



Tort Reform Record

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The American Tort Reform Association was organized in 1986 to bring greater fairness and efficiency to the civil justice system through public education and the enactment of state legislation. Today it represents approximately five hundred non-profit organizations, professional societies, trade associations and businesses. ATRA accomplishes its mission primarily by coordinating and supporting the activities of legislative coalitions in each of the states, by keeping its members informed of developments and mobilizing them for action, and by keeping media attention focused on the need for civil justice reform.

Tort Reform Record is published every June and December to record the accomplishments of the latest legislative year. It includes a single-page state-by-state summary of generic tort reforms enacted by the states since January, 1986, and then an issue-by-issue elaboration of what each state has done. ATRA has also, of course, achieved specific reforms in such fields as professional malpractice, municipal liability and products liability.

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SUMMARY

Alabama	Coll Srces, Puni Cap \$250,000, Friv Penlty
Alaska	Jt & Sev, Non Ec Cap=\$500,000, Coll Srces, Puni Evid Stand, Periodic Pay
Arizona	Jt & Sev, FDA Def to Puni
Arkansas	
California	Jt & Sev, Puni Evid Stand
Colorado	Jt & Sev, Non Ec Cap \$250,000, Coll Srces, Puni Cap=Compen, Friv Penlty
Connecticut	Jt & Sev, Coll Srces, Periodic Pay, Friv Penlty
Delaware	
D.C.	
Florida	Jt & Sev, Coll Srces, Puni Cap=3 x Compen, Periodic Pay, Friv Penlty
Georgia	Jt & Sev, Puni Cap=\$250,000, Friv Penlty
Hawaii	Jt & Sev, Non Ec Cap=\$375,000, Coll Srces, Friv Penlty
Idaho	Jt & Sev, Non Ec Cap, Periodic Pay, Coll Srces, Puni Evid Stand, Friv Penlty
Illinois	Jt & Sev, Coll Srces, Puni Evid Stand, Friv Penlty
Indiana	Coll Srces, Friv Penlty
Iowa	Jt & Sev, Coll Srces, Prej Int, Puni Evid Stand and Bifur Trial, Periodic Pay, Friv Penlty
Kansas	Non Ec Cap, Puni Cap=lesser of def ann gross income or/\$5M
Kentucky	Jt and Sev, Coll Srces, Puni Evi Stand
Louisiana	Jt & Sev, Prej Int, Friv Penlty
Maine	Prej Int
Maryland	Non Ec Cap=\$350,000, Periodic Pay
Massachusetts	
Michigan	Jt & Sev, Coll Srces, Prej Int, Periodic Pay, Friv Penlty
Minnesota	Jt & Sev, Non Ec Cap, Coll Srces, Prej Int, Puni Evid Stand & bifur trial, Friv Penlty
Mississippi	Jt & Sev, Friv Penlty
Missouri	Jt & Sev, Coll Srces, Puni=Bifurcated Trial
Montana	Jt & Sev, Coll Srces, Pun Evid Stand, Periodic Pay
Nebraska	Jt & Sev, Prej Int, Friv Penlty
Nevada	Jt & Sev, Puni Cap, Puni Evid Stand
New Hampshire	Jt & Sev, Puni Prohib, Friv Penlty
New Jersey	Jt & Sev, Puni Evid Stand, Coll Srces, Friv Penlty
New Mexico	Jt & Sev
New York	Jt & Sev (for non ec), Coll Srces Periodic Pay, Friv Penlty
North Carolina	
North Dakota	Jt & Sev, Coll Srces, Puni Evid Stand, Periodic Pay, Friv Penlty
Ohio	Jt & Sev, Coll Srces, Puni Evid Stand, Periodic Pay, Friv Penlty
Oklahoma	Prej Int, Puni Cap=Comp, Friv Penlty
Oregon	Jt & Sev, Non Ec Cap=\$500,000, Coll Srces, Puni Evid Stand, Friv Penlty
Pennsylvania	
Rhode Island	Prej Int, Periodic Pay, Friv Penlty
South Carolina	Pun Evid Stand, Friv Penlty
South Dakota	Jt & Sev, Puni Evid Stand, Periodic Pay
Tennessee	
Texas	Jt & Sev, Prej Int, Puni Cap=4 x Comp or \$200,000, Friv Penlty
Utah	Jt & Sev, Puni Evid Stand, Friv Penlty
Vermont	Jt & Sev
Virginia	Puni Cap=\$350,000, Friv Penlty
Washington	Jt & Sev, Periodic Pay, Friv Penlty
West Virginia	
Wisconsin	
Wyoming	Jt & Sev, Friv Penlty

ABOLITION OR MODIFICATION OF
THE RULE OF JOINT AND SEVERAL LIABILITY

Please note that the courts of the following states do not currently apply the doctrine of joint and several liability: Alabama, Indiana, Kansas and Oklahoma.

1985

Iowa

Abolished joint liability for defendants who are less than 50% responsible

Vermont

Totally abolished joint and several liability

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1986

California

Abolished for non-economic damages

Colorado

Totally abolished joint and several liability (an amendment approved in 1987 allows joint liability when tortfeasors consciously acted in a concerted effort to commit a tortious act)

Connecticut

Modified to prohibit joint liability except where liable party's share of judgment is uncollectible (1987 legislation by opposition limited this reform to non-economic damages only)

Florida

Abolished as to non-economic damages in negligence actions

Also abolished for economic damages for defendants less at fault than plaintiff

This rule does not apply for:

- o economic damages for pollution
- o intentional torts
- o actions governed by a specific statute providing for joint and several liability
- o actions involving damages no greater than \$25,000

Hawaii

- o Abolished for low fault defendants (25% of fault or less)
- o Applies for non-economic damages only
- o Does not apply to auto, product, or environmental cases

Illinois

- o Abolished for low fault defendants (25% of fault or less)
- o Does not apply to medical expenses awarded as damages
- o Does not apply to medical malpractice or environmental liability cases

Michigan

Limited joint and several (except in products liability actions and actions involving a blame-free plaintiff) holds defendants severally liable except when uncollectible shares of a judgment are reallocated between solvent co-defendants according to their degree of negligence; joint and several liability is abolished for municipalities

New York

Limited joint and several liability; a defendant who is 50% or less at fault is only severally liable for non-economic damages. However, the limitation does not apply to:

- o actions in reckless disregard of rights of others
- o motor vehicle cases
- o actions involving the release of toxic substances into the environment
- o intentional torts
- o contract cases
- o products liability cases where the manufacturer could not be joined
- o construction cases and other specific actions

Utah

Totally abolished joint and several liability

Washington

Abolished except for cases in which:

- o defendants acted in concert
- o plaintiff is fault free
- o hazardous or solid waste disposal sites are involved
- o business torts are involved
- o manufacturing of generic products is involved

Wyoming

Totally abolished joint and several liability

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1987

Arizona

Abolished except in cases of:

- o intentional torts
- o hazardous waste

Georgia

Limited to several only when plaintiff is assessed a portion of the fault

Idaho

Abolished except in cases of:

- o intentional torts
- o hazardous wastes
- o medical and pharmaceutical products

Louisiana

Joint and several liability applies only to the extent necessary to cover 50% of the plaintiff's damages. (Current law which provided that the defendant is only liable for his/her share of damages when the defendant's liability is less than the plaintiff's remained unchanged.)

Missouri

Limited to several only when plaintiff is assessed a portion of the fault

Montana

Abolished joint liability for defendants who are 50% or less responsible

Nevada

Abolished except in:

- o product cases
- o cases involving toxic wastes
- o cases involving intentional torts
- o cases where defendants acted in concert

New Jersey

Modified the doctrine in the following way:

If the defendant is found to be less than 20% liable, the defendant is held responsible for only his degree of fault; between 20% and 60% the defendant can be held responsible for full economic damages and only his share of non-economic damages; over 60%, the defendant can be held liable for payment of all damages.

New Mexico

Codified common law application of several except in:

- o cases involving intentional torts;
- o cases in which the relationship of defendants could make one defendant vicariously liable for the acts of others
- o cases involving the manufacture or sale of a defective product (In

these cases the manufacturer and retailer can be held liable for their collective percentage of fault but not the fault of other defendants.)

- o situations "having sound basis in public policy"

North Dakota

Abolished except for:

- o intentional torts
- o cases in which defendants acted in concert
- o products liability cases

Ohio

Abolished for non-economic damages when the plaintiff is also assessed a portion of the fault

Oregon

- o Abolished joint and several liability with regard to non-economic damages
- o Abolished joint and several liability for economic damages when the defendant is less than 15% at fault
- o Exempts some environmental torts

South Dakota

Limited joint for those who are 50% or less responsible -- they pay no more than twice their share

Texas

Abolished joint liability for those who are 20% or less responsible except when:

- o plaintiff is fault free and defendant's share exceeds 10%
- o damages result from environmental pollution or hazardous waste

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1988

Alaska

Joint and several liability was abolished through a ballot initiative, Proposition 2, on the November 8, 1988, ballot

Kentucky

Codified common law rule that when jury apportions fault, defendant is only liable for that share of fault

Minnesota

Limited joint and several liability for those who are 15% or less responsible -- they pay no more than four times their share

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1989

Mississippi

Modified joint and several liability -- by applying the doctrine of joint and several only to the extent necessary for the injured party to receive 50% of his recoverable damages

New Hampshire

Abolished joint and several liability for defendants who are less than 50% responsible

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1991

Nebraska

Modified the doctrine by

- o replacing current slight-gross negligence rule with a 50/50 rule in which the palintiff wins if the plaintiff's responsibility is less than the

responsibility of all the defendants

- o eliminates joint and several liability for non-economic damages for all defendants in all types of cases

LIMITATIONS ON AWARDS OF
NON-ECONOMIC DAMAGES

1986

Alaska

\$500,000 cap (except for physical impairment or disfigurement)

Colorado

\$250,000 cap (unless court finds justification by "clear and convincing evidence" for a larger award which cannot exceed \$500,000)

Hawaii

\$375,000 cap but cap applies only to actual physical pain and suffering; other non-economic damages have no limit

Maryland

\$350,000 cap

Minnesota

- o \$400,000 cap on all awards based on loss of consortium, emotional distress, or embarrassment
- o No cap for pain and suffering

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1987

Idaho

\$400,000 cap -- adjusted for annual wage increase

Kansas

\$250,000 cap on pain and suffering (not other non-economic losses)

Oregon

\$500,000 cap on non-economic damages

REDUCTION OF COMPENSATORY AWARDS

BY COLLATERAL SOURCES

1986

Alaska

Admissible as evidence and offset with broad exclusions

Colorado

Admissible as evidence and offset with broad exclusions

Connecticut

Admissible as evidence and offset with broad exclusions

Florida

Mandatory offset with broad exclusions

Hawaii

- o Provides for payment of valid liens (arising out of claim for payment made from collateral sources for costs and expenses arising out of injury) from special damages recovered
- o Prevents double recoveries by allowing subrogation liens by insurance companies or other sources. Third parties are allowed to file a lien and collect the benefits paid to plaintiff from the plaintiff's award. The amount of damages paid by the defendant to the plaintiff is not affected

Illinois

- o Only collateral sources for benefits over \$25,000 can be offset
- o Offset cannot reduce judgment by more than 50%

Indiana

Admissible as evidence with certain exclusions. Court may reduce awards at its discretion. Jury may be instructed to disregard tax consequences of its verdict

Michigan

- o Provides that evidence that expense or loss was paid by a collateral source is admissible after the verdict and before judgment is entered
- o Court will offset but cannot reduce the plaintiff's damages by more than amount awarded for economic damages

Minnesota

Admissible as evidence but only for the Court's review; offset is provided for but collateral sources having rights of subrogation are excluded

New York

Mandatory offset

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1987

Alabama

Collateral sources allowed as evidence -- reduction not mandated

Iowa

Collateral sources allowed as evidence -- reduction not mandated

Missouri

Collateral sources allowed as evidence but if used as evidence, defendant waives the right to a credit against the judgment for that amount

Montana

Collateral source rule abolished -- reimbursement from collateral source is admissible in evidence -- unless the source of reimbursement has a subrogation right under state or federal law, court is required to offset damages over \$50,000

New Jersey

Mandatory offset of collateral source benefits other than workers' compensation and life insurance benefits

North Dakota

Mandatory offset of collateral source benefits other than life insurance or insurance purchased by recovering party

Ohio

Mandatory offset of any benefits received less the total of any costs paid for the benefit

Oregon

Judge is allowed to reduce awards for collateral sources

Excludes:

- o life insurance and other death benefits
- o benefits for which plaintiff has paid premiums
- o retirement, disability, and pension plan benefits
- o federal social security benefits

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1988

Kentucky

The jury must be advised of collateral source payments and subrogation rights of collateral payors

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1990

Idaho

Allows the court to receive evidence of collateral source payments and reduce jury awards to the extent that they include double recoveries from sources other than federal benefits, life insurance or contractual subrogation rights

PROHIBITION OF, OR LIMITS, ON PREJUDGMENT INTEREST

1986

Michigan

Prohibits prejudgment interest on awards for future damages

Minnesota

Prohibits prejudgment interest on awards for future damages

Nebraska

Reduces rate of interest to 1% above the rate on U.S. Treasury Bill
Offer of settlement provision allows the award of prejudgment interest for unreasonable failure to settle

Oklahoma

Prohibits prejudgment interest on punitive damage awards
Rate of interest reduced to 4% above the rate on U.S. Treasury Bill

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1987

Iowa

Repeals prejudgment interest for future damages (other interest accrues from the date of commencement of the action at a rate based on U.S. Treasury Bill)

Louisiana

Ties prejudgment interest to the prime rate plus 1% with a floor of 7% and a cap of 14%

Rhode Island

Ties prejudgment interest to U.S. Treasury Bill rate--accrues from date suit is filed

Texas

Limits the period during which prejudgment interest may accrue if the defendant has made an offer to settle.

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1988

Maine

Ties prejudgment and postjudgment interest rate to U.S. Treasury Bill rate

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REFORM OF THE LAW OF PUNITIVE DAMAGES

1986

Alaska

Requires "clear and convincing" evidence

Colorado

Punitive award may not exceed compensatory award; court may reduce if deterrence achieved without award, but may also increase to three times compensatory if misbehavior continues during trial

Florida

Punitive award may not exceed three times compensatories unless plaintiff can demonstrate by "clear and convincing" evidence that a higher award would not be excessive

Illinois

Plaintiffs no longer able to plead punitives in original complaint; subsequent motion to add punitive claim must show at hearing reasonable chance that the plaintiff will win punitive award at trial; defendant must be shown to have acted "willfully and wantonly"; court has discretion to award among plaintiff, plaintiff's attorney, and State Department of Rehabilitation Services

Iowa

Punitive damages may only be awarded where "willful and wanton disregard for the rights and safety of another" is proven; 75% or more of the award goes to State Civil Reparations Trust Fund (In 1987 the evidence standard was elevated to "clear, convincing, and satisfactory" evidence)

New Hampshire

Punitive damages prohibited

Oklahoma

Award may not exceed compensatory award unless plaintiff establishes his case by "clear and convincing" evidence, in which case, there is no dollar limitation

South Dakota

Requires "clear and convincing" evidence of "willful, wanton, or malicious" conduct

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1987

Alabama

\$250,000 cap requires proof of "wanton" conduct by "clear and convincing" evidence

California

Requires "clear and convincing" evidence of oppression, fraud, or malice; the trial is bifurcated allowing evidence of defendants' financial condition only after a finding of liability

Georgia

\$250,000 cap -- products are excluded from the cap

Idaho

Requires preponderance of evidence of "oppressive, fraudulent, wanton, malicious or outrageous" conduct

Missouri

Bifurcated trial for punitives - The jury still sets the amount for punitive damages if in the 1st stage they find defendant liable for punitives; defendant's net worth is admissible only in punitive section of trial; 50% of the punitive damage award goes to state fund; multiple punitive awards prohibited under certain conditions

Montana

- o Requires "clear and convincing" evidence of "actual fraud" or "actual malice"
- o Bifurcates the trial with evidence of defendant's net worth only admissible in second section of trial

- o Requires judge to review all punitive awards and issue an opinion on whether he increased, decreased or let stand the punitive award

New Jersey

- o Requires evidence of "actual malice" or "wanton and willful disregard" of the rights of others
- o Provides for a bifurcated trial
- o Provides for a FDA government standards defense to punitives
- o Excludes environmental torts

North Dakota

- o Punitives not allowed in original complaint
- o Plaintiff has to show prima facie evidence for claim for punitives
- o Plaintiff must show "oppression, fraud or malice"

Ohio

Requires "clear and convincing" evidence; judge sets amounts; punitives cannot be awarded unless plaintiff has proved "actual damages" were sustained because of defendant's "malice, aggravated or egregious fraud, oppression or insult"; provides a government standard defense for FDA approved drugs

Oregon

- o Requires "clear and convincing" evidence
- o Provides a FDA defense to punitives

Texas

Caps punitive award at 4 times the actual damages or \$200,000 whichever is greater

Plaintiff must show defendant's conduct was "fraudulent, malicious or grossly negligent"

- o Requires judge to review all punitive awards and issue an opinion on whether he increased, decreased or let stand the punitive award

New Jersey

- o Requires evidence of "actual malice" or "wanton and willful disregard" of the rights of others
- o Provides for a bifurcated trial
- o Provides for a FDA government standards defense to punitives
- o Excludes environmental torts

North Dakota

- o Punitives not allowed in original complaint
- o Plaintiff has to show prima facie evidence for claim for punitives
- o Plaintiff must show "oppression, fraud or malice"

Ohio

Requires "clear and convincing" evidence; judge sets amounts; punitives cannot be awarded unless plaintiff has proved "actual damages" were sustained because of defendant's "malice, aggravated or egregious fraud, oppression or insult"; provides a government standard defense for FDA approved drugs

Oregon

- o Requires "clear and convincing" evidence
- o Provides a FDA defense to punitives

Texas

Caps punitive award at 4 times the actual damages or \$200,000 whichever is greater

Plaintiff must show defendant's conduct was "fraudulent, malicious or grossly negligent"

- o Requires a higher standard of liability, "oppression, fraud or malice";
- o Requires "clear and convincing evidence";
- o Bifurcates the trial allowing financial evidence only after a finding of liability

Utah

Provides for a higher standard of liability (from "reckless" to "knowing and reckless"), a government standard defense for FDA approved drugs, bifurcation of trials involving punitives, a "clear and convincing" evidence standard and the payment of 50% of punitive damage awards over \$20,000 to the state fund

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1990

Minnesota

(1986 legislation prohibited punitive claims in the original complaint)

- o Raises the standard of conduct for punitive damages from the current "willful indifference" to a standard of "deliberate disregard;"
- o Establishes a defendant's right to insist on a bifurcated trial when a claim includes punitive damages;
- o Provides trial and appellate judges the power to review all punitive damage awards

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1992

New York

Requires that 20% of all punitive damages be paid to the New York State General Fund.

PROVISION FOR PERIODIC PAYMENTS

1986

Alaska

Allows court to order periodic payments for future damages only

Connecticut

Mandates periodic payments if future economic damages exceed \$200,000

Florida

Mandates periodic payments when requested by a party to the suit if economic damages exceed \$250,000

Iowa

Allows court to order periodic payments when requested by a party to the suit

Maryland

Allows court to order periodic payments for future damages only

Michigan

Mandates periodic payments if future damages exceed \$250,000

New York

Mandates periodic payments if future damages exceed \$250,000

South Dakota

Mandates periodic payments when requested by a party to the suit if future damages exceed \$100,000

Washington

Mandates periodic payments when requested by a party to the suit if future damages exceed \$100,000

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1987

Idaho

Allows court to order periodic payments if future damages exceed \$100,000

Montana

Allows court to order periodic payments when in plaintiff's best interest

North Dakota

Allows court to order periodic payments for future economic damages if more than 2 years of institutional or custodial care are involved

Ohio

Allows court to order periodic payments in cases in which the future damages for economic losses exceed \$200,000 and represent more than 25% of the total jury award

Rhode Island

If damages exceed \$150,000, a mandatory post-judgment conference is held to determine the viability of a voluntary agreement on periodic payments

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SANCTIONS ON FRIVOLOUS SUITS OR DEFENSES

1986

Colorado

Requires pleadings to be signed and allows court to assess reasonable expenses including reasonable attorney fees for frivolous pleadings, motions, or defenses (Rule 11)

Connecticut

Court may assess twice the amount of court costs and attorney fees as the penalty for frivolous suits

Florida

Court may assess fees to the prevailing party in any action in which the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the complaint or defense of the losing party

Georgia

Court may assess court costs and attorney fees for frivolous lawsuits or defenses

Hawaii

Court may assess penalty not exceeding 25% of the losses claimed

Illinois

Court may assess reasonable costs and attorney fees for frivolous pleadings, motions or defenses (Rule 11)

Indiana

Court may assess court costs and attorney fees for frivolous conduct

Iowa

Court may assess penalties for frivolous lawsuits or deceptive tactics

Michigan

Court may assess court costs and attorney fees for frivolous actions or defenses

Minnesota

Court may assess court costs and attorney fees for frivolous claims

New Hampshire

Court may assess penalties for frivolous lawsuits

New York

In cases involving frivolous claims or counterclaims, the court is required to award the successful party court costs and attorney fees, which cannot exceed \$10,000

Wyoming

Court may assess reasonable court costs and attorney fees for frivolous claims or defenses

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1987

Alabama

May assess court costs and reasonable attorney fees against parties bringing frivolous claims or defenses

Idaho

Court may assess attorney fees in frivolous suits

Nebraska

Court may assess court costs and attorney fees for alleging claim or defense which is frivolous or in bad faith

North Dakota

Court is required to award reasonable court costs and attorney fees to a prevailing party upon a finding that the claim for relief was frivolous

Ohio

Court may assess attorney fees to any party adversely affected by frivolous conduct

Oklahoma

Requires pleadings to be signed and allows court to assess reasonable expenses and attorney fees for frivolous actions (Rule 11)

Oregon

Requires pleadings to be signed and allows court to assess attorney fees, court costs, and other expenses for frivolous pleadings, motions or defenses (Rule 11)

Rhode Island

Requires pleadings to be signed and allows court to assess reasonable expenses and attorney fees for frivolous pleadings, motions or defenses (Rule 11)

Texas

Requires pleadings to be signed; sanctions may include: striking the pleading, dismissal, payment of reasonable expenses including attorney fees

Virginia

Court may assess payment of reasonable expenses including attorney fees if an action is not brought in good faith

Washington

Court may determine prior to final judgment that an action, claim, or defense was frivolous; sanctions include reasonable expenses including attorney fees

* * * * *

1988

Louisiana

Court may assess reasonable expenses incurred including attorney fees for frivolous conduct

Mississippi

Court may assess transaction costs and attorney fees for frivolous claims or defenses

New Jersey

Court may assess costs and attorney fees upon a finding that a complaint, counterclaim, cross-claim or defense of a nonprevailing party was frivolous

South Carolina

Court may assess reasonable expenses including attorney fees for frivolous suits or defenses

Utah

Court may assess attorney fees to the prevailing party if lawsuit or defense was not brought in good faith

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