasses violation of "commonly accepted and well-known safety standard within the industry or business of the employer," now requires proof "by competent evidence of written standards or guidelines which reflect a consensus safety standard in the industry or business."; (4) subsection (D) contains a grammatical change that retains the requirement of intentional exposure; and (5) section §23-4-2(d)(2) is corrected to make reference to the immunity provision in §23-2-6, which was inadvertently omitted when the statute was amended.

Wyoming

Obesity Litigation Reform – HB 170
Exempted from civil liability manufacturers, sellers, trade associations, agricultural producers (means any producer of livestock, crops for food or fiber, dairy products and any other product for human consumption from an agricultural operation), wholesalers, brokers or retailers of a qualified food product [means any food or drink as defined in 21 U.S.C. 321 (f) and specifically includes meat and meat products from livestock, food, fiber, dairy product and any other product for human consumption from an agricultural operation] in cases in which liability is based on weight gain, obesity, or a health condition related to weight gain or obesity, and the weight gain or obesity or health condition results from the long-term consumption of a qualified product. The liability exemption does not apply if the claim is based on a material violation of a federal or state composition, branding, or labeling standard and that the violation was committed with intent to deceive or injure consumers or with actual knowledge that the violation was injurious to consumers.