Tort Reform Record

December 30, 2002

The Tort Reform Record is published each June and December to record the accomplishments of the latest legislative year. It includes a two-page, state-by-state summary of the ATRA-supported reforms enacted by the states since 1986.

Please note: The Record lists tort reforms enacted since 1986; it does not list legislative reforms enacted prior to 1986, the year of ATRA's founding.

For each issue included in the Record, ATRA provides issue papers and model legislation.

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Tort Reform Record
At-A-Glance

	Punitive Damage Reform	Joint & Several Liability Reform	Prejudgment Interest Reform	Collateral Source Rule Reform	Noneconomic Damage Reform	Product Liability Reform	Class Action Reform	Attorney Retention Sunshine	Appeal Bond Reform
Alabama	x			x			x		
Alaska	x	x	x	x	x				
Arizona	x	x		x					
Arkansas									
California	x	x				x			
Colorado	x	x	x	x	x				
Connecticut		x		x					
Delaware									
District of Columbia									
Florida	x	x		x	x	x			x
Georgia	x	x				x			x
Hawaii		x		x	x				
Idaho	x	x		x	x				
Illinois	x	x		x					
Indiana	x			x		x			x
Iowa	x	x	x	x		x			
Kansas	x				x			x	
Kentucky		x		x					x
Louisiana	x	x	x			x	x		x
Maine			x	x		x			
Maryland					x				
Massachusetts		x							
Michigan		x	x	x	x	x			x

	Punitive Damage Reform	Joint & Several Liability Reform	Prejudgment Interest Reform	Collateral Source Rule Reform	Noneconomic Damage Reform	Product Liability Reform	Class Action Reform	Attorney Retention Sunshine	Appeal Bond Reform
Minnesota	x	x	x	x	x				
Mississippi	x	x				x			x
Missouri	x	x	x	x					
Montana	x	x		x	x	x			
Nebraska		x	x						
Nevada	x	x							x
New Hampshire	x	x	x			x			
New Jersey	x	x		x		x			
New Mexico		x							
New York	x	x		x					
North Carolina	x					x			x
North Dakota	x	x		x	x			x	
Ohio	x	x		x		x	x		x
Oklahoma	x		x						x
Oregon	x	x		x					
Pennsylvania		x							
Rhode Island			x						
South Carolina	x								
South Dakota	x	x							
Tennessee*		x							
Texas	x	x	x			x		x	
Utah	x	x							
Vermont		x							
Virginia	x							x	
Washington		x							
West Virginia									x
Wisconsin	x	x			x				
Wyoming		x							

*Tennesse abolished joint and several liability by judicial decision

THE RULE OF JOINT AND SEVERAL LIABILITY

Joint and several liability is a theory of recovery that permits the plaintiff to recover damages from multiple defendants collectively, or from each defendant individually. In a state that follows the rule of joint and several liability, if a plaintiff sues three defendants, two of whom are 95 percent responsible for the defendant's injuries, but are also bankrupt, the plaintiff may recover 100 percent of her damages from the solvent defendant that is 5 percent responsible for her injuries.

The rule of joint and several liability is neither fair, nor rational, because it fails to equitably distribute liability. The rule allows a defendant only minimally liable for a given harm to be forced to pay the entire judgment, where the co-defendants are unable to pay their share. The personal injury bar's argument in support of joint and several liability—that the rule protects the right of their clients to be fully compensated—fails to address the hardship imposed by the rule on co-defendants that are required to pay damages beyond their proportion of fault.

ATRA supports replacing the rule of joint and several liability with the rule of proportionate liability. In a proportionate liability system, each co-defendant is proportionally liable for the plaintiff's harm. For example, a co-defendant that is found by a jury to be 20% responsible for a plaintiff's injury would be required to pay no more than 20% of the entire settlement. More moderate reforms that ATRA supports include: (1) barring the application of joint and several liability to recover non-economic damages; and (2) barring the application of joint and several liability to recover from co-defendants found to be responsible for less than a certain percentage (such as 25%) of the plaintiff's harm.

Thirty-seven states have modified the rule of joint and several liability.

ALASKA

1988—Proposition Two

Barred application of the rule of joint and several liability in the recovery of all damages through a ballot initiative on November 8, 1988.

ARIZONA

1987—SB 1036

Barred application of the rule of joint and several liability in the recovery of all damages, except in cases of intentional torts and hazardous waste.

The Arizona Court of Appeals upheld the constitutionality of this statute in Church v. Rawson Drug & Sundry Co., No. 1 CA-CV 90-0357, October 1, 1992.

CALIFORNIA

1986—Proposition 51

Barred application of the rule of joint and several liability in the recovery of noneconomic damages.

COLORADO

1986—SB 70

Barred application of the rule of joint and several liability in the recovery of all damages. (An amendment approved in 1987 allowed joint liability when tortfeasors consciously acted in a concerted effort to commit a tortious act.)

CONNECTICUT

1986—HB 6134

Barred application of the rule of joint and several liability in the recovery of all damages, except where the liable party's share of the judgment is uncollectible. (1987 legislation limited application of this reform to noneconomic damages.)

FLORIDA

1999—HB 775

Provided for a multi-tiered approach for applying limits on the rule of joint and several liability.

1) **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 to $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.

2) **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.

1986—SB 465

Barred application of the rule of joint and several liability in the recovery of noneconomic damages in negligence actions, and for economic damages, where a defendant is less at fault than the plaintiff. The reform does not apply to the recovery of economic damages for pollution, intentional torts, actions governed by a specific statute providing for joint and several liability, or actions involving damages no greater than $25,000.

The Florida Supreme Court upheld the statute as constitutional in Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987). The Florida Supreme Court further interpreted the Joint and Several Liability patron of the statute in Allied Signal v. Fox, case No. 80818, Florida Supreme Court, Aug. 26, 1993 and Fabre v. Marin, case No. 76869, Florida Supreme Court, Aug. 26, 1993.

Georgia

1987—HB 1

Barred application of the rule of joint and several liability in the recovery of all damages when a plaintiff is assessed a portion of the fault.

Hawaii

1994—HB 1088

Barred application of the rule of joint and several liability in the recovery of all damages from all governmental entities.

1986—SB S1

Barred application of the rule of joint and several liability in the recovery of noneconomic damages from defendants found to be 25% or less at fault. The reform does not apply to auto, product, or environmental cases.

Idaho

1990—HB 744

Defined the term "acting in concert," as used in SB 1223 (below), as pursuing a common plan or design that results in the commission of an intentional or reckless tortious act.

1987—SB 1223

Barred application of the rule of joint and several liability in the recovery of all damages, except in cases of intentional torts, hazardous waste, and medical and pharmaceutical products.

Illinois

1995—HB 20

Barred application of the rule of joint and several liability in the recovery of all damages.

Held unconstitutional by the Illinois Supreme Court in Best v. Taylor Machine Works, Inc., December 1997.

1986—SB 1200

Barred application of the rule of joint and several liability in the recovery of noneconomic damages from defendants found to be 25% or less at fault. The reform does not apply to auto, product, or environmental cases.

Iowa

1997—HF 693

Provided that defendants found to be 50% or more at fault are jointly liable for economic damages only.

1985

Barred application of the rule of joint and several liability in the recovery of all damages from defendants who are found to be less than 50% at fault.

KENTUCKY

1996—HB 21

Barred application of the rule of joint and several liability in the recovery of all damages.

1988—HB 551

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

LOUISIANA

1996—HB 21

Barred application of the rule of joint and several liability in the recovery of all damages.

MASSACHUSETTS

2001—HB 574

Barred application of the rule of joint and several liability in the recovery of all damages against public accountants so that an individual or firm is only liable for damages in proportion to the assigned degree of fault.

MICHIGAN

1995—HB 4508

Barred application of the rule of joint and several liability in the recovery of all damages, except in cases of employers' vicarious liability and in medical liability cases, where the plaintiff is determined not to have a percentage of fault.

1986—HB 5154

Barred application of the rule of joint and several liability in the recovery of all damages from municipalities. Barred application of the rule of joint and several liability in the recovery of all damages from all other defendants, except in products liability actions and actions involving a blame-free plaintiff. Provided that defendants are severally liable, except when uncollectible shares of a judgment are reallocated between solvent co-defendants according to their degree of negligence.

MINNESOTA

1988—HF 1493

Provided that defendants found to be 15% or less at fault shall pay no more than *four times* their share of damages.

MISSISSIPPI

1989—HB 1171

Provided that the rule of joint and several liability only applies to the extent necessary for the injured party to receive 50% of his or her recoverable damages.

MISSOURI

1987—HB 700

Barred application of the rule of joint and several liability in the recovery of all damages when a plaintiff is assessed a portion of the fault.

MONTANA

1997—HB 571

Retained the current system of modified joint and several liability, where joint liability does not apply to defendants found to be less than 50% at fault. Revised the comparative negligence statute to permit the allocation of a percentage of liability to defendants who settle or are released from liability by the plaintiff. Allowed those defendants to intervene in the action to defend against claims affirmatively asserted.

1997—HB 572

Barred application of the rule of joint and several liability in the recovery of all damages.

Takes effect only if HB 571 is held unconstitutional.

1995—SB 212

Restored the joint and several liability reforms of 1987, which had been weakened by the Montana Supreme Court. Provided procedural safeguards to allow joint liability to apply only when a defendant is found to be more than 50% at fault.

1987—SB 51

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be 50% or less at fault.

NEBRASKA

1991—LB 88

Modified the rule of joint and several liability by replacing the 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; Barred application of the rule of joint and several liability in the recovery of noneconomic damages.

NEVADA

2002—AB 1

Barred application of the rule of joint and several liability in the recovery of noneconomic damages for medical liability claims.

1987—SB 511

Barred application of the rule of joint and several liability in the recovery of all damages, except in product liability cases, cases involving toxic waste, cases involving intentional torts, and cases where defendants acted in concert.

NEW HAMPSHIRE

1989—SB 110

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 50% at fault.

NEW JERSEY

1995—SB 1494

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 60% at fault. (The law formerly extended the 60% threshold for noneconomic damages only.) The reform does not apply to toxic torts.

1987—SB 2703, SB 2708

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 20% at fault. Barred application of the rule of joint and several liability in the recovery of noneconomic damages from defendants found to be between 20% and 60% at fault.

NEW MEXICO

1987—SB 164

Barred application of the rule of joint and several liability in the recovery of all damages, except in cases involving toxic 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), and in situations "having a sound basis in public policy."

NEW YORK

1986—SB 9391

Barred application of the rule of joint and several liability in the recovery of noneconomic damages from defendants found to be 50% or less at fault. The reform does not apply to actions where the defendant is found to have acted with reckless disregard of the rights of others, and in actions involving motor vehicle cases, actions involving the release of toxic substances into the environment, intentional torts, contract cases, product liability cases where the manufacturer could not be joined, construction cases, and other specific actions.

NORTH DAKOTA

1987—HB 1571

Barred application of the rule of joint and several liability in the recovery of all damages, except for intentional torts, cases in which defendants acted in concert, and products liability cases.

OHIO

1996—HB 350

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 50% at fault. Barred application of the rule of joint and several liability in the recovery of noneconomic damages from defendants found to be more than 50% at fault.

Held unconstitutional in *Ohio Academy of Trial Lawyers v. Sheward*, August 1999.

1987—HB 1

Barred application of the rule of joint and several liability in the recovery of noneconomic damages when the plaintiff is also assessed a portion of the fault.

OREGON

1995—SB 601

Barred application of the rule of joint and several liability in the recovery of all damages, except where the defendants is determined to be insolvent within one year of the final judgment. In those cases, a defendant less than 20% at fault would be liable for no more than two times her original exposure and a defendant more than 20% liable would be liable for the full amount of damages.

1987—SB 323

Barred application of the rule of joint and several liability in the recovery of noneconomic damages. Barred application of the rule of joint and several liability in the recovery of all damages, where the defendant is found to be less than 15% at fault.

PENNSYLVANIA

2002—SB 1089

Barred application of the rule of joint and several liability in the recovery of all damages, except when a defendant has not: (1) been found liable for intentional fraud or tort; (2) been held more than 60% liable; (3) been held liable for environmental hazards, or; (4) been held civilly liable as a result of drunk driving.

SOUTH DAKOTA

1987—SB 263

Provided that "any party who is allocated less than 50% of the total fault allocated to all parties may not be jointly liable for more than twice the percentage of fault allocated to that party."

TEXAS

1995—SB 28

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 51% at fault.

1987—SB 5

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 20% at fault, except when a plaintiff is found to be fault free and a defendant's share exceeds 10%, and when damages result from environmental pollution or hazardous waste.

UTAH

1999—HB 74

Clarified the 1986 statute that totally abolished joint liability to address the Utah Supreme Court decision in *Field v. The Boyer Company*.

1986—SB 64

Barred application of the rule of joint and several liability in the recovery of all damages.

VERMONT

1985

Barred application of the rule of joint and several liability in the recovery of all damages.

WASHINGTON

1986—SB 4630

Barred application of the rule of joint and several liability in the recovery of all damages, except incases in which defendants acted in concert or the plaintiff is found to be fault free, or in cases involving hazardous or solid waste disposal sites, business torts and manufacturing of generic products.

WISCONSIN

1995—SB 11

Barred application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 51% at fault. Provided that a plaintiff's negligence will be measured separately against each defendant.

WYOMING

1994—SF 35

Amended the joint and several liability reform passed in 1986. Defined when an individual is at fault. Specified the amount of damages recoverable in cases where more than one party is at fault. Clarified the relationship between fault and negligence.

1986—SB 17

Barred application of the rule of joint and several liability in the recovery of all damages.

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THE COLLATERAL SOURCE RULE

The collateral source rule of the common law says that evidence may not be admitted at trial to show that plaintiffs' losses have been compensated from other sources, such as plaintiffs' insurance, or worker compensation. As a result, for example, 35% of total payments to medical malpractice claimants are for expenses already paid from other sources.

Twenty-four states have modified or abolished the collateral source rule.

ALABAMA

1987

Permitted the admissibility of evidence of collateral source payments.

ALASKA

1986—SB 337

Permitted the admissibility of evidence of collateral source payments. Provided for awards to be offset with broad exclusions.

ARIZONA

1993—SB 1055

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.

COLORADO

1986—SB 67

Permitted the admissibility of evidence of collateral source payments. Provided for awards to be offset with broad exclusions.

CONNECTICUT

1986—HB 6134

Permitted the admissibility of evidence of collateral source payments. Provided for awards to be offset with broad exclusions.

FLORIDA

1986—SB 465

Provided for awards to be offset with broad exclusions.

The Florida Supreme Court upheld the collateral source provision as constitutional in Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987).

GEORGIA

1987—HB 1

Permitted the admissibility of evidence of collateral source payments.

The Georgia Supreme Court held the collateral source provision unconstitutional in Georgia Power v. Falagan, No. S90A1245, April 1991.

Hawaii

1986—SB S1

Provided for payment of valid liens (arising out of claims for payments made from collateral sources for costs and expenses arising from an 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 reform does not affect the amount of damages paid by the defendant to the plaintiff.

Idaho

1990—HB 745

Permitted the admissibility of evidence of collateral source payments. Provided for awards to be offset to the extent that they include double recoveries from sources other than federal benefits, life insurance, or contractual subrogation rights.

Illinois

1986—SB 1200

Provided for awards to be offset for benefits over $25,000, as long as the offset does not reduce the judgment by more than 50%.

Indiana

1986—SB 394

Permitted the admissibility of evidence of collateral source payments, with exceptions. Provided for awards to be offset at the court's discretion. Permitted a court to instruct a jury to disregard tax consequences of its verdict.

Iowa

1987—SF 482

Permitted the admissibility of evidence of collateral source payments.

Kansas

1988—HB 2693

Permitted the admissibility of evidence of collateral source payments, where damages exceed $150,000. Provided for awards to be offset when the court assigns comparative fault.

The $150,000 threshold for the admissibility of collateral sources into evidence was held unconstitutional by the Kansas Supreme Court in Thompson v. KFB Insurance Company, Case No. 68452 (1993).

KENTUCKY

1988—HB 551

Mandated that juries be advised of collateral source payments and subrogation of rights of collateral payers.

MAINE

1990

Provided for awards to be offset by collateral source payments, where the collateral sources have not exercised subrogation rights within 10 days after a verdict for the plaintiff.

MICHIGAN

1986—HB 5154

Permitted the admissibility of evidence of collateral source payments after the verdict and before judgment is entered. Permitted courts to offset awards, as long as a plaintiff's damages are not reduced by more than the amount awarded for economic damages.

MINNESOTA

1986—SB 2078

Permitted the admissibility of evidence of collateral source payments only for the court's review. Provided for awards to be offset by collateral source payments, unless the source of reimbursement has a subrogation right.

MISSOURI

1987—HB 700

Permitted the admissibility of evidence of collateral source payments, but provided that a defendant who presents collateral source payments as evidence waives his right to a credit against the judgment for that amount.

MONTANA

1987—HB 567

Permitted the admissibility of evidence of collateral source payments, unless the source of reimbursement has a subrogation right under state or federal law. Required a court to offset damages over $50,000.

New Jersey

1987—SB 2703, SB 2708

Provided for awards to be offset by collateral source payments other than workers' compensation and life insurance benefits.

New York

1986—SB 9351

Provided for awards to be offset by collateral source payments.

North Dakota

1987—HB 1571

Provided for awards to be offset by collateral source payments other than life insurance or insurance purchased by the recovering party.

Ohio

1996—HB 350

Permitted the admissibility of evidence of collateral source payments, including workers' compensation benefits, but only if there is no right of subrogation attached or the plaintiff has not paid a premium for the insurance.

Held unconstitutional by the Ohio Supreme Court in Ohio Academy of Trial Lawyers v. Sheward, August 1999

1987—HB 1

Provided for awards to be offset by payments of collateral source benefits that have been paid or are likely to be paid within 60 months of judgment, unless the source of reimbursement has a subrogation right.

Oregon

1987—SB 323

Permitted a judge to reduce awards for collateral source payments, excluding life insurance and other death benefits, benefits for which plaintiff have paid premiums, retirement benefits, disability benefits, pension plan benefits, and federal social security benefits.

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PUNITIVE DAMAGES

Punitive damages are awarded not to compensate a plaintiff, but to punish a defendant for intentional or malicious misconduct and to deter similar future misconduct. While punitive damages awards are infrequent, their frequency and size have grown greatly in recent years. More importantly, they are routinely asked for today in civil lawsuits. The difficulty of predicting whether punitive damages will be awarded by a jury in any particular case, and the marked trend toward astronomically large amounts when they are awarded, have seriously distorted settlement and litigation processes and have led to wildly inconsistent outcomes in similar cases. ATRA recommends four reforms:

- Establishing a liability "trigger" that reflects the intentional tort origins and quasi-criminal nature of punitive damages awards - "actual malice."
- Requiring "clear and convincing evidence" to establish punitive damages liability.
- Requiring proportionality in punitive damages so that the punishment fits the offense.
- Enacting federal legislation to address the special problem of multiple punitive damages awards; This would protect against unfair overkill, guard against possible due process violations, and help preserve the ability of future claimants to recover basic out-of-pocket expenses and damages for their pain and suffering.

Thirty-two states have reformed punitive damages laws.

ALABAMA

1999—SB 137

In non-physical injury cases:

1) General rule: Limited the award of punitive damages to the greater of three times the award of compensatory damages or $500,000.

2) For businesses with a net worth of less than $2 million: Limited the award of punitive damages to $50,000 or 10% of net worth up to $200,000, whichever is greater.

In physical injury cases: Limited the award of punitive damages to the greater of three times the award of compensatory damages or $1.5 million.

Prohibited application of the rule of joint and several liability in actions for punitive damages, except for wrongful death actions, actions for intentional infliction of physical injury, and class actions.

Provided that the limit on punitive damages will be adjusted on January 1, 2003 and increased at three-year intervals in accordance with the Consumer Price Index.

1987

Required a plaintiff to show by "clear and convincing" evidence that a defendant acted with "wanton" conduct.

Limited the award of punitive damages to $250,000.

The Alabama Supreme Court held the $250,000 limit on punitive damages unconstitutional in Craig Henderson v. Alabama Power Co., case No. 1901875, June 25, 1993.

Required trial and appellate judges to review all punitive damages awards and reduce those that are excessive based on the facts of the case—Chapter 87-185.

The Alabama Supreme Court held the judicial review of all awards unconstitutional in Armstrong v. Roger's Outdoor Sports, Inc., May 10, 1991.

ALASKA

1997—HB 58

Limited the award of punitive damages to the greater of three times the award of compensatory damages or $500,000.

Exceptions include:

1) When the defendant's action is motivated by financial gain, punitive damages are limited to the greater of four times compensatory damages, four times the aggregate amount of financial gain, or $7,000,000.

2) 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.

Required a plaintiff to show by "clear and convincing" evidence that a defendant acted with "reckless indifference" or was engaged in "outrageous" conduct.

Required the determination of awards for punitive damages to be made in a separate proceeding.

1986—SB 337

Required a plaintiff to prove punitive damages by "clear and convincing" evidence.

ARIZONA

1989—SB 1453

Provided a government standards defense for FDA-approved drugs and devices.

CALIFORNIA

1987—SB 241

Required a plaintiff to show by "clear and convincing" evidence that a defendant acted with oppression, fraud, or malice.

Required the determination of awards for punitive damages to be made in a separate proceeding, allowing evidence of defendants' financial conditions only after a finding of liability.

COLORADO

1991—HB 1093

Expanded the 1990's prohibition against seeking punitive damages in cases in which FDA-approved drugs are administered by a physician to include medically prescribed drugs or products used on an experimental basis (when such experimental use has not received specific FDA approval) and when the patient has given informed consent.

1990—HB 1069

Provided that punitive damages may not be alleged in a professional negligence suit until discovery is substantially completed.

Provided that discovery cannot be reopened without an amended pleading.

Provided that physicians cannot be liable for punitive damages because of the bad outcome of a prescription medication, as long as it was administered in compliance with current FDA protocols.

Prohibited punitive damages from being assessed against a physician because of the act of another unless she directed the act or ratified it.

1986—HB 1197

Provided that an award for punitive damages may not exceed an award for compensatory damages. Permitted a court to reduce a punitive damages award if deterrence can be achieved without the award. Permitted a court to increase a punitive damages award to three times an award for compensatory damages if misbehavior continues during trial.

Required one-third of punitive damages awards to be paid to the state fund.

The Colorado Supreme Court held the state fund portion of this statute unconstitutional in Kirk v. The Denver Publishing Company, 15 Brief Times Reporter, No. 88SA405, September 23, 1991.

FLORIDA

1999—HB 775

Limited the award of punitive damages to the greater of three times the award of compensatory damages or $500,000.

Limited the award of punitive damages to the greater of four times the award of compensatory damages or $2,000,000, where the defendant's wrongful conduct was motivated by unreasonable financial gain or the likelihood of injury was known.

Prohibited multiple punitive damages awards based on the same act or course of conduct, absent a specific finding by the court that earlier punitive damages awards were insufficient.

Required a plaintiff to show by "clear and convincing" evidence that a defendant engaged in intentional misconduct or gross negligence.

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

The reform does not apply to abuses to the elderly, child abuse cases, or cases where the defendant is intoxicated.

1986—SB 465

Limited the award of punitive damages to three times the award of compensatory damages, unless a plaintiff can demonstrate by "clear and convincing" evidence that a higher award would not be excessive.

Required 60% of all punitive damages awards to be paid to the state's General Fund or Medical Assistance Trust Fund. (Amended in 1992 so that 35% of any punitive damages award goes to the state's General Fund or Medical Assistance Trust Fund.)

The Florida Supreme Court upheld the constitutionality of the punitive damages limit and "clear and convincing" evidence requirement in Smith v. Department of Insurance, 507 So. 2d 1080 Fla. 1987. The Florida Appellate Court upheld the constitutionality of the state fund provision in Harvey Gordon v. State of Florida, K-Mart Corp. et al., No 90-2497, August 27, 1991.

GEORGIA

1987—HB 1

Limited the award of punitive damages to $250,000, except in product liability cases, where only one award of punitive damages can be assessed against any given defendant.

The Georgia Supreme Court upheld the constitutionality of the $250,000 limit on punitive damages in Bagley, et al. V. Shortt, et al. and vice versa, Nos. S91X0662, S91X0663, September 5, 1991.

Required 75% of all punitive damages awards to be paid to the State Treasury.

The Federal District Court for Georgia held the state fund provision for punitive damages unconstitutional in McBride v. General Motors Corp., M.D. Ga., No. 89-110-COL, April 10, 1990.

IDAHO

1987—SB 1223

Required a plaintiff to show by a preponderance of evidence that a defendant's conduct was "oppressive, fraudulent, wanton, malicious or outrageous."

ILLINOIS

1995—HB 20

Limited the award of punitive damages to three times the award of economic damages.

Prohibited the award of punitive damages absent a showing that conduct was engaged in "with an evil motive or with a reckless indifference to the rights of others."

Required the determination of awards for punitive damages to be made in a separate proceeding.

Held unconstitutional by the Illinois Supreme Court in Best v. Taylor Machine Works, Inc., December 1997.

1986—SB 1200

Prohibited plaintiffs from pleading punitive damages in an original complaint.

Required a subsequent motion for punitive damages to show at a hearing a reasonable chance that the plaintiff will recover an award for punitive damages at trial.

Required a plaintiff to show that the defendant acted "willfully and wantonly."

Provided discretion to the court to award punitive damages among the plaintiff, the plaintiff's attorney, and the State Department of Rehabilitation Services.

INDIANA

1995—HB 1741

Limited the award of punitive damages to the greater of three times the award of compensatory damages or $50,000.

Required 75% of punitive damage awards to be paid to the state fund.

IOWA

1987—SF 482

Required a plaintiff to show by a "preponderance of clear, convincing, and satisfactory evidence that the conduct of the defendant from which the claim constituted willful and wanton disregard for the rights or safety of another."

1986—SB 2265

Required a plaintiff to show that a defendant acted with "willful and wanton disregard for the rights and safety of another." (In 1987 the evidence standard was elevated to "clear, convincing, and satisfactory" evidence.)

Required 75% or more of all punitive damages awards to be paid to the State Civil Reparations Trust Fund.

KANSAS

1988—HB 2731

Limited the award of punitive damages awards to the lesser of a defendant's annual gross income or $5 million. (The 1992 legislature amended this statute to allow a judge who felt a defendant's annual gross income was not a sufficient deterrent to look at 50% of the defendant's net assets and award the lesser of that amount or $5 million.)

(1987 legislation had required the court, not the jury, to determine the amount of the punitive damages award and required "clear and convincing" evidence.)

Required a plaintiff to show that a defendant acted with willful or wanton conduct, fraud, or malice.

Required the determination of awards for punitive damages to be made in a separate proceeding.

1987—HB 2025

Limited the award of punitive damages awards to the lesser of defendant's highest annual gross income during the preceding five years or $5 million. Provided that if the defendant earned more profit from the objectionable conduct than either of these limits, the court could award 1.5 times the amount of that profit.

Required the determination of awards for punitive damages to be made in a separate proceeding.

Required a plaintiff to prove punitive damages by "clear and convincing" evidence.

Provided seven criteria for the judge to consider in punitive damages cases, including whether this is the first award against a given defendant.

KENTUCKY

1988—HB 551

Required a plaintiff to show by "clear and convincing" evidence that a defendant acted with oppression, fraud or malice.

The Kentucky Supreme Court held the "clear and convincing" evidence standard that conduct constituted oppression, fraud or malice unconstitutional in Terri C. Williams v. Patricia Lynn Herald Wilson, No. 96-SC-1122-DG, April 16, 1998.

LOUISIANA

1996—HB 20

Repealed the statute that authorized punitive damages to be awarded for the wrongful handling of hazardous substances. (The Louisiana courts had established precedents substantially expanding liability based upon the repealed statute.)

MINNESOTA

1990—Minn. Stat. Sec. 549.20

Required a plaintiff to show that a defendant acted with "deliberate disregard." (The former standard required only a showing of "willful indifference.")

Required the determination of awards for punitive damages to be made in a separate proceeding at the request of the defendant.

Granted trial and appellate judges the power to review all punitive damages awards.

1986—SB 2078

Prohibited plaintiffs from pleading punitive damages in an original complaint. Required a plaintiff to make a *prima facie* showing of liability before an amendment of pleadings is permitted by the court.

MISSISSIPPI

1993—HB 1270

Required a plaintiff to prove punitive damages by "clear and convincing" evidence.

Required the determination of awards for punitive damages to be made in a separate proceeding.

Prohibited the award of punitive damages in the absence of compensatory awards.

Prohibited the award of punitive damages against an innocent seller.

Established factors for the jury to consider when determining the amount of a punitive damages award.

MISSOURI

1987—HB 700

Required the determination of awards for punitive damages to be made in a separate proceeding. Permitted the jury to set the amount for punitive damages if, in the first stage, the jury finds a defendant liable for punitive damages. Permitted the admissibility of evidence of a defendant's net worth only during the proceeding for the determination of punitive damages.

Required 50% of all punitive damages awards to be paid to the state fund.

Prohibited multiple punitive damages awards under certain conditions.

MONTANA

1997—SB 212

Required a unanimous jury to determine the amount of punitive damages awards.

1987—HB 442

Required a plaintiff to show by "clear and convincing" evidence that a defendant acted with "actual fraud" or "actual malice."

Required the determination of awards for punitive damages to be made in a separate proceeding. Permitted the admissibility of evidence of a defendant's net worth only during the proceeding for the determination of punitive damages.

Required a judge to review all punitive damages awards and to issue an opinion on his decision to increase or decrease an award, or to let it stand.

NEVADA

1989 — AB 307

Limited punitive damages awards to $300,000, where the award for compensatory damages is less than $100,000, and to three times the award for compensatory damages, where the award for compensatory damages is $100,000 or more.

The reform does not apply to 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; or a person for defamation.

Required a plaintiff to show by "clear and convincing evidence" that a defendant acted with "oppression, fraud, or malice."

Required the determination of awards for punitive damages to be made in a separate proceeding. Permitted the admissibility of evidence of a defendant's finances only during the proceeding for the determination of punitive damages.

NEW HAMPSHIRE

1986—HB 513

Prohibited the award of punitive damages.

NEW JERSEY

1995—SB 1496

Limited the award of punitive damages to the greater of five times the award of compensatory damages or $350,000.

The reform does not apply to cases involving bias crimes, discrimination, AIDS testing disclosure, sexual abuse, and injuries caused by drunk drivers.

1987—SB 2805

Required a plaintiff to show that a defendant acted with "actual malice" or "wanton and willful disregard" for the rights of others.

Required the determination of awards for punitive damages to be made in a separate proceeding.

Provided for an FDA government standards defense to punitive damages.

The reform does not apply to cases involving environmental torts.

NEW YORK

1992—SB 7589

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

NORTH CAROLINA

1995—HB 729

Limited the award of punitive damages to the greater of three times the award of compensatory damages or $250,000. The reform does not apply to cases where the defendant caused the injury by driving while impaired.

Required a plaintiff to show by "clear and convincing" evidence that a defendant was liable for compensatory damages and acted with fraud, malice, willful or wanton conduct.

Required the determination of awards for punitive damages to be made in a separate proceeding at the request of the defendant.

North Dakota

1997—HB 1297

Required a plaintiff to show by a preponderance of the evidence that a defendant acted with oppression, fraud, or actual malice before a moving party may amend pleadings and claim punitive damages.

1995 — HB 1369

Required a plaintiff to show by "clear and convincing" evidence that a defendant acted with oppression, fraud, or actual malice.

Provided for an FDA government standards defense to punitive damages.

1993—SB 2351

Limited the award of punitive damages to the greater of $250,000 or two times the award of compensatory damages.

Required the determination of awards for punitive damages to be made in a separate proceeding. Permitted the admissibility of evidence of a defendant's financial worth only during the proceeding for the determination of punitive damages.

1987—HB 1571

Barred the pleading of punitive damages in an original complaint.

Required a plaintiff to show *prima facie* evidence for claims for punitive damages.
Required a plaintiff to show that a defendant acted with "oppression, fraud, or malice."

Ohio

1996—HB 350

Limited the amount of punitive damages recoverable from all parties except large employers to the lesser of three times the award of compensatory damages or $100,000.

Limited 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 award of compensatory damages or $250,000.

Required the determination of awards for punitive damages to be made in a separate proceeding at the request of either party.

Limited multiple punitive damages awards based on the same act or course of conduct.

Expanded governmental defense standards to include non-drug manufacturers and manufacturers of over-the-counter drugs and medical devices.

The Ohio Supreme Court held HB 350 unconstitutional in Ohio Academy of Trial Lawyers v. Sheward, N.E. 2d Ohio August 16, 1999.

1987—HB 1

Required a plaintiff to show by "clear and convincing" evidence that she suffered "actual damages" because a defendant acted with "malice, aggravated or egregious fraud, oppression or insult."

Provided a government standard defense for FDA approved drugs.

OKLAHOMA

1995—SB 263

Codified factors that the jury must consider in awarding punitive damages.

Provided that when a jury finds by "clear and convincing" evidence that the defendant:

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

2) Acted intentionally and with malice, the award is limited to $500,000; two times the award of actual damages; or the increased financial benefit derived by the defendant

or insurer as a direct result of the conduct causing injury.

The limit does not apply if the court finds evidence *beyond a reasonable doubt* that the defendant acted intentionally and with malice in conduct life-threatening to humans.

1986—SB 488

Limited the award of punitive damages to the award of compensatory damages, unless a plaintiff establishes her case by "clear and convincing" evidence, in which case no limit applies.

OREGON

1995—SB 482

Required 40% of punitive damages awards to be paid to the prevailing party, 60% to the state fund, and no more than 20% to the attorney of the prevailing party.

Required a plaintiff to show by "clear and convincing" evidence that a 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."

Provided for court review of jury-awarded punitive damages.

Barred the claiming of punitive damages in an original complaint. Required a plaintiff to show a *prima facie* case for liability before amending a complaint to include a punitive damages claim.

1987—SB 323

Required a plaintiff to prove punitive damages by "clear and convincing" evidence.

Provided an FDA standards defense to punitive damages.

South Carolina

1988

Required a plaintiff to prove punitive damages by "clear and convincing" evidence.

South Dakota

1986—SB 280

Required a plaintiff to prove by "clear and convincing" evidence that a defendant acted with "willful, wanton, or malicious" conduct.

Texas

1995—SB 25

Limited the award of punitive damages to the greater of $200,000 or two times the award of economic damages plus non-economic damages up to $750,000.

Required a plaintiff to show by "clear and convincing" evidence that a defendant acted with malice, defined as the "conscious indifference to the rights, safety, or welfare of others."

Required the determination of awards for punitive damages to be made in a separate proceeding at the request of the defendant.

1987—SB 5

Required a plaintiff to show that a defendant's actions were fraudulent, malicious, or grossly negligent.

Limited the award of punitive damages to the greater of four times the amount of actual damages or $200,000.

Utah

1989—SB 24

Required a plaintiff to show by "clear and convincing" evidence that a defendant's actions were "knowing and reckless." (The law previously required only a showing that a defendant's actions were "reckless.")

Provided a government standard defense for FDA approved drugs.

Required the determination of awards for punitive damages to be made in a separate proceeding on a defendant's motion.

Required 50% of all punitive damage awards over $20,000 to be paid to the state fund.

Virginia

1987—SB 402

Limited the award of punitive damages to $350,000.

The Virginia Court of Appeals upheld the constitutionality of this statute in Wackenhut Applied Technologies Center Inc. v. Syngetron Protection Systems, No. 91-1655, November 1992.

WISCONSIN

1995—SB 11

Required a plaintiff to show that a defendant acted "maliciously or in intentional disregard of the rights of the plaintiff."

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NONECONOMIC DAMAGES

Damages for noneconomic losses are damages for pain and suffering, emotional distress, loss of consortium or companionship, and other intangible injuries. These damages involve no direct economic loss and have no precise value. It is very difficult for juries to assign a dollar value to these losses, given the minimal guidance they customarily receive from the court. As a result, these awards tend to be erratic and, because of the highly charged environment of personal injury trials, excessive.

ATRA believes that the broad and basically unguided discretion given juries in awarding damages for noneconomic loss is the single greatest contributor to the inequities and inefficiencies of the tort liability system. It is a difficult issue to address objectively because of the emotions involved in cases of serious injury and because of the financial interests of plaintiffs' lawyers.

Seventeen states have modified the rules for awarding noneconomic damages.

ALABAMA

1987

Limited the award of noneconomic damages to $250,000 in medical liability cases.

The Supreme Court of Alabama found the limit on noneconomic damages unconstitutional in Moore v. Mobile Infirmary Association, 592 So. 2d 156 (1991).

ALASKA

1997—HB 58

Limited the award of noneconomic damages to the greater of $400,000 or the injured person's life expectancy in years multiplied by $8,000, unless the plaintiff "suffers severe permanent physical impairment or severe disfigurement," in which case noneconomic damages are limited to the greater of $1,000,000 or the injured person's life expectancy multiplied by $25,000.

1986—SB 337

Limited the award of noneconomic damages for injuries other than physical impairment or disfigurement to $500,000.

COLORADO

1988— SB 143

Limited the total award of damages to $1,000,000, of which no more than $250,000 can be for noneconomic damages.

The $250,000 limit on noneconomic damages in medical liability actions was held constitutional by the Colorado Supreme Court in Scholz v. Metropolitan Pathologists, P.C., No. 92-8A277, Co. Sup. Ct., April 26, 1993.

1986—SB 67

Limited the award of noneconomic damages to $250,000, unless the court finds justification by "clear and convincing" evidence for a larger award, which cannot exceed $500,000.

The $250,000 limit on noneconomic damages in medical liability actions was held constitutional by the Colorado Supreme Court in Scholz v. Metropolitan Pathologists, P.C., No. 92-8A277, Co. Sup. Ct., April 26, 1993.

FLORIDA

1988—CS/SB 6-E

Limited the award of noneconomic damages in medical liability cases to $250,000 if the parties agree to arbitration.

Limited the award of noneconomic damages in medical liability cases to $350,000 if the plaintiff rejects the defendant's offer to arbitrate.

1986—SB 465

Limited the award of noneconomic damages to $450,000.

The Florida Supreme Court held the limit on noneconomic damages unconstitutional in Smith v. Department of Insurance, Inc., 507 So. 2d 1080 Florida, 1987.

HAWAII

1986—SB S1

Limited the award of damages for physical pain and suffering to $375,000.

The reform does not limit the award of other noneconomic damages.

IDAHO

1990—HB 574

Removed the 1992 sunset to the $400,000 limit on noneconomic damages enacted in 1987.

1987—SB 1223

Limited the award of noneconomic damages to $400,000; provided a sunset in June 1992.

ILLINOIS

1995—HB 20

Limited the award of noneconomic damages in all civil actions to $500,000 per plaintiff, indexed for inflation.

Held unconstitutional by the Illinois Supreme Court in Best v. Taylor Machine Works, Inc., December 1997.

KANSAS

1988—HB 2692

Limited the award of noneconomic damages to $250,000.

1987

Limited the award of damages for pain and suffering to $250,000. The reform does not limit the award of other noneconomic damages.

MARYLAND

2001—HB 714

Provided that an individual driving a motor vehicle that is not covered by insurance is considered to have waived the right to recover noneconomic damages under specified circumstances.

1994—SB 283

Limited the award of noneconomic damages in wrongful death actions to $500,000, where there is one beneficiary, and $700,000, where there are two or more beneficiaries. (The legislation somewhat countered the effect of the *Streidel* decision, which held that Maryland's $350,000 limit on noneconomic damages did not apply in wrongful death actions.)

1987—SB 237

Limited the award of noneconomic damages in public entity lawsuits to $200,000 per person and $500,000 per incident.

1986—SB 558

Limited the award of noneconomic damages to $500,000.

The Court of Special Appeals of Maryland upheld the constitutionality of the noneconomic damages limit in Potomac Electric Co. v. Smith, 79 Md. App. 591, 558 A.2d 768 1989.

MICHIGAN

1993—SB 270 (H-2)

Limited the award of noneconomic damages in medical liability cases to $280,000 for ordinary occurrences, and $500,000 for incidents falling within certain exceptions.

MINNESOTA

1986—SB 2078

Limited the award of damages for loss of consortium, emotional distress, or embarrassment to $400,000. The reform does not limit the award of other noneconomic damages, such as pain and suffering.

MONTANA

1995—HB 309

Limited the award of noneconomic damages in medical malpractice cases to $250,000.

Provided for the periodic payment of future damages over $50,000.

North Dakota

1995—HB 1050

Limited the award of noneconomic damages in medical liability cases to $500,000. The reform included a provision for alternative dispute resolution.

New Hampshire

1986—HB 513

Limited the award of noneconomic damages to $875,000.

The New Hampshire Supreme Court held this statute unconstitutional in Brannigan v. Usitalo, No. 90-377, March 13, 1991.

Ohio

1997—HB 350

Limited the award of noneconomic damages to the greater of $250,000 or three times economic damages to a maximum of $500,000, unless there is a finding that a plaintiff suffered:

1) a permanent and severe physical deformity; or

2) a permanent physical functional injury that permanently prevents her from being able to independently care for herself and perform life sustaining activities.

If a plaintiff establishes the 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.

Held unconstitutional by the Ohio Supreme Court in Ohio Academy of Trial Lawyers v. Sheward, August 1999.

Oregon

1987—SB 323

Limited the award of noneconomic damages to $500,000.

The Oregon Supreme Court declared the $500,000 limit on noneconomic damages unconstitutional in the case of Larkin v. Senco Products, Inc. — P.2d. — , 1999 WL 498088 Or. July 15, 1999.

Washington

1986—SB 4630

Limited the award of noneconomic damages for bodily injury to .43% times the average annual wage times the plaintiff's life expectancy (no less than 15 years).

The Washington Supreme Court held the limit on noneconomic damages unconstitutional in Sofie v. Fibreboard Corp., 112 Wash. 2d 636, 771 P. 2d 1989).

1995—AB 36

Limited the award of noneconomic damages in medical liability cases to $350,000, indexed for inflation.

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PREJUDGMENT INTEREST

In the absence of an applicable statute or rule, the courts generally applied the traditional common law rule that prejudgment interest was not available in tort actions since the claim for damages was unliquidated. In an effort to compensate tort plaintiffs for the often-considerable lag between the event giving rise to the cause of action, or filing of the lawsuit, and the actual payment of the damages, many state legislatures have enacted laws that provide for or allow prejudgment interest in particular tort actions or under particular circumstances. In addition to seeking to compensate the plaintiff fully for losses incurred, the goal of such statutes is to encourage early settlements and to reduce delay in the disposition of cases, thereby lessening congestion in the courts. Although well-intended, the practical effects of prejudgment interest statutes can be inequitable and counter-productive. Prejudgment interest laws can, for example, result in over-compensation, hold a defendant financially responsible for delay it may not have caused, and impede settlement.

At a time when policymakers are attempting to lower the cost of the liability system in an equitable and just manner, prejudgment interest laws that currently exist and new proposals should be reviewed to ensure that they are structured fairly and in a way designed to foster settlement. At a minimum, the interest rate should reflect prevailing interest rates by being indexed to the treasury bill rate at the time the claim was filed and an offer of judgment provision should be included.

Fifteen states have enacted prejudgment interest reforms.

ALASKA

1997—HB 58

Set prejudgment interest rates at the Twelfth Federal Reserve District's discount rate plus 3%.

Prohibited the assessment of prejudgment interest for future damages and punitive damages.

COLORADO

1995—SB 165

Limited the amount of prejudgment interest that can be assessed between accrual of the action and filing of the claim to below the $1,000,000 limit on the total amount recoverable in medical liability claims.

IOWA

1997—HF 693

Set prejudgment interest rates at the U.S. Treasury Rate plus 2%.

1987—SF 482

Prohibited the assessment of prejudgment interest for future damages. (Other interest accrues from the date of commencement of the actions at a rate based on the U.S. Treasury Bill.)

LOUISIANA

1997

Set prejudgment interest rates at the average Treasury Bill rate for 52 weeks plus 2%. Provided varying rates of prejudgment interest for actions pending or filed during the last 10 years.

1987—HB 1690

Set prejudgment interest rates at the prime rate plus 1% with a floor of 7% and a cap of 14%.

MAINE

1988—LD 2520

Set prejudgment interest rates and postjudgment interest rates at the U.S. Treasury Bill rate.

MICHIGAN

1986—HB 5154

Prohibited the assessment of prejudgment interest on awards for future damages.

MINNESOTA

1986—SB 2078

Prohibited the assessment of prejudgment interest on awards for future damages.

MISSOURI

1987— HB 700

Permitted the assessment of prejudgment interest only in cases where the judgment exceeds a settlement offer.

NEBRASKA

1986—LB 298

Set the prejudgment interest rate at 1% above the rate of the U.S. Treasury Bill.

The reform included an offer of judgment provision that permitted the award of prejudgment interest for unreasonable failure to settle.

NEW HAMPSHIRE

2001—HB 140

Set the prejudgment interest rate at the 26-week discount U.S. Treasury Bill rate.

OKLAHOMA

1986—SB 488

Prohibited the assessment of prejudgment interest on punitive damages awards.

Set the prejudgment interest rate at 4% above the rate on the U.S. Treasury Bill.

RHODE ISLAND

1987—HB 5885

Set the prejudgment interest rate at the U.S. Treasury Bill rate. Provided that interest accrues from the date the lawsuit is filed.

TEXAS

1987—SB 6

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

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PRODUCT LIABILITY

Product liability law is meant to compensate persons injured by defective products and to deter manufacturers from marketing such products. It fails, however, when it does not send clear signals to manufacturers about how to avoid liability or holds manufacturers liable for failure to adopt a certain design or warning even if the manufacturers neither know, nor could have anticipated, the risk.

Seventeen states have enacted laws specifically to address product liability.

CALIFORNIA

1986—SB 241

Confirmed that under California law, products like foods high in cholesterol, alcohol, and cigarettes, which are inherently unsafe and which ordinary consumers know to be unsafe, should not be the basis for product liability lawsuits.

FLORIDA

1999—HB 775

Provided a 12-year statute of repose for products with a useful life of 10 years or less, unless the product is specifically warranted a useful life longer than 12 years.

Provided a 20-year statute of repose for airplanes or vessels in commercial activity, unless the manufacturer specifically warranted a useful life longer than 20 years.

The reform does not apply to cases involving improvements to real property, including elevators and escalators; latent injury cases; and cases where the manufacturer, acting through its officers, directors or managing agents, took affirmative steps to conceal a known defect in the product.

GEORGIA

1987—HB 1

Permitted only one award of punitive damages to be assessed against any given defendant in product liability cases.

ILLINOIS

1995—HB 20

Provided for product liability affidavit requirements.

Created a presumption of safety, where manufacturers meet state and federal standards, and where no practical or feasible alternative design existed at the time the product was manufactured.

Applied statutes of repose on all product liability cases to bar an action after 12 years from the first sale or 10 years from the first sale to a user or consumer, whichever occurs first.

Held unconstitutional by the Illinois Supreme Court in Best v. Taylor Machine Works, Inc., December 1997.

INDIANA

1995—HB 1741

Barred application of the rule of joint and several liability in product liability cases.

Provided a rebuttable presumption that a product is not defective if:

1) the manufacturer of the product conformed with recognized "state of the art" safety guidelines; or

2) the manufacturer of the product complied with government standards (*i.e.* approved by FDA, FAA etc...).

Restricted strict liability actions to the manufacturer of the product.

IOWA

1997—HF 693 Statute of Repose

Established a 15-year statute of repose for product liability lawsuits not involving fraud, concealment, latent diseases caused by harmful materials, or specified products.

LOUISIANA

1988—SB 684

Provided that a product may be unreasonably dangerous only because of one or more of the following characteristics:

1) defective construction or composition;

2) defective design;

3) failure to warn or inadequate warning; or

4) nonconformity with an express warranty.

Provided that a manufacturer of a product shall not be liable for damages proximately caused by a characteristic of the product's design, if the manufacturer proves that at the time the product left his control:

1) 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;

2) he did not know and, in light of then-existing reasonable available scientific and technological knowledge, could not have known of the alternative design identified by the plaintiff; or

3) the alternative design identified by the plaintiff was not feasible, in light of then-existing reasonably available scientific and technological knowledge or existing economic practicality.

MAINE

1996—LD 346

Provided 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.

MICHIGAN

1995—SB 344

Barred application of the rule of joint and several liability in product liability cases.

Provided statutory defenses to product liability claims, including adherence to government standards, FDA standards, and sellers' defenses. Provided an absolute defense, where the plaintiff was found to be at least 50% at fault due to intoxication or a controlled substance.

Limited the award of noneconomic damages in product liability cases not involving death or loss of vital bodily function to $280,000; Limited the award of noneconomic damages in such cases to $500,000.

1995—HB 4508

Provided venue control in product liability cases.

MISSISSIPPI

1993—HB 1270

Required product liability cases to be based on a design, manufacturing or warning defect, or breach of an express warranty, which caused the product to be unreasonably dangerous.

Provided that a product that contains an inherently dangerous characteristic is not defective if 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.

Provided that a manufacturer or seller cannot be held liable for failure to warn of a product's dangerous condition if it was not known at the time the product left the manufacturer's or seller's control.

Completely barred 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.

Relieved a manufacturer or seller from the duty to warn of a product that poses an open and obvious risk.

Provided that a properly functioning product is not defective unless there was a practical and economically feasible design alternative available at the time of manufacture.

Provided for indemnification of innocent retailers and wholesalers.

MONTANA

1987—SB 380

Provided statutory defenses to product liability claims, including assumption of the risk and misuse of product.

NEW HAMPSHIRE

1993—SB 76

Established a right of indemnification for New Hampshire manufacturers from a claim for damages by the original purchaser of a product, where the product was significantly altered after it left the New Hampshire manufacturer's control.

1992—SB 339

Established a committee to study the impact of product liability on New Hampshire businesses.

NEW JERSEY

1995 —SB 1495

Excluded product sellers from strict liability in product liability actions.

1987—SB 2805

Provided that a manufacturer or seller of a product is liable only if the plaintiff proves by a preponderance of the evidence that the product was not suitable or safe because it:

1) deviated from the design specifications or performance standards;

2) failed to contain adequate warnings; or

3) was designed in a defective manner.

Provided 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.

Provided that a product's design is not defective if the harm results from an inherent characteristic of the product that is known to the ordinary person who uses or consumes it.

Provided that a manufacturer or seller is not liable for a design defect if the harm results from an *unavoidably unsafe aspect* of a product and the product was accompanied by an *adequate warning*.

Provided that the state of the art provision does not apply if the court makes all of the following determinations:

1) that the product is egregiously unsafe;

2) that the user could not be expected to have knowledge of the product's risk; and

3) that the product has little or no usefulness.

Provided that a manufacturer or seller in a warning-defect case is not liable if an *adequate warning* is given. (An adequate warning is one that a reasonably prudent person in the similar circumstances would have provided.) Established a rebuttable presumption that a government (FDA) warning is adequate.

NORTH CAROLINA

1995—HB 637

Expressly provided that there shall be no strict liability in tort for product liability actions.

Provided statutory defenses to product liability claims, including assumption of the risk.

NORTH DAKOTA

1995—HB 1369

Established a ten-year statute of repose in product liability actions.

Provided a government standards defense.

Prohibited the award of punitive damages, when a manufacturer complies with government standards.

The 10-year statute of repose was found unconstitutional in Dickie v. Farmers Union Oil Co., 2000 ND 111 (N.D. May 25, 2000).

OHIO

1996—HB 350

Amended product liability law to include additional requirements for establishing liability.

Prohibited expanding theories of liability, including enterprise liability.

Adopted a fifteen-year statute of repose in product liability cases, absent latent harm or fraud.

Held unconstitutional by the Ohio Supreme Court in Ohio Academy of Trial Lawyers v. Sheward, August 1999.

1987—HB 1

Provided that a product's design is not defective if:

1) an injury occurs due to the inherent characteristics of a product, where the characteristics are recognized by the ordinary person with ordinary knowledge common to the community; or

2) an injury occurs because of a design which is state of the art, unless the manufacturer acted unreasonably in introducing the product into trade or commerce.

Provided that a product is not defective due to lack of warnings if the risk is open and obvious or is a risk that is a matter of common knowledge.

Established a complete defense for manufacturers and sellers of ethical drugs and/or devices if they have supplied adequate warnings to learned intermediaries, unless the FDA requires additional warnings.

Provided that a drug manufacturer shall not be liable for punitive damages if the drug was approved by the FDA.

TEXAS

1993—SB 4

Required proof of an economically and technologically feasible safer alternative design available at the time of manufacture in most product liability actions for defective design.

Provided a defense for manufacturers and sellers of inherently unsafe products that are *known* to be unsafe.

Established a fifteen-year statute of repose for product liability actions against manufacturers or sellers of manufacturing equipment.

Provided protection for innocent retailers and wholesalers.

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CLASS ACTION REFORM

Once considered a tool of judicial economy that aggregated many cases with similar facts, or similar complaints into a single action, class actions are now often considered a means of defendant extortion. Today, some class actions are meritless cases in which thousands, or millions, of plaintiffs are granted class status, sometimes without even notifying the defendant. In many of these cases, the victimized consumers often receive pennies, or nearly-worthless coupons, while plaintiffs' counsel receives millions in legal fees. State class action reformcan more equitably balance the interests of plaintiffs and the defendant.

Three states have reformed their laws pertaining to class actions

ALABAMA

1999—SB 72

Set procedures to certify class actions.

Codified Supreme Court rulings to ensure that a defendant receives adequate notice prior to class certification.

Provided for an immediate appeal of any order certifying a class or refusing to certify a class, and for an automatic stay of matters in the trial court pending such appeal.

LOUISIANA

1997—HB 1984

Updated Louisiana class action laws by providing objective definitions of class action terms, and detailed procedures for class action cases.

OHIO

1998—HB 394

Provided for the interlocutory appeal of class action certification.

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ATTORNEY RETENTION SUNSHINE

In state recoupment litigation against the tobacco industry, most states retained plaintiffs' personal injury lawyers on a contingent fee basis to assist them with their litigation. Unfortunately, many of these contracts, inked without competitive bidding, and with little or no outside oversight, were rife with political favoritism, inside dealing, and in at least one case, amid the stench of corruption. Many of these billion-dollar fees (which bore little or no relation to the value of the work performed) are being strategically reinvested into the political process, and into still more litigation. Attorney "sunshine" legislation requires legislative approval of most large contingent fee contracts, and reasserts the legislature's oversight of "regulation through litigation."

Four states have adopted this proposal.

KANSAS

2000—HB 2627

Required open and competitive bidding for all contingent fee contracts for legal services between the state and outside counsel, where fees and services exceed $7,500

Required proposed contracts for legal services between the state and outside counsel in excess of $1,000,000 to be submitted to the legislative budget committee for approval.

7 Required, at the conclusion of representation, outside counsel to provide the state with a statement of hours worked and fees recovered through a contract for legal services between the state and outside counsel. Provided that in no instance shall the state pay fees, even on a contingent fee basis, in excess of $1,000 per hour.

NORTH DAKOTA

1999—SB 2047

Required an emergency commission of the legislature to approve the attorney general's appointment of a special assistant attorney general in a case in which the amount of the controversy exceeds $150,000.

TEXAS

1999—SB 113

Required the state and outside counsel to first seek an hourly arrangement for contracts for legal services.

Required contingent fee contracts between the state and outside counsel in excess of $100,000 to be approved by a Legislative Review Board.

Required, at the conclusion of representation, outside counsel to provide the state with a statement of hours worked and fees recovered through a contract for legal services between the state and outside counsel.

VIRGINIA

2002—HB 309

Required open and competitive bidding in accordance with the Virginia Public Procurement Act for all contingent fee contracts for legal services between a state agency or state agent and outside counsel, where fees and services are reasonably expected to exceed $100,000.

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APPEAL BOND REFORM

According to Lawyer's Weekly USA, the total amount of 1999's top ten jury verdicts was three times higher than 1998's level, and 12 times higher than the 1997 total. While many of these verdicts are overturned or reduced on appeal, defendants in many states are required to post an appeal bond sometimes equal to 150 percent of the verdict in question. In an era when billion-dollar verdicts are no longer uncommon, appealing an outrageous verdict can force a company or an industry into bankruptcy. Appeal bond waiver legislation limits the size of an appeal bond when a company is not liquidating its assets or attempting to flee from justice.

Twelve states have adopted this proposal.

FLORIDA

2000 —HB 1721

Limited the amount a defendant can be required to pay to secure the right to appeal punitive damages awards in class actions to the lesser of 10% of the defendants net worth or $100 million.

The reform applies in out-of-state judgments during the stay period only.

GEORGIA

2000 —HB 1346

Limited the amount a defendant can be required to pay to secure the right to appeal to $25 million.

The reform applies in out-of-state judgments during the stay period only.

INDIANA

2002—HB 1204

Limited the amount a defendant can be required to pay to secure the right to appeal punitive damages awards to $25 million.

KENTUCKY

2000 —SB 316

Limited the amount a defendant can be required to pay to secure the right to appeal to $100 million.

The reform applies in out-of-state judgments during the stay period only.

LOUISIANA

2001—HB 1524

Provided that, where the amount of a judgment exceeds $150 million, the trial court may, upon motion and after a hearing, and in the exercise of its broad discretion, fix the appeal bond in an amount sufficient to protect the rights of the judgment creditor, while at the same time preserving the favored status of appeals in Louisiana.

MICHIGAN

2002—HB 5151

Limited the amount a defendant can be required to pay to secure the right to appeal to $25 million. This limit will be adjusted on January 1, 2008 and on January 1 every 5 years after that adjustment by an amount determined by the state treasurer to reflect the annual aggregate percentage change in the Detroit consumer price index since the previous adjustment.

Provided that a court will rescind the limit if an appellee proves by a preponderance of the evidence that the party for whom the bond to stay execution has been limited is purposefully dissipating or diverting assets outside of the ordinary course of business for the purpose of avoiding ultimate payment of the judgment.

MISSISSIPPI*

2001

The Mississippi Supreme Court, acting on its own motion, imposed a $100 million limit on the amount a defendant can be required to pay to secure the right to appeal large punitive damages verdicts.

NEVADA*

2001 —AB 576

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

NORTH CAROLINA

2000 —SB 2

Limited the amount a defendant can be required to pay to secure the right to appeal to $25 million.

The reform applies in out-of-state judgments during the stay period only.

OHIO

2002—HB 161

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

OKLAHOMA*

2001—SB 372

Limited the amount a defendant can be required to pay to secure the right to appeal to $25 million.

VIRGINIA

2000 —HB 1547

Limited the amount a defendant can be required to pay to secure the right to appeal to $25 million.

The reform applies in out-of-state judgments during the stay period only.

WEST VIRGINIA*

2001—SB 661

Limited the amount a defendant can be required to pay to secure the right to appeal to $200 million.

Provided that an appeal bond may not exceed $100 million for compensatory damages and $100 million in punitive damages.

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*Pursuant to the master Settlement Agreement entered into between this state and tobacco product manufacturers.