



# 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 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 the states have done is included. If the state has amended or repealed earlier reforms this has been noted by referring to the most recent enactment. 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, 1997

SUMMARY

Alabama	Coll Srces
Alaska	Jt & Sev, Non Ec Cap-\$500,000, Coll Srces, Prej Int, Puni Evid Stand, Puni Cap
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, Non Ec Cap \$500,000, Coll Srces, Puni Evid Stand, Puni Cap=3x Econ., Bifur Trial, Products Defense
Indiana	Coll Srces, Puni Evid Stand, Puni Cap= > 3x Compen or \$50,000, Products Defense
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 & Sev, Coll Srces, Puni Evi Stand
Louisiana	Jt & Sev, Prej Int, Products Bill
Maine	Prej Int, Products Bill
Maryland	Non Ec Cap=\$350,000
Massachusetts	
Michigan	Jt & Sev, Coll Srces, Prej Int, Products Defense
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, Products Bill
Missouri	Jt & Sev, Coll Srces, Puni=Bifurcated Trial, Products Defense
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, Prej Int, Products Defense
New Jersey	Jt & Sev, Puni Evid Stand, Coll Srces, Products Bill
New Mexico	Jt & Sev
New York	Jt & Sev, Coll Srces
North Carolina	Puni Cap=3x Econ or \$250,000 whichever > , Bifur Trial, Products Defense
North Dakota	Jt & Sev, Coll Srces, Puni Evid Stand, Puni cap=\$250,000, Bifur Trial, Products Defense
Ohio	Jt & Sev, Non Ec Cap= \$250,000/\$500,000, Coll Srces, Prej Int, Puni Cap, Bifur Trial & Puni Evid Stand, Products Bill
Oklahoma	Prej Int, Puni Cap=3 categories to be determined by jury.
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, Products Defense
Tennessee	Jt & Sev *
Texas	Jt & Sev, Prej Int, Puni Cap, Products Bill
Utah	Jt & Sev, Puni Evid Stand, Products Bill
Vermont	Jt & Sev, Products Defense
Virginia	Puni Cap=\$350,000
Washington	Jt & Sev, Products Defense
West Virginia	
Wisconsin	Jt & Sev, Puni Evid Stand.
Wyoming	Jt & Sev

\* Court Decision - 1992 Tennessee Supreme Court abolished the doctrine of joint and several liability in the case of Hodges v. Toof.  
Note: In addition to New Hampshire which prohibits punitive damages by statute, there are common law restrictions on punitive damages in Louisiana, Massachusetts, Nebraska and Washington. Connecticut and Michigan use them to compensate but not deter.

**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

**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 an tortious act)

**Connecticut**

Modified to prohibit joint liability except where liable party's share of judgement 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

**Michigan**

**See 1995**

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 waste
- o medical and pharmaceutical products

**Iowa**

**See 1997**

**Louisiana**

**See 1996**

**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** See 1995

**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** See 1996

**Oregon** See 1995

**South Dakota**

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

**Texas - 1987 Amended - See 1995**

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 for all defendants in all types of cases

**1995**

**Illinois**

Totally abolished joint and several liability

**Michigan**

Abolished joint liability of fault except for:

- o employers vicarious liability; and
- o in medical malpractice cases where the plaintiff is determined not to have a percentage of fault, defendants are jointly liable.

**New Jersey**

Abolished for defendants less than 60% at fault except for:

- o toxic torts

**Oregon**

Abolished joint liability except for:

cases in which one of the defendants within one year of the final judgment is determined to be insolvent. In those cases, a defendant less than 20% at fault would be liable for no more than 2 times their original exposure and defendant more than 20% liable would be liable for the full amount of damages.

**Texas**

Abolished joint liability for defendants less than 51% at fault

**Wisconsin**

Abolished joint liability for defendants found to be less than 51% at fault

**1996**

**Louisiana**

Totally abolished joint and several liability

**Ohio**

Abolished joint and several liability except for defendants who are more than 50% at fault who would then be jointly liable for economic damages only.

**1997**

**Iowa**

Amends the 1987 statute on the doctrine of joint liability to provide that defendants fifty percent or more at fault are jointly liable for economic damages only. (Note: defendants less than fifty percent at fault are not jointly liable for *any* damages.)

## LIMITATIONS ON AWARDS OF NON-ECONOMIC DAMAGES

1986

**Alaska**      **See 1997**

**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**

\$500,000 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

1995

**Illinois**

\$500,000 cap on non-economic damages, indexed for inflation. (In the Circuit Court of Cook County, this limit was held unconstitutional in *Cargill v. Waste Management, Inc.*. As of June, 1996, the case is on appeal.)

1996

**Ohio**

In all civil actions, limits non economic damages to the greater of \$250,000 or three times economic damages to a maximum of \$500,000 unless; there is (a) permanent and severe physical deformity, loss of use of limb or loss of a major bodily organ system; or (b) permanent physical functional injury that permanently prevents the injured person from being able to independently care for herself or himself and perform life sustaining activities.

If plaintiff establishes criteria set forth above, noneconomic damages are limited to the greater of \$1 million or \$35,000 times the number of years remaining in the plaintiff's expected life.

1997

**Alaska**

\$400,000 cap on noneconomic damages or \$8,000 times plaintiff's life expectancy, whichever is greater unless the plaintiff suffers severe permanent physical impairment or severe disfigurement. In such cases, noneconomic damages are limited to the greater of \$1 million or \$25,000 times the plaintiff's life expectancy.



**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 cost 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 the 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 judgement 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 only for the court's review; offset is provided for but collateral sources having rights of subrogation are excluded

**New York**

Mandatory offset

**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**            **See 1996**

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 payers

**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 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)

**1996**

**Ohio**

Allows collateral source payments, including workers' compensation benefits, to be submitted as evidence to the trier of fact, but only if there is no right of subrogation attached or the plaintiff has not paid a premium for the insurance.

**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**

**See 1997**

Repealed prejudgment interest for future damages (other interest accrues from the date of commencement of the actions 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 interest and post judgment interest rate to U.S. Treasury Bill rate

**1995**

**New Hampshire**

Tied the prejudgment interest to the U. S. Treasury Bill rate plus 2%

**1996**

**Ohio**

Tied prejudgment interest to 50% of the "federal short-term rate." Interest accrues from date defendant received notice of cause of action. Repealed prejudgment interest for future damages

1997

**Alaska**

Tied interest rate to the 12th Federal Reserve District's Discount Rate plus 3%. Repealed prejudgment interest for future damages and punitive damages

**Iowa**

Tied interest rate to U.S. Treasury Rate plus 2%

## REFORM OF THE LAW OF PUNITIVE DAMAGES

### 1986

**Alaska**      **See 1997**

Requires "clear and convincing" evidence

**Colorado**

Punitive award may exceed compensatory award; court may reduce if deterrence achieved without award, but also may 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**      **See 1995**

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

**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

**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 conditions only after a finding of liability

**Georgia**

\$250,000 cap -- product liability actions are excluded from the cap

**Idaho**

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

**Missouri**

Bifurcated trial for punitive - The jury stills 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**

**See 1997**

- 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**

**Amended See 1995**

- 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 an FDA government standards defense to punitives
- o Excludes environmental torts

**North Dakota**

**See also 1993, 1995 & 1997**

- 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**

**See 1996**

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"; provided a government standard defense for FDA approved drugs

**Oregon**

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

**Texas**

**See 1995**

**Virginia**

\$350,000 cap

**1988**

**Kansas**

Caps punitive awards 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**

Provided 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

**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



**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 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 Requires 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

**1995**

**Illinois**

(1986 legislation prohibited punitive damages claims in the original complaint)

- o Limits punitive damages to three times economic damages;
- o Prohibits punitive damage awards unless conduct is "with an evil motive or with a reckless indifference to the rights of others";
- o Bifurcates trials to allow the claim for punitive damages to be considered separately at the request of the defendant;
- o Requires courts to reduce awards in excess of caps and
- o Provides for an FDA government standards defense to punitives.

**Indiana**

- o Limits punitive damages to the greater of three times compensatory damages or \$50,000 whichever is greater
- o Redirects 75% of punitive awards to a state fund.

**New Jersey**

- o Limits punitive damage awards to five times compensatory damages or \$350,000, whichever is greater
- o Provides exemptions including: bias crimes, discrimination, AIDS testing disclosure, sexual abuse, and injuries caused by drunk drivers

**North Carolina**

- o Limits punitive awards to three times compensatory damages or \$250,000 whichever is greater while providing an exception for harms caused by driving while impaired;
- o Requires "clear and convincing" evidence that the defendant is liable for compensatory damages and engaged in fraud, malice, willful or wanton conduct; and
- o Provides for a bifurcated trial on motion of defendant.

**North Dakota**

(1987 legislation prohibited punitive damages in original complaint; 1993 legislation limited damages)

- o Requires "clear and convincing" evidence that the defendant has been guilty of oppression, fraud, or *actual* malice.
- o Provides for an FDA government standards defense to punitives.

**Oklahoma**

(1986 legislation had limited punitive award to compensatory award)

Codifies factors which the jury must consider in awarding punitive damages, then provides three separate "categories" for limiting punitive awards. When the jury finds by clear and convincing evidence that the defendant:

- o Acted in "reckless disregard for the rights of others", the award is limited to \$100,000 or actual damages awarded, whichever is greater;
- o Acted intentionally and with malice, the limit is either \$500,000; two times actual damages awarded; or the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing injury; and
- o if the court finds evidence *beyond a reasonable doubt* that the defendant acted intentionally and with malice in conduct life-threatening to humans, the cap is lifted.

**Oregon**

(1987 legislation provided an FDA defense)

- o Provides that 40% of the punitive award is paid to the prevailing party and 60% is paid to a state fund, and no more than 20% of the award may be paid to the attorney of the prevailing party;
- o Imposes a "clear and convincing" evidence standard to prove defendant "acted with malice or has shown a reckless and outrageous indifference to a highly unreasonable risk

of harm and has acted with a conscious indifference to the health, safety and welfare of others";

- o Provides court review of jury awarded punitive damages;
- o Prohibits punitive damages in the original complaint. A prima facie case for liability is required before the complaint can be amended to include a punitive damages claim

**Texas**

- o Limits punitive damage awards to the greater of \$200,000 or two times economic damages plus non-economic damages up to \$750,000; and
- o Requires "clear and convincing" evidence to prove *malice* defined as the "conscious indifference to the rights, safety, or welfare of others."

**Wisconsin**

Allows punitive damages only where defendants act "maliciously or in intentional disregard of the rights of the plaintiff."

**1996**

**Ohio**

- o Limits amount of punitive damages recoverable from all parties except large employers to the lesser of three times compensatory damages or \$100,000;
- o Limits the amount of punitive damages recoverable from large employers (more than 25 employees on a full time permanent basis) to the greater of three times the amount of compensatory damages or \$250,000;
- o Provides that any party may request a bifurcated trial; and
- o Limits multiple punitive damage awards based on the same act or course of conduct; and expands governmental standards defense to include non-drug manufacturers, and manufacturers of over-the-counter drugs and medical devices.

**1997**

**Alaska**

- o Limits amount of punitive damages to the greater of three times compensatory damages or \$500,000; except
  - a) When the defendant's action is motivated by financial gain in which case punitive damages are limited to the greater of four times compensatory damages; four times the aggregate amount of financial gain; or \$7,000,000.
  - b) In an unlawful employment practices suit, punitive damages are limited to \$200,000 if the employer has less than 100 employees in the state; \$300,000 if the employer has more than 100 but less than 200 employees in the state;

**Punitive Damages**

\$400,000 if the employer has more than 200 but less than 500 employees in the state; and \$500,000 if the employer has more than 500 employees in the state.

- o Establishes a clear and convincing evidence standard to prove conduct was "outrageous" or evidenced "reckless indifference."
- o Provides for a bifurcated trial when punitive damages are awarded.

**Montana**

- o Allows the court to assess jury costs if a party's case is frivolous or maintained for purposes of harassment.

**North Dakota**

- o Requires a preponderance of the evidence to prove oppression, fraud, or actual malice before a moving party may amend pleadings and claim punitive damages.

## 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 tort actions including strict product liability claims

#### **Iowa**

- o Establishes a defense of conformity with the state-of-the-art at the time of the 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 a 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 court's jurisdictions

#### **Mississippi**

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

#### **Missouri**

- o Recognizes state-of-the-art as a complete affirmative defense

#### Product Liability

- o Defines "plaintiff fault" to include product misuse, failure to take reasonable precautions, and unreasonable failure to appreciate the danger involved in the use of the product

#### Montana

- o Defines unreasonable product misuse and assumption of the risk under the comparative responsibility statute

#### New Jersey - Comprehensive Statute Also See 1995

- o Provides that a manufacturer or seller of a product is liable only if claimant proves by preponderance of evidence that the product was not suitable or safe because it:
  - a) deviated from the design specifications or performance standards
  - b) failed to contain adequate warnings
  - c) was designed in a defective manner
- o Provides that a manufacturer or seller is not liable if at the time the product left the manufacturer's control there was not available a practical and feasible alternative design that would have prevented the harm
- o Provides that a product is not defective in design if harm results from an inherent characteristic of the product that is known to the ordinary person who uses or consumes it
- o Provides that a manufacturer or seller is not liable for a design defect if harm results from an unavoidably unsafe aspect of a product and the product was accompanied by an adequate warning
- o Provides that the state of the art provision does not apply if the court makes all of the following determinations:
  - a) that the product is egregiously unsafe
  - b) that the user could not be expected to have knowledge of the product's risk
  - c) that the product has little or no usefulness
- o Provides that a manufacturer or seller is not liable in a warning-defect case if an adequate warning is given (An adequate warning is one that a reasonably prudent person in the similar circumstances would have provided.)
- o Establishes a rebuttable presumption that a government (FDA) warning is adequate
- o Provides that drugs, devices, food and food additives which have received pre-market approval or are licensed or regulated by the FDA shall not be subject to punitive damages unless material information was withheld or misrepresented

#### New Mexico

- o Exempts blood, blood products, and human tissue and organs from strict product liability

#### North Dakota

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

**Ohio - Comprehensive Statute - Amended See 1996**

- o Codifies the consumer-expectation test for design defects
- o Establishes a defense for inherent characteristics of a product known to the ordinary person with knowledge common to the community
- o Establishes a state-of-the-art defense when no practical and technologically feasible alternative design was available unless the manufacturer acted unreasonably in introducing the product into commerce
- o Establishes a defense to warning claims if the risk is open and obvious or a matter of common knowledge
- o Establishes a defense to warning claims for drugs and medical devices if the warnings provided comply with regulations of the Food and Drug Administration
- o Establishes a defense to punitive damages against a drug manufacturer if the drug was approved by the Food and Drug Administration

**Oregon**

- o Prohibits punitive damages against a drug manufacturer if the drug was manufactured and labeled in accord with government approval or if it was generally recognized as safe and effective in accord with FDA procedures, unless the defendant withheld information concerning the drug from the FDA or failed to conduct a required recall

**Texas**

- o Prohibits recovery against a manufacturer, distributor or retailer of a product if the plaintiff is 60% or more responsible for the injury

**1988**

**Louisiana - Comprehensive Statute**

- o Provides that a product may be unreasonably dangerous only because of one or more of the following characteristics:
  - a) defective construction or composition
  - b) defective design
  - c) failure to warn or inadequate warning
  - d) nonconformity within express warranty
- o Provides that a manufacturer of a product shall not be liable for damage proximately caused by a characteristic of the product's design if the manufacturer proves that at the 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 - Comprehensive Statute**

- o Provides a statute of limitation that mandates 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 - Comprehensive Statute**

- 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
- o Completely bars from recovery a plaintiff who knowingly and voluntarily exposes himself or herself to a dangerous product condition if her or she is injured as a result of that condition



Product Liability

- 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 purchasers 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 and allows a manufacturer's and seller's defense where injury was due to a product's alteration or modification

**Texas**

- o Requires proof of an economically and technologically safer alternative design available at the time of manufacture in product liability actions for defective design
- o Provides immunity for manufacturers and sellers of inherently unsafe products
- o Establishes a 15 year statute of repose for product liability actions against manufacturers or sellers of manufacturing equipment
- o Provides for a seller's defense

**1995**

**Illinois**

- o Requires a product liability affidavit; (In the Circuit Court of Cook County, the affidavit requirement was held unconstitutional in *Panzer v. Owens-Corning Fiberglas Corp.*. As of June, 1996, the case is on appeal.)
- o Creates a presumption of safety for manufacturers which meet state and federal standards
- o Creates a presumption of safety for manufacturers who can show that no practical or feasible alternative design existed at the time product was manufactured;
- o Prohibits evidence of subsequent changes in design or subsequent changes in product warnings
- o Establishes a statute of repose. Action is barred after 12 years from first sale or 10 years from first sale to a user or consumer, whichever occurs first

**Indiana**

- o Abolishes joint liability in product liability actions; Indiana does not apply joint and several liability in other civil actions
- o Provides a rebuttable presumption that the product was not defective if: a) the manufacturer of the product was in conformity with recognized "state of the art" safety guidelines; or b) the manufacturer of the product complied with government standards approved by the Federal Drug Administration, Federal Aviation Administration, etc.
- o Prohibits strict liability actions against the seller unless seller is a manufacturer of the product

**Michigan**

- o provides a rebuttable presumption that manufacturer or seller is not liable if product complied with federal or state standards
- o provides an FDA defense; sellers' defense; a defense for misuse or alteration; and an assumption of the risk defense
- o provides an absolute defense if claimant was 50% or more at fault due to intoxication or a controlled substance
- o limits non-economic damages awarded in product liability actions to \$280,000 unless the action involves death or loss of vital bodily function which raises the limit to \$500,000.
- o abolished joint liability in product liability actions. Pure comparative fault applies to all product manufacturers except those named in medical malpractice cases.

**New Jersey**

Limits strict liability for product sellers in product liability actions

**North Carolina**

- o Expressly provides that there shall be no strict liability in tort product liability actions; and
- o Provides statutory defenses for manufacturer or sellers including an assumption of the risk defense.

**North Dakota**

- o Establishes 10 year statute of repose in product liability actions; and
- o Provides for a government standards defense

**South Dakota**

Provides a state of the art defense in product liability actions

**1996**

**Maine**

Provides that "subsequent remedial measures" or steps taken after an accident to repair or improve the site of injury are not admissible as evidence of negligence.

**Ohio**

Amends product liability law to include additional requirements for establishing liability; prohibits expanded theories of liability including enterprise liability; and adopts a fifteen year statute of repose in product liability cases unless there is latent harm or fraud.

**1997**

**Iowa**

Establishes a 15 year statute of repose in product liability actions with exceptions for fraud, concealment, latent disease caused by harmful materials, and specified products.