



Tort Reform Record

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TORT REFORM RECORD

December 31, 1993

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 four 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.

The 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 the reforms enacted by the states since January, 1986. An issue-by-issue elaboration of what each state has done is included. Separate documents are available on professional liability, periodic payment of awards and frivolous suit sanctions. ATRA also provides position papers and model bills on each of these issues.

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December 31, 1993

SUMMARY

Alabama	Coll Srces, Puni Evid Standard
Alaska	Jt & Sev, Non Ec Cap=\$500,000, Coll Srces, Puni Evid Stand
Arizona	Jt & Sev, FDA Def to Puni, Coll Srces
Arkansas	
California	Jt & Sev, Puni Evid Stand, Products Defense
Colorado	Jt & Sev, Non Ec Cap \$250,000, Coll Srces, Puni Cap=Compen
Connecticut	Jt & Sev, Coll Srces
Delaware	Products Defense
D.C.	
Florida	Jt & Sev, Coll Srces, Puni Cap=3 x Compen, Products Defense
Georgia	Jt & Sev, Puni Cap=\$250,000, Products Defense
Hawaii	Jt & Sev, Non Ec Cap=\$375,000, Coll Srces
Idaho	Jt & Sev, Non Ec Cap=\$400,000, Coll Srces, Puni Evid Stand
Illinois	Jt & Sev, Coll Srces, Puni Evid Stand
Indiana	Coll Srces
Iowa	Jt & Sev, Coll Srces, Prej Int, Puni Evid Stand and Bifur Trial, Products Defense
Kansas	Non Ec Cap=\$250,000, Puni Cap=lesser of def ann gross income or/\$5M, Products Defense
Kentucky	Jt and Sev, Coll Srces, Puni Evi Stand
Louisiana	Jt & Sev, Prej Int, Products Bill
Maine	Prej Int
Maryland	Non Ec Cap=\$350,000
Massachusetts	
Michigan	Jt & Sev, Coll Srces, Prej Int
Minnesota	Jt & Sev, Non Ec Cap=\$400,000, Coll Srces, Prej Int, Puni Evid Stand & Bifur Trial
Mississippi	Jt & Sev, Puni Ev Stand, Bifur Trial, No puni if no compens
Missouri	Jt & Sev, Coll Srces, Puni=Bifurcated Trial, Products Bill
Montana	Jt & Sev, Coll Srces, Pun Evid Stand, Products Defense
Nebraska	Jt & Sev, Prej Int
Nevada	Jt & Sev, Puni Cap, Puni Evid Stand
New Hampshire	Jt & Sev, Puni Prohib, Products Defense
New Jersey	Jt & Sev, Puni Evid Stand, Coll Srces, Products Bill
New Mexico	Jt & Sev
New York	Jt & Sev, Coll Srces, Products Defense
North Carolina	
North Dakota	Jt & Sev, Coll Srces, Puni Evid Stand, Puni cap=\$250,000, Bifur Trial
Ohio	Jt & Sev, Coll Srces, Puni Evid Stand, Products Bill
Oklahoma	Prej Int, Puni Cap=Comp
Oregon	Jt & Sev, Non Ec Cap=\$500,000, Coll Srces, Puni Evid Stand, Products Defense
Pennsylvania	
Rhode Island	Prej Int
South Carolina	Pun Evid Stand
South Dakota	Jt & Sev, Puni Evid Stand
Tennessee	
Texas	Jt & Sev, Prej Int, Puni Cap=4 x Comp or \$200,000, Products Bill
Utah	Jt & Sev, Puni Evid Stand, Products Bill
Vermont	Products Defense
Virginia	Puni Cap=\$350,000
Washington	Jt & Sev, Products Defense
West Virginia	
Wisconsin	
Wyoming	Jt & Sev

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: Indiana, Kansas and Oklahoma.

1985

Iowa

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

1986

California

Abolished for non-economic damages

Colorado

Totally abolished joint and several liability (an amendment approved in 1987 allowed 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

Joint and Several

Michigan

Limited joint and several (except in products liability actions and actions involving a blame-free plaintiff), held 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 was 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

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

Joint and Several

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

Joint and Several

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 Exempted 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

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

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

1991

Nebraska

Modified the doctrine by:

- o replacing current slight-gross negligence rule with a 50/50 rule in which the plaintiff wins if the plaintiff's responsibility is less than the responsibility of all the defendants
- o eliminating joint and several liability for non-economic damages.

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

\$400,000 cap on all awards based on loss of consortium, emotional distress, or embarrassment (not pain and suffering)

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 Provided 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 Prevented 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

Admissible after the verdict and before judgment is entered; courts can offset awards 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

Collateral Source Rule

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

Allowed a judge 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

1988

Kentucky

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

1990

Idaho

Allowed 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

Collateral Source Rule

Insurance or contractual subrogation rights

1993

Arizona

Extended the existing collateral source legislation from medical malpractice issues to other forms of liability litigation (under this legislative approach, a jury would not be bound to deduct the amounts paid under a collateral source provision, but would be free to consider it in determining fair compensation for the injured party)

PROHIBITION OF, OR LIMITS, ON PREJUDGMENT INTEREST

1986

Michigan

Prohibited prejudgment interest on awards for future damages

Minnesota

Prohibited prejudgment interest on awards for future damages

Nebraska

Reduced 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

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

1987

Iowa

Repealed 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

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

Rhode Island

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

Texas

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

1988

Maine

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

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

1987

Alabama

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 -- product liability actions are excluded from the cap

Punitive Damages

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"

Punitive Damages

Virginia

\$350,000 cap

1988

Kansas

Caps punitive award at lesser of defendant's annual gross income or \$5 million (the 1992 legislature amended this statute to allow a judge who felt annual gross income was not a sufficient deterrent, to look at 50% of the defendant's net assets, awarding the lesser of that amount or \$5 million); (Note: 1987 legislation had required the court, not the jury, to determine the amount of the punitive damages award and required "clear and convincing" evidence)

Kentucky

Requires "clear and convincing" evidence that conduct constituted "oppression, fraud or malice"

South Carolina

Requires "clear and convincing" evidence for punitives

1989

Arizona

Provides a government standard defense for FDA approved drugs and devices

Nevada

- o Limits punitive damage awards to \$300,000 in cases in which compensatory damages are less than \$100,000 and to three times the amount of compensatory damages in cases of \$100,000 or more (Note: limits do not apply in cases against a manufacturer, distributor, or seller of a defective product; an insurer who acts in bad faith; a person violating housing discrimination laws; a person involved in a case for damages caused by toxic, radioactive or hazardous waste; a person for defamation)
- 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 to a state fund of 50% of punitive damage awards over \$20,000

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;"

Punitive Damages

- 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

1992

New York

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

1993

Mississippi

- o Establishes a clear and convincing evidence standard for the award of punitive damages
- o Requires bifurcation of trials on the issue of punitive damages
- o Prohibits the award of punitive damages in the absence of a compensatory awards
- o Prohibits the award of punitive damages against an innocent seller
- o Lays down factors for the jury to consider when determining the amount of a punitive damages award

North Dakota

- o Limits punitive damages to the greater of \$250,000 or two times compensatory damages
- o Allows for bifurcated trials on the issue of punitive damages and
- o Prohibits a defendant's financial worth from being admitted in the punitive damages portion of a trial

PRODUCT LIABILITY

1986

Colorado

- o Establishes a two-year statute of limitations for product liability suits
- o Establishes a ten-year statute of repose for manufacturing equipment

Florida

- o Establishes modified comparative fault for all tort actions including strict product liability claims

Iowa

- o Establishes a defense of conformity with the state-of-the-art at the time of manufacture
- o Eliminates the liability of product sellers unless the manufacturer is not subject to the court's jurisdiction

Kansas

- o Prohibits submission of evidence in product liability cases concerning advances in technology or changes in manufacturing process made after the product was designed and sold

Washington

- o Prohibits liability if the injured person was under the influence of alcohol or illegal drugs and that condition was 50% responsible for the injury

1987

California

- o Provides that a manufacturer or seller is not liable if harm results from an inherent characteristic of a product that is known to the ordinary person and the product is intended for personal consumption

Delaware

- o Establishes a defense for product sellers when the seller did not know of the defect and did not manufacture or modify the product

Georgia

- o Eliminates the liability of product sellers unless the manufacturer is not subject to the courts's jurisdiction

Mississippi

- o Makes unenforceable any attempt by a seller of consumer goods to exclude or modify any implied warranties of merchantability or fitness or to limit or modify a consumer's remedies for breach of the manufacturer's express warranties

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Product Liability

time the product left his control:

- a) he did not know, and in light of then-existing reasonably available scientific and technological knowledge, could not have known of the design characteristic that caused the damage
- b) he did not know and in light of then-existing reasonably available scientific and technological knowledge, could not have known of the alternative design identified by the claimant
- c) the alternative design identified by the claimant was not feasible, in light of then-existing reasonably available scientific and technological knowledge or then-existing economic practicality

New Hampshire

- o Provides affirmative defense that the risks complained of by the plaintiff were not discoverable using prevailing research and scientific techniques under the state of the art and were not discoverable using procedures required by federal or state regulatory authorities charged with supervision or licensing of the product in question

1989

Utah

- o Provides a statute of limitation = actions shall not be brought more than six years after the date of initial purchase or ten years after the date of manufacture of a product
- o Provides that no dollar amount may be specified in the prayer of a complaint filed in a product liability action
- o Provides for an alteration or modification defense
- o Provides a rebuttable presumption that a product is free from any defect where the alleged defect in the plans for the product were in conformity with government standards for the industry

1993

Mississippi

- o Provides that product liability cases must be based on a design, manufacturing or warning defect, or breach of an express warranty, which caused the product to be unreasonably dangerous
- o Provides that a product which contains an inherently dangerous characteristic is not defective unless the dangerous characteristic cannot be eliminated without substantially reducing the product's usefulness or desirability and the inherent characteristic is recognized by the ordinary person with ordinary knowledge common to the community
- o Provides that a manufacturer or seller cannot be held liable for failure to warn of a product's dangerous condition if it was unknowable at the time the product left the manufacturer's or seller's control

Product Liability

- o Completely bars from recovery a plaintiff who knowingly and voluntarily exposes himself or herself to a dangerous product condition if he or she is injured as a result of that condition
- o Relieves a manufacturer or seller from the duty to warn of a product that poses an open and obvious risk
- o Provides that a properly functioning product is not defective unless there was a practical and economically feasible design alternative available at the time of manufacture
- o Provides for indemnification of innocent retailers and wholesalers

New Hampshire

- o Establishes New Hampshire manufacturers' right of indemnification from the original purchaser of a product for damages caused by the product if it is significantly altered after it leaves the New Hampshire manufacturer's control

North Dakota

- o Provides for a move from pure comparative fault to modified comparative fault in product liability actions

Texas

- o Requires plaintiffs with suits claiming a product was defectively designed to prove that an economically and technologically feasible, safer alternative design was available at the time of manufacture in most product liability actions for defective design
- o Provides a defense for manufacturers and sellers of inherently unsafe products that are known to be unsafe
- o Establishes a 15 year statute of repose for product liability actions against manufacturers or sellers of manufacturing equipment
- o Provides protection for innocent retailers and wholesalers