Tort Reform Record

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December 31, 1999

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 If the state has amended or repealed earlier reforms this has been noted by referring to the most recent enactment.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 product liability, 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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* 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   See 1999
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:

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

Hawaii
- Abolished for low fault defendants (25% of fault or less)
- Applies for non-economic damages only
- 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:

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

Utah
Totally abolished joint and several liability

Washington
Abolished except for cases in which:

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

Wyoming
Totally abolished joint and several liability

1987

Arizona
Abolished except in cases of:

- intentional torts
- hazardous waste

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

Idaho
Abolished except in cases of:

- intentional torts
- hazardous waste
- 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:

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

New Jersey  See 1995

New Mexico
Codified common law application of several except in:

- cases involving intentional torts;
- cases in which the relationship of defendants could make one defendant vicariously liable for the acts of others
- 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.)
- situations "having sound basis in public policy"

North Dakota
Abolished except for:

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

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

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:

- plaintiff is fault free and defendant's share exceeds 10%
- 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 extend 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

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

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.)

1999

**Florida**
Provides for a multi-tiered approach for applying limits on joint and several liability. Where a plaintiff is at fault:

Any defendant 10% or less at fault shall not be subject to joint liability; for any defendant more than 10% but less than 25% at fault, joint liability is limited at $200,000; for any defendant at least 25% but not more than 50% at fault, joint liability is limited to $500,000; and for any defendant more than 50% at fault, joint liability is limited to $1 million.

Where a plaintiff is without fault:

Any defendant less than 10% at fault shall not be subject to joint liability; for any defendant at least 10% but less than 25% at fault, joint liability is limited to $500,000; for any defendant at least 25% but not more than 50% at fault, joint liability is limited to $1 million; and for any defendant more than 50% at fault, joint liability is limited to $2 million.
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)

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
- 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
- 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
- Only collateral sources for benefits over $25,000 can be offset
- 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
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:
- life insurance and other death benefits
- benefits for which plaintiff has paid premiums
- retirement, disability, and pension plan benefits
- 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)
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  See 1997
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%

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%

Louisiana
Sets judicial interest to the average Treasury Bill Rate for 52 weeks plus 2%. Provides varying rates of interest for actions pending or filed during the last 10 years
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  See 1999
Punitive award may not exceed three times compensatory damages 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

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  See 1999
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
- Requires "clear and convincing" evidence of "actual fraud" or "actual malice"
- Bifurcates the trial with evidence of defendant's net worth only admissible in second section of trial
- 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
- Requires evidence of "actual malice" or "wanton and willful disregard" of the rights of others
- Provides for a bifurcated trial
- Provides for an FDA government standards defense to punitives
- Excludes environmental torts

North Dakota
See also 1993, 1995 & 1997
- Punitives not allowed in original complaint
- Plaintiff has to show prima facie evidence for claim for punitives
- 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"; provided a government standard defense for FDA approved drugs

Oregon
- Requires "clear and convincing" evidence
- 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)

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

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

1995

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

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

**North Carolina**
- 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;
- Requires "clear and convincing" evidence that the defendant is liable for compensatory damages and engaged in fraud, malice, willful or wanton conduct; and
- Provides for a bifurcated trial on motion of defendant.

**North Dakota**
(1987 legislation prohibited punitive damages in original complaint; 1993 legislation limited damages)
- Requires "clear and convincing" evidence that the defendant has been guilty of oppression, fraud, or actual malice.
- 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:

- Acted in "reckless disregard for the rights of others", the award is limited to $100,000 or actual damages awarded, whichever is greater;
- 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
- 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)

- 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;
- 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";

- Provides court review of jury awarded punitive damages;
- 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

- Limits punitive damage awards to the greater of $200,000 or two times economic damages plus non-economic damages up to $750,000; and
- 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."

Alaska

- Limits amount of punitive damages to the greater of three times compensatory damages or $500,000; except

1997
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; $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.

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

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

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

1999

**Alabama**
- In non-physical injury cases: limits punitive damages to the greater of three times compensatory damages or $500,000; for small businesses with a net worth of less than $2 million, limits punitive damages to $50,000 or 10% of net worth up to $200,000, whichever is greater.
- In physical injury cases: limits punitive damages to the greater of three times compensatory damages or $1.5 million. Limit to be adjusted by the Consumer Price Index in three-year intervals beginning on January 1, 2003
- Prohibits joint liability in all punitive damage actions by requiring a punitive damage award be specific to each defendant and in an amount commensurate with each defendant's conduct.
- Exceptions include: wrongful death, intentional infliction of physical injury and class actions.
- The limit will be adjusted on January 1, 2003 and increased at three-year intervals in accordance with the Consumer Price Index.
Florida

- Limits punitive damages to three times compensatory damages or $500,000, whichever is greater.

- The limit is increased to four times compensatory damages or $2,000,000, whichever is greater, if the defendant's wrongful conduct was motivated by unreasonable financial gain or the likelihood of injury was known.

- Establishes a clear and convincing evidence standard for intentional misconduct or gross negligence.

- Outlines circumstances when an employer is liable for punitive damages arising from an employee's conduct.

- Exceptions include: abuses to the elderly or child abuse cases or cases where the defendant is intoxicated.