

ADDENDUM: SOME REFORMS

By permission the following tort reforms are reported. The following list is partial and only mentions tort reforms that will have an effect on Aviation accident cases brought within the particular state . You should visit the web site for a complete listing which covers many other areas of law. Especially significant are the Medical reforms.

Thanks to **The American Tort Reform Association** for allowing this reprint from their web site.

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ALABAMA REFORMS

Forum Non Conveniens Reform: (1987). Gives judges the authority to refuse out-of-state cases because of convenience or inconvenience to parties and witnesses and allows judges to transfer cases to the most appropriate court.

Punitive Damages Reform: SB 137 (1999): Ala. Code § 6-11-21. Limits the award of punitive damages in most non-physical injury cases to the greater of three times the award of compensatory damages or \$500,000. Limits the award of punitive damages in non-physical injury cases against businesses with a net worth of less than \$2 million to the greater of \$50,000 or 10% of the business's net worth up to \$200,000. Limits the award of punitive damages in physical injury cases to the greater of three times the award of compensatory damages or \$1.5 million. Prohibits application of the rule of joint and several liabilities in actions for punitive damages, except for wrongful death actions, actions for intentional infliction of physical injury, and class actions. Provides 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.

Punitive Damages Reform: (1987): Ala. Code § 6-11-20. Requires a plaintiff to show by "clear and convincing" evidence that a defendant acted with "wanton" conduct for the recovery of punitive damages. Limits the award of punitive damages to \$250,000. *The statute setting a \$250,000 limit on punitive damages awards violated the right to jury trial under the State Constitution. Henderson v. Alabama Power Co., 627 So. 2d 878 (Ala. 1993).* Requires trial and appellate judges to review all punitive damages awards and reduce those that are excessive based on the facts of the case. *The Alabama Supreme Court held the judicial review of all awards unconstitutional in Armstrong v. Roger's Outdoor Sports, Inc., May 10, 1991.*

ALASKA REFORMS

Comparative Negligence: HB 58 (1997). Establishes a comparative allocation of fault between parties and non-parties. *The reform did not violate the right to a jury trial, the right to equal protection, or the right to substantive due process in the State or Federal Constitutions, the separation of powers doctrine, or the right of access to the courts or ban on “special legislation” in the State Constitution).* *Evans v. State, 2002 WL 1998141 (Alaska Aug. 30, 2002).*

Joint and Several Liability Reform: Proposition 2 (1988). Bars application of the rule of joint and several liabilities in the recovery of all damages.

Product Liability Reform: HB 160 (1994). Provides for a 15-year statute of repose in civil actions brought against design and construction professionals. The statute would begin to run from substantial completion of the work and require that liability be assigned proportionally to the defendant's degree of fault.

Punitive Damages Reform: HB 58 (1997). Limits the award of punitive damages in most cases to the greater of three times the award of compensatory damages or \$500,000. Limits the award of punitive damages to the greater of four times compensatory damages, four times the aggregate amount of financial gain, or \$7,000,000, when the defendant's action is motivated by financial gain. Limits punitive damages in unlawful employment practices lawsuits to: \$200,000, when the employer has less than 100 employees in the state; \$300,000, when the employer has more than 100, but less than 200 employees in the state; \$400,000, when the employer has more than 200, but less than 500 employees in the state; and \$500,000, when the employer has more than 500 employees in the state. Requires a plaintiff to show by “clear and convincing” evidence that a defendant acted with “reckless indifference” or was engaged in “outrageous” conduct. Requires the determination of awards for punitive damages to be made in a separate proceeding. Requires that 50% of punitive damages awards be paid to the state treasury. *The reform did not violate the right to a jury trial, the right to equal protection, or the right to substantive due process in the State or Federal Constitutions, the separation of powers doctrine, or the right of access to the courts or ban on “special legislation” in the State Constitution).* *Evans v. State, 2002 WL 1998141 (Alaska Aug. 30, 2002).*

Punitive Damages Reform: SB 337 (1986). Requires a plaintiff to prove punitive damages by “clear and convincing” evidence.

Statute of Limitations Reform: HB 58 (1997). Establishes a modified tolling provision for the statute of limitations as applied to minors. *The reform did not violate the right to a jury trial, the right to equal protection, or the right to substantive due process in the State or Federal Constitutions, the separation of powers doctrine, or the right of access to the courts or ban on “special legislation”*

in the State Constitution). *Evans v. State*, 2002 WL 1998141 (Alaska Aug. 30, 2002).

Statute of Repose Reform: HB 58 (1997). Establishes a ten-year statute of repose. *The reform did not violate the right to a jury trial, the right to equal protection, or the right to substantive due process in the State or Federal Constitutions, the separation of powers doctrine, or the right of access to the courts or ban on “special legislation” in the State Constitution*). *Evans v. State*, 2002 WL 1998141 (Alaska Aug. 30, 2002).

ARIZONA REFORMS

Assumption of the Risk: SB 1305 (1994). Provides for an assumption of the risk defense in personal injury lawsuits. *Under the Arizona Constitution, SB 1305 is technically unconstitutional and cannot be enacted until the constitution is amended*.

Collateral Source Rule Reform: SB 1055 (1993): Ariz. Rev. Stat. § 12-565. Permits the admissibility of evidence of collateral source payments in all civil liability cases.

Joint and Several Liability Rule Reform: SB 1036: (1987): Ariz. Stat. § 12-2506. Bars 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 statute abolishing joint liability did not violate the equal protection, due process, or separation of powers provisions of the State Constitution*. *Church v. Rawson Drug & Sundry Co.*, 842 P.2d 1355 (Ariz. App. 1992). *Retroactive application of the statute abolishing joint liability was not unconstitutional*. *Neil v. Kavena*, 859 P.2d 203 (Ariz. App. 1993).

Punitive Damages Reform: Clear and Convincing Evidence: Linthicum v. Nationwide Life Ins. Co., 723 P.2d 675 (Ariz. 1986). Requires a plaintiff to prove punitive damages by “clear and convincing” evidence.

ARKANSAS REFORMS

Joint and Several Liability Reform: HB 1038 (2003). Provides for a modified repeal of joint and several liability instead of complete repeal, whereby defendants who are found to be 1 percent to 10 percent at fault will only be responsible for the percentage of damage caused, defendants who are 11 percent to 50 percent at fault can be assessed an additional 10 percent if a co-defendant is unable to pay its share of a judgment, and defendants who are 51 percent to 99 percent at fault can be assessed an additional 20 percent if a co-defendant is unable to pay its share of the judgment (this provision does not apply to long-term care facility medical directors). Bifurcates proceedings for punitive damages.

Punitive Damages Reform: HB 1038 (2003). Raises the standard for the imposition of punitive damages to “clear and convincing evidence” of actual fraud, malice, or willful or wanton conduct and changes. Limits punitive damages to the greater of \$250,000 or three times compensatory damages not to exceed \$1,000,000. Bifurcates proceedings for punitive damages.

CALIFORNIA REFORMS

Joint and Several Liability Reform: Proposition 51 (1986): Cal. Civ. Code § 1431.2. Bars application of the rule of joint and several liability in the recovery of noneconomic damages. *The Fair Responsibility Act, which abolished joint liability for noneconomic damages, did not violate the equal protection provisions of the State or Federal Constitutions. Evangelatos v. Superior Court, 753 P.2d 585 (Cal. 1988).*

Punitive Damages Reform: SB 241 (1987): Cal. Civ. Code § 3294(a). Requires a plaintiff to show by “clear and convincing” evidence that a defendant acted with oppression, fraud, or malice. Requires 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 REFORMS

Alternative Dispute Resolution: HB 1168 (1992). Allows judges to refer litigants to alternative dispute resolution systems when available.

Collateral Source Rule Reform: SB 67 (1986): Colo. Rev. Stat. § 13-21-111.6. Permits the admissibility of evidence of collateral source payments. Provides for awards to be offset with broad exclusions.

Joint and Several Liability Reform: SB 70 (1986). Colo. Rev. Stat. § 13-21-111.5. Bars 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.)

Product Liability Reform: SB 231 (2003). Prohibits a product liability action from being brought against a seller or manufacturer of a product under certain circumstances. An innocent seller provision is included which prohibits product liability actions against parties who were not the manufacturer of the product. The bill also provides that a product liability action may not be taken if the product

was improperly used or if the product provided warning or instruction that, if heeded, would have prevented the injury, death, or property damage.

Punitive Damages Reform: HB 03-1186 (2003). Prohibits a plaintiff from filing a claim for punitive damages unless the plaintiff can show evidence of willful or wanton action that would justify such a claim.

Punitive Damages Reform: HB 1197 (1986): Colo. Rev. Stat. § 13-21-102(1)(a). Provides that an award for punitive damages may not exceed an award for compensatory damages. Permits a court to reduce a punitive damages award if deterrence can be achieved without the award. Permits a court to increase a punitive damages award to three times an award for compensatory damages if misbehavior continues during trial. Requires one-third of punitive damages awards to be paid to the state fund. *The law requiring plaintiff to pay one-third of any punitive damages award collected to the State general fund was an unconstitutional taking of property without just compensation under both the Federal and Colorado Constitutions. Kirk v. Denver Publishing Co., 818 P.2d 262 (Colo. 1991).*

Punitive Damages Reform: “Beyond a Reasonable Doubt:” Colo. Rev. Stat. § 13-25-127(2). Requires a plaintiff to prove punitive damages “beyond a reasonable doubt.”

CONNECTICUT REFORMS

Collateral Source Rule Reform: HB 6134 (1986): Conn. Gen. Stat. Ann. § 52-225a. Permits the admissibility of evidence of collateral source payments. Provides for awards to be offset by the amount paid by collateral sources less any amount paid by the claimant to secure the benefit.

Joint and Several Liability Reform: HB 6134 (1986): Conn. Gen. Stat. Ann. § 52-572h. Bars 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. (The 1987 legislation limited application of this reform to noneconomic damages.)

Punitive Damages Reform: Conn. Gen. Stat. Ann. § 52-240b. Limits punitive damages in product liability actions to two times the award of compensatory damages.

DELAWARE REFORMS

DISTRICT OF COLUMBIA REFORMS

FLORIDA REFORMS

Admissibility of Evidence: Measures Taken After an Injury: HB 775 (1999). Bars the admissibility of evidence of measures taken after an injury for the purpose of proving negligence or a product defect.

Joint and Several Liability Reform: H.B. 145 (2006). Abolishes joint and several liability.

Punitive Damages Reform: HB 775 (1999): Fla. Stat. § 768.73. Limits punitive damages to the greater of three times the award of compensatory damages or \$500,000. Limits punitive damages to be greater of four times compensatory damages or \$2,000,000, where the defendant's wrongful conduct was motivated by an unreasonable financial gain or the likelihood of injury was known. Prohibits the award of multiple punitive damages awards based on the same act or course of conduct unless the court makes a specific finding that earlier punitive damages awards were insufficient. Requires a plaintiff to prove by clear and convincing evidence that a defendant acted with intentional misconduct or gross negligence for the award of punitive damages. Outlines circumstances when an employer is liable for punitive damages arising from an employee's conduct. The reform does not apply to cases involving abuses to the elderly or children, or cases where the defendant is intoxicated

Sound Science Reform: HB 775 (1999). Requires a jury to consider the state of the art of scientific and technical knowledge that existed at the time when the product was manufactured.

GEORGIA REFORMS

Comparative Negligence: SB 3 (2005). Provides for comparative negligence amongst all parties for all cases.

Expert Witness Standards: SB 3 (2005). Strengthens expert witness rules and adopted the *Daubert* standard in civil cases.

***Forum Non Conveniens*: SB 3 (2005).** Allows courts to dismiss cases with little or no connection to the venue under the doctrine of *forum non conveniens*.

Joint and Several Liability: SB 3 (2005). Eliminates joint and several liability.

Joint and Several Liability Reform: Ga. Code Ann. § 51-12-33. Bars application of the rule of joint and several liability in certain cases where the plaintiff is partially at fault.

Punitive Damages Reform: Clear and Convincing Evidence: Ga. Code Ann. § 51-12-5.1. Requires a plaintiff to prove punitive damages by “clear and convincing” evidence.

Punitive Damages Reform: Limits on Damages: Ga. Code Ann. § 51-12-5.1 (f)(g). Limits punitive damages to \$250,000 unless the plaintiff demonstrates that the defendant acted with a specific intent to harm.

HAWAII REFORMS

Joint and Several Liability Reform: HB 1088 (1994). Bars application of the rule of joint and several liability in the recovery of all damages from all governmental entities.

Joint and Several Liability Reform: SB S1 (special session) (1986): Sunset provision (SB 1529) enacted in 1991. Bars 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 REFORMS

Collateral Source Rule Reform: HB 745 (1990): Idaho Code Ann. § 6-1606. Permits the admissibility of evidence of collateral source payments. Provides 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.

Joint and Several Liability Reform: HB 744 (1990). Defines 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.

Joint and Several Liability Reform: SB 1223 (1987): Idaho Code Ann. § 6-803. Bars 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.

Punitive Damages Reform: HB 92 (2003). Raises the standard for the imposition of punitive damages to “clear and convincing evidence.” Limits punitive damages awards to the greater of \$250,000 or three times compensatory damages.

Punitive Damages Reform: SB 1223 (1987). Requires a plaintiff to show by a preponderance of evidence that a defendant’s conduct was “oppressive, fraudulent, wanton, malicious or outrageous” for the award of punitive damages.

INDIANA REFORMS

Frivolous Lawsuit Sanction: SB 393 (1986). Allows a court to assess court costs and attorneys’ fees for frivolous conduct.

Joint and Several Liability Reform: Ind. Code Ann. § 34-51-2-8. Bars application of the rule of joint and several liability in the recovery of all damages.

Product Liability Reform: HB 1741 (1995). Bars application of the rule of joint and several liability in product liability cases. Provides 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...). Restricts strict liability actions to the manufacturer of the product.

Punitive Damages Reform: HB 1741 (1995): Ind. Code Ann. § 34-51-3-4. Limits the award of punitive damages to the greater of three times the award of compensatory damages or \$50,000. Requires 75% of punitive damage awards to be paid to the state fund.

ILLINOIS REFORMS

Joint and Several Liability Reform: HB 20 (1995). Bars application of the rule of joint and several liability in the recovery of all damages. *The reform violates the State Constitutional prohibition against special legislation. Best v. Taylor Machine Works, Inc., 689 N.E.2d 1057 (Ill. 1997).*

Joint and Several Liability Reform: SB 1200 (1986). Bars 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. Except in auto, product or environmental cases.

Product Liability Reform: HB 20 (1995). Establishes affidavit requirements in product liability cases. Creates 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. Applies statutes of repose on all product liability cases to bar an action after either 12 years from the

first sale or 10 years from the first sale to a user or consumer. *The reform is unconstitutional. Best v. Taylor Machine Works, Inc., 689 N.E.2d 1057 (Ill. 1997).*

Punitive Damages Reform: HB 20 (1995). Limits the award of punitive damages to three times the award of economic damages. Prohibits the award of punitive damages absent a showing that the defendant engaged in conduct “with an evil motive or with a reckless indifference to the rights of others.” Requires the determination of awards for punitive damages to be made in a separate proceeding. *The reform is unconstitutional. Best v. Taylor Machine Works, Inc., 689 N.E.2d 1057 (Ill. 1997).*

Punitive Damages Reform: SB 1200 (1986). Prohibits a plaintiff from pleading punitive damages in an original complaint. Requires 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. Requires a plaintiff to show that the defendant acted “willfully and wantonly.” Provides discretion to the court to award punitive damages among the plaintiff, the plaintiff’s attorney, and the State Department of Rehabilitation Services.

IOWA REFORMS

Joint and Several Liability Reform: HF 693 (1997): Iowa Code Ann. § 668.4. Bars application of the rule of joint and several liabilities in the recovery of all noneconomic damages, and economic damages, where a defendant is found to be less than 50% at fault.

Product Liability Reform: Statute of Repose: HF 693 (1997). Establishes a 15-year statute of repose for product liability lawsuits not involving fraud, concealment, latent diseases caused by harmful materials, or specified products.

Punitive Damages Reform: SF 482 (1987). Requires 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.”

Punitive Damages Reform: SB 2265 (1986): Iowa Code Ann. § 668A.1. Requires 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.) Requires 75% or more of all punitive damages awards to be paid to the State Civil Reparations Trust Fund. *The statute directing 75% of punitive damages awards to a civil reparation trust fund did not violate the equal protection or due process clauses of the State or Federal Constitutions. Shepherd Components, Inc. v. Brice Petrides-Donohue & Associates, Inc., 473 N.W.2d 612 (Iowa 1991).*

KANSAS REFORMS

Joint and Several Liability Reform: *Brown v. Keill*, 580 P.2d 867, 874 (Kan. 1978). Bars application of the rule of joint and several liability in the recovery of all damages.

Punitive Damages Reform: HB 2731 (1988). Kan. Stat. Ann. § 60-3701. Limits the award of punitive damages 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.) Requires a plaintiff to show that a defendant acted with willful or wanton conduct, fraud, or malice. Requires the determination of awards for punitive damages to be made in a separate proceeding.

Punitive Damages Reform: HB 2025 (1987). Limits the award of punitive damages to the lesser of defendant's highest annual gross income during the preceding five years or \$5 million. Provides 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. Requires the determination of awards for punitive damages to be made in a separate proceeding. Requires a plaintiff to prove punitive damages by "clear and convincing" evidence. Provides seven criteria for the judge to consider in punitive damages cases, including whether this is the first award against a given defendant.

KENTUCKY REFORMS

Joint and Several Liability Reform: HB 21 (1996): Ky. Rev. Stat. Ann. § 411.182. Bars application of the rule of joint and several liability in the recovery of all damages.

Joint and Several Liability Reform: HB 551 (1988). Requires that juries be instructed to determine the percentage of fault appropriate to each claimant, defendant, third party defendant and defendant settling out of court and apportion each party's equitable share in accordance with the respective percentages of fault. *Prudential Life Ins. Co. v. Moody*, 696 S.W.2d 503 (Ky. 1985).

.Punitive Damages Reform: HB 551 (1988). Ky. Rev. Stat. Ann. § 411.184(2). Requires, for the award of punitive damages, a plaintiff to show by "clear and convincing" evidence that a defendant acted with oppression, fraud or malice. *The 1988 punitive damages reform statute requiring a plaintiff to show that the defendant acted with "flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm" as a predicate for punitive damages liability violated "jural rights"*

provisions of the State Constitution. *Williams v. Wilson*, 972 S.W.2d 260 (Ky. 1998).

LOUISIANA REFORMS

Joint and Several Liability Reform: HB 21 (1996): La. Civ. Code arts 1804, 2323, 2324. Bars application of the rule of joint and several liability in the recovery of all damages.

Product Liability Reform: SB 684 (1988). Provides that a product may be unreasonably dangerous only because of one or more of the following characteristics: (a) defective construction or composition; (b) defective design; (c) failure to warn or inadequate warning; or (d) nonconformity with an express warranty. Provides that a manufacturer of a product shall not be liable for damage proximately caused by a characteristic of the product's design if the manufacturer proves that at the time the product left his control: (a) he did not know and, in light of then-existing reasonably available scientific and technological knowledge, could not have known of the design characteristic that caused the damage; (b) he did not know and, in light of then-existing reasonable available scientific and technological knowledge, could not have known of the alternative design identified by the claimant; or (c) the alternative design identified by the claimant was not feasible, in light of then-existing reasonably available scientific and technological knowledge or then-existing economic practicality.

Punitive Damages Reform: HB 20 (1996). Repeals 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.)

MAINE REFORMS

MARYLAND REFORMS

Noneconomic Damages Reform: Wrongful Death: SB 283 (1994): Md. Cts. & Jud. Pro. §11-108. Limits noneconomic damages in wrongful death actions to \$500,000. In cases where there are two or more beneficiaries, the limit is \$700,000. The reform somewhat counters the effect of the *Streidel* decision, which held that Maryland's \$350,000 limit on noneconomic damages did not apply in wrongful 0 per incident.

Noneconomic Damages Reform: SB 558 (1986): Md. Cts. & Jud. Pro. §11-108. Limits 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*

Punitive Damages Reform: Owens-Illinois v. Zenobia, 601 A.2d 633 (Md. 1992). Requires a plaintiff to prove punitive damages by “clear and convincing” evidence.

MASSACHUSETTS REFORMS

Joint and Several Liability Reform: HB 574 (2001): Mass. Gen. Laws Ann. Ch. 231B §§ 1-2. Bars 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 REFORMS

Joint and Several Liability Reform: HB 4508 (1995): Mich. Comp. Laws §§ 600.6304(4), 600.6312. Bars 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.

Joint and Several Liability Reform: HB 5154 (1986): Mich. Comp. Laws §§ 600.6304(4), 600.6312. Bars application of the rule of joint and several liability in the recovery of all damages from municipalities. Bars 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. Provides that defendants are severally liable, except when uncollectible shares of a judgment are reallocated between solvent co-defendants according to their degree of negligence.

Product Liability Reform: SB 344 (1995). Bars application of the rule of joint and several liability in product liability cases. Provides statutory defenses to product liability claims, including adherence to government standards, FDA standards, and sellers’ defenses. Provides an absolute defense, where the plaintiff was found to be at least 50% at fault due to intoxication or a controlled substance. Limits the award of noneconomic damages in product liability cases not involving death or loss of vital bodily function to \$280,000. Limits the award of noneconomic damages in such cases to \$500,000.

Product Liability Reform: Venue Reform: HB 4508 (1995). Provides venue control in product liability cases.

MINNESOTA REFORMS

Contributory Negligence Reform: SF 1827 (1990): (Minn. Stat. Sec. 604.01, Subd. 1). Expands contributory fault to encompass "economic loss" claims, such that awards to plaintiffs will be decreased in proportion to the plaintiff's fault.

Joint and Several Liability Reform: SF 872 (2003). Provides that joint and several liability does not apply to defendants found to be less than 50% at fault.

Joint and Several Liability Reform: HF 1493 (1988): Minn. Stat. Ann. § 604.02 Subd. 1. Provides that defendants found to be 15% or less at fault shall pay no more than four times their share of damages.

Punitive Damages Reform: (1990). Minn. Stat. Sec. 549.20. Requires a plaintiff to show that a defendant acted with "deliberate disregard" for the award of punitive damages. (The former standard required only a showing of "willful indifference.") Requires the determination of awards for punitive damages to be made in a separate proceeding at the request of the defendant. Grants trial and appellate judges the power to review all punitive damages awards.

Punitive Damages Reform: SB 2078 (1986). Prohibits plaintiffs from pleading punitive damages in an original complaint. Requires a plaintiff to make a *prima facie* showing of liability before an amendment of pleadings is permitted by the court.

Punitive Damages Reform: Clear and Convincing Requirement: Minn. Stat. Ann. § 549.20. Requires a plaintiff to prove punitive damages by clear and convincing evidence

MISSISSIPPI REFORMS

Joint Liability Reform: H.B. 13 (special session) (2004). Abolishes joint and several liability. Provides that defendants are not responsible for any fault allocated to an immune tortfeasor or a tortfeasor whose liability is limited by law.

Joint and Several Liability Reform: HB 1171 (1989): Miss. Code Ann. § 85-5-7(2). Provides 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.

Product Liability Reform: HB 1270 (1993). Requires 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. Provides 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. Provides 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 bars from recovery a plaintiff who knowingly and voluntarily exposes himself or herself to a dangerous product condition if he or she is injured as a result of that condition. Relieves a manufacturer or seller from the duty to warn of a product that poses an open and obvious risk. Provides that a properly functioning product is not defective unless there was a practical and economically feasible design alternative available at the time of manufacture. Provides for indemnification of innocent retailers and wholesalers.

Punitive Damages Reform: H.B. 13 (special session) (2004). Modifies and lowered some caps on punitive damages, based upon the net worth of a defendant.

- \$20 million for a defendant with a net worth of more than \$1 billion;
- \$15 million for a defendant with a net worth of more than \$750 million but not more than \$1 billion
- \$5 million for a defendant with a net worth of more than \$500 million but not more than \$750 million (new law);
- \$3.75 million for a defendant with a net worth of more than \$100 million but not more than \$500 million (new law);
- \$2.5 million for defendants with a net worth of more than \$50 million but not more than \$100 million (new law);
- Two percent of the defendant's net worth for a defendant with a net worth of \$50 million or less (new law).

Punitive Damages Reform: HB 1270 (1993): Miss. Code Ann. § 11-1-65(1)(a). Requires a plaintiff to prove punitive damages by "clear and convincing" evidence. Requires the determination of awards for punitive damages to be made in a separate proceeding. Prohibits the award of punitive damages in the absence of compensatory awards. Prohibits the award of punitive damages against an innocent seller. Establishes factors for the jury to consider when determining the amount of a punitive damages award.

Statute of Limitations Reform: HB 1171 (1989). Reduces the statute of limitations from 6 years to 3 years. Provides that cases that cannot be maintained in other states because of the lapse of time will not be allowed in Mississippi.

MISSOURI REFORMS

Joint and Several Liability Reform: HB 393 (2005). Provides that joint and several liability applies if a defendant is 51 percent or more at fault. In such circumstances, the defendant is jointly and severally liable for the amount of the judgment rendered against the defendant. If a defendant is found to be less than 51 percent at fault, the defendant is only responsible for the percent of the judgment he or she is responsible for.

Joint and Several Liability Reform: HB 700 (1987). Bars 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.

Joint and Several Liability Reform: Mo. Stat. § 537.067. Limits joint liability to two times the defendant's percentage of fault, if the plaintiff was at fault.

Punitive Damages Reform: HB 393 (2005). Limits punitive damages to \$500,000 or five times the judgment, whichever is greater. Limit does not apply to certain cases involving housing discrimination.

Punitive Damages Reform: HB 700 (1987). Requires the determination of awards for punitive damages to be made in a separate proceeding. Permits the jury to set the amount for punitive damages if, in the first stage, the jury finds a defendant liable for punitive damages. Permits the admissibility of evidence of a defendant's net worth only during the proceeding for the determination of punitive damages. Requires 50% of all punitive damages awards to be paid to the state fund. Prohibits multiple punitive damages awards under certain conditions.

Punitive Damages Reform: Clear and Convincing Requirement: *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104 (Mo. 1996). Requires a plaintiff to prove punitive damages by clear and convincing evidence.

MONTANA REFORMS

Joint and Several Liability Reform: HB 571 (1997): Mont. Code Ann. § 27-1-705. Retains 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. Revises 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. Allows those defendants to intervene in the action to defend against claims affirmatively asserted. Provides that joint liability shall apply in actions arising from an act or omission that violates a state environmental law relating to hazardous or deleterious substances.

Joint and Several Liability Reform: HB 572 (1997). Bars application of the rule of joint and several liability in the recovery of all damages. *Takes effect only if HB 571 is held unconstitutional.*

Joint and Several Liability Reform: SB 212 (1995). Restores the joint and several liability reforms of 1987, which had been weakened by the Montana Supreme Court. Provides procedural safeguards to allow joint liability to apply only when a defendant is found to be more than 50% at fault.

Joint and Several Liability Reform: SB 51 (1987). Bars 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. *Parts of the 1987 comparative negligence statute allowing fault to be allocated to nonparties violated the due process provision of the State Constitution. *Newville v. State of Montana, Department of Family Services*, 883 P.2d 793 (Mont. 1994).*

Punitive Damages Reform: SB 363 (2003). Limits punitive damages, unless otherwise expressed by statute, to \$10 million or 3 percent of a defendant's net worth, whichever is less. The bill does not limit the amount of punitive damages that may be awarded in class action lawsuits.

Punitive Damages Reform: HB 212 (2003). Brings Montana statute into conformity with Supreme Court decision that punitive damages may be awarded by a two-thirds verdict rather than the previous requirement that punitive damages awards must be unanimous. *In Finstad v. W.R. Grace & Co.*, 2000 MT 228, 301 Mont. 240, 8 P.3d 778 (2000), *the Montana Supreme Court held that the portion of section 27-1-221(6), MCA, which requires that an award of punitive damages must be unanimous as to liability and amount, violates Article II, section 26, of the Montana Constitution, guaranteeing a verdict by a two-thirds majority in all civil cases.*

Punitive Damages Reform: HB 442 (1987): Mont. Code Ann. § 27-1-221(5). Requires a plaintiff to show by "clear and convincing" evidence that a defendant acted with "actual fraud" or "actual malice." Requires the determination of awards for punitive damages to be made in a separate proceeding. Permits the admissibility of evidence of a defendant's net worth only during the proceeding for the determination of punitive damages. Requires 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.

Punitive Damages Reform: Unanimous Jury: SB 212 (1997): Requires a unanimous jury to determine the amount of punitive damages awards. *In Finstad v. W.R. Grace & Co.*, 2000 MT 228, 301 Mont. 240, 8 P.3d 778 (2000), *the Montana Supreme Court held that the portion of section 27-1-221(6), MCA, which requires that an award of punitive damages must be unanimous as to liability and amount,*

violates Article II, section 26, of the Montana Constitution, guaranteeing a verdict by a two-thirds majority in all civil cases.

Product Liability Reform: SB 380 (1987). Provides statutory defenses to product liability claims, including assumption of the risk and misuse of product.

NEBRASKA REFORMS

Assumption of the Risk: LB 88 (1991). Provides for an assumption of the risk defense.

Joint and Several Liability Reform: LB 88 (1991): Neb. Rev. Stat. § 25-21,185.10. Bars application of the rule of joint and several liability in the recovery of noneconomic damages.

Plaintiff's Negligence Reform: LB 88 (1991). Replaces Nebraska's 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.

NEVADA REFORMS

Joint and Several Liability Reform: SB 511 (1987): Nev. Rev. Stat. Ann § 41.141. Bars 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.

Punitive Damages Reform: AB 307 (1989). Limits 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. Requires a plaintiff to show by "clear and convincing evidence" that a defendant acted with "oppression, fraud, or malice." Requires the determination of awards for punitive damages to be made in a separate proceeding. Permits the admissibility of evidence of a defendant's finances only during the proceeding for the determination of punitive damages.

NEW HAMPSHIRE REFORMS

Joint and Several Liability Reform: SB 110 (1990): N.H. Rev. Stat. Ann. § 507:7-e. Bars 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.

Product Liability Reform: SB 76 (1993). Establishes 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.

Product Liability Reform: Study Committee: SB 339 (1992). Establishes a committee to study the impact of product liability on New Hampshire businesses.

Product Liability Reform: State of the Art Defense: HB 936 (1988). Provides a state of the art defense for defendants in product liability cases.

Punitive Damages Reform: HB 513 (1986). Prohibits the award of punitive damages.

NEW JERSEY REFORMS

Joint and Several Liability Reform: SB 1494 (1995). Bars 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.

Joint and Several Liability Reform: SB 2703, SB 2708 (1987): N.J. Stat. Ann. § 2A:15-5.3. Bars 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. Bars 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.

Product Liability Reform: SB 2805 (1987). Provides 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. Provides that a manufacturer or seller is not liable if at the time the product left the manufacturer's control there was not available a practical and feasible *alternative design* that would have prevented the harm. Provides 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. Provides 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*. Provides 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. Provides 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.) Establishes a rebuttable presumption that a government (FDA) warning is adequate.

Punitive Damages Reform: Actual Malice: SB 2805 (1987). Requires a plaintiff to show that a defendant acted with “actual malice” or “wanton and willful disregard” for the rights of others. Requires the determination of awards for punitive damages to be made in a separate proceeding. Provides for an FDA government standards defense to punitive damages. The reform does not apply to cases involving environmental torts.

Punitive Damages Reform: Clear and Convincing Evidence: N.J. Stat. Ann. § 2A:15-5.12. Requires a plaintiff to prove punitive damages by “clear and convincing evidence.”

NEW MEXICO REFORMS

Joint and Several Liability Reform: SB 164 (1987): N.M. Stat. Ann. § 41-3A-1. Bars 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 REFORMS

Collateral Source Rule Reform: SB 9351 (1986). Provides for awards to be offset by collateral source payments.

Joint and Several Liability Reform: SB 9391 (1986): N.Y. Civ. Prac. L. & R. §§ 1601-1602. Bars 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.

Punitive Damages Reform: SB 7589 (1992). Requires that 20% of all punitive damages awards be paid to the New York State General Fund.

NORTH CAROLINA REFORMS

Product Liability Reform: HB 637 (1995). Provides that there shall be no strict liability in tort for product liability actions. Provides statutory defenses to product liability claims, including assumption of the risk.

Punitive Damages Reform: HB 729 (1995): N.C. Gen. Stat. §§ 10-15(b), 1D-25 . Limits the award of punitive damages to the greater of three times the award of compensatory damages or \$250,000, unless the defendant caused the injury by driving while impaired. Requires 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. Requires the determination of awards for punitive damages to be made in a separate proceeding at the request of the defendant.

NORTH DAKOTA REFORMS

Joint and Several Liability Reform: HB 1571 (1987): N.D. Cent Code § 32-03.2-02. Bars 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 product liability cases.

Product Liability Reform: HB 1369 (1995). Establishes a ten-year statute of repose in product liability actions. Provides a government standards defense. Prohibits the award of punitive damages, when a manufacturer complies with government standards. *The 10-year statute of repose is unconstitutional. Dickie v. Farmers Union Oil Co., 2000 ND 111 (N.D. May 25, 2000).*

Punitive Damages Reform: HB 1297 (1997). Requires 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.

Punitive Damages: Clear and Convincing Evidence: N.D. Cent. Code § 32-03.2-11. Requires a plaintiff to prove punitive damages by “clear and convincing” evidence.

Punitive Damages Reform: Damages Limit: N.D. Cent. Code § 32.03.2-11(4). Limits punitive damages to the greater of two times compensatory damages or \$250,000.

OHIO REFORMS

Comparative Fault: HB 350 (1996). Allows juries to consider the comparative fault of non-parties when apportioning liability. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Joint and Several Liability Reform: HB 350 (1996). Bars application of the rule of joint and several liability for the recovery of noneconomic damages, where the plaintiff was contributorily negligent or impliedly assumed the risk that caused the harm. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Noneconomic Damages Reform: Am. Sub. S.B. 80 (2004). Limits noneconomic damages in cases involving noncatastrophic injuries to the greater of \$250,000 or three times economic damages up to \$350,000, per plaintiff, with a maximum limit of \$500,000 per occurrence. Limits applied to all cases but medical liability cases. Specifies that juries may not consider the following when determining noneconomic damages: (1) evidence of a defendant's alleged wrongdoing, misconduct or guilt; (2) evidence of the defendant's wealth or financial resources; (3) all other evidence that is offered for the purpose of punishing the defendant. Finally, S.B. 80 specifies procedures and guidelines, based on ALEC's *Full and Fair Noneconomic Damages Act*, for trial courts to review (upon a motion) noneconomic damage awards.

Product Liability Reform: Statute of Repose: Am. Sub. S.B. 80 (2004). Provides for a ten-year statute of repose for product liability actions, with certain exceptions.

Product Liability Reform: HB 350 (1996). Amends product liability law to include additional requirements for establishing liability. Prohibits expanding theories of liability, including enterprise liability. Adopts a fifteen-year statute of repose in product liability cases, absent latent harm or fraud. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Product Liability Reform: HB 1 (1987). Provides 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. Provides 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. Establishes 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. Provides that a drug manufacturer shall not be liable for punitive damages if the drug was approved by the FDA.

Punitive Damages Reform: Am. Sub. S.B. 80 (2004). Limits punitive damages to not more than two times compensatory damages. Limits punitive damages for small businesses to the lesser of two times compensatory damages or 10 percent of a defendant's net worth, not to exceed \$350,000. Small businesses are defined as having less than 100 employees or manufacturers that have less than 500 employees. Prohibits the award of punitive damages if punitive damages have already been awarded based on the same act or conduct that is alleged, except under certain circumstances.

Punitive Damages Reform: Bifurcated Trial: Am. Sub. S.B. 80 (2004). Provides that in jury trials, if punitive damages are requested by any party, the trial is bifurcated so that the jury considers compensatory damages in one stage, and punitive damages in a second stage.

Punitive Damages Reform: HB 1 (1987). Requires 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" for the award of punitive damages. Provides a government standard defense for FDA approved drugs.

OKLAHOMA REFORMS

Joint and Several Liability Reform: H.B. 2661 (2004). Restricts joint liability to only a defendant that is more than 50 percent at fault, except where any defendant acted with willful and wanton conduct or reckless disregard and then all defendants may be held joint and severally liable. Limitation only applies when the plaintiff has no comparative negligence.

Joint and Several Liability Reform: *Anderson v. O'Donohue*, 677 P.2d 648 (Okla. 1983). *Laubach v. Morgan*, 588 P.2d 1071 (Okla. 1978). Bars application of the rule of joint and several liability in the award of all damages if the plaintiff was at fault.

Joint & Several Liability: H.B. 1603 (2009). Provides that unless a defendant is more than 50% at fault, the defendant will only be charged its proportionate share of the injury award.

Junk Science & Expert Witness Reforms: H.B. 1603 (2009). Adopts Federal Rules to create stricter standards for admitting expert testimony.

Products Liability Reform: H.B. 1603 (2009). Provides that a manufacturer shall not be liable if the product is inherently unsafe.

Punitive Damages Reform: SB 263 (1995): Okla. Stat. Ann. tit. 23, § 9.1. Codifies factors that the jury must consider in awarding punitive damages. Provides 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.

Punitive Damages Reform: SB 488 (1986). Limits the award of punitive damages to the award of compensatory damages unless the plaintiff establishes her case by “clear and convincing” evidence, in which case no limit applies.

OREGON REFORMS

Joint and Several Liability Reform: SB 601 (1995): Or. Rev. Stat. § 18.485. Bars application of the rule of joint and several liability in the recovery of all damages, except where the defendant 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.

Joint and Several Liability Reform: SB 323 (1987). Bars application of the rule of joint and several liability in the recovery of noneconomic damages. Bars 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.

Punitive Damages Reform: SB 482 (1995): Or. Rev. Stat. § 18.537. Requires 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. Requires 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.” Provides for court review of jury-awarded punitive damages. Bars the claiming of punitive damages in an original complaint. Requires a plaintiff to show a *prima facie* case for liability before amending a complaint to include a punitive damages claim. *The split-recovery statute allocating 60% of punitive damages award to the state did not violate the right to a remedy, the right to a jury trial, the takings or tax provisions, or the separation of powers under the State Constitution. DeMendoza v. Huffman, 2002 WL 1827841 (Or. Aug. 8, 2002).*

Punitive Damages Reform: SB 323 (1987). Requires a plaintiff to prove punitive damages by “clear and convincing” evidence. Provides an FDA standards defense to punitive damages.

PENNSYLVANIA REFORMS

Joint and Several Liability Reform: SB 1089 (2002). Bars application of the rule of joint and several liability in the recovery of all damages, except when a defendant has: (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. *The 2002 joint and several liability law violated the single subject rule of the PA Constitution. DeWeese v. Weaver, 880 A.2d 54 & 824 A.2d 364 (Pa. Cmwlth. 2005).*

Punitive Damages Reform: HB 2210 (1996). Limits punitive damages to 200% of compensatory awards. Raises the standard of defense in punitive damage cases to “willful or wanton misconduct or reckless indifference to the rights or others.” Provides for bifurcated trials.

RHODE ISLAND REFORMS

SOUTH CAROLINA REFORMS

Joint and Several Liability Reform: H 3008 (2005). Provides that joint and several liability does not apply to defendants less than 50 percent responsible of the total fault. In the calculation of total fault, comparative fault of the plaintiff is to be included. If the plaintiff is found to be 50 percent or greater at fault, the plaintiff shall then be barred from recovery. Defendant’s less than 50 percent at fault shall only be responsible for its proportional share of the damages based on its percentages of liability.

Joint and Several Liability: S 83 (2005). Specifies that if there are multiple defendants in a civil action, joint and several liability does not apply to any defendant 50 percent or less responsible for the damages. Furthermore, specified that comparative fault is included in the calculation of total fault in the case. If

the plaintiff is found to be greater than 50 percent responsible for the total fault, then the plaintiff is completely barred from recovering damages. A defendant found to be less than 50 percent responsible is only responsible for its proportional share of damages based on its percentage of liability. Retained the right of the “empty chair” defense where a defendant retains the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged damages and may be liable for any or all damages alleged by another party.

Punitive Damages Reform: Clear and Convincing Evidence: H 2610 (1988): S.C. Code Ann. § 15-33-135. Requires a plaintiff to prove punitive damages by “clear and convincing” evidence.

Statute of Limitations Reform: H 2610 (1988). Reduces the statute of limitations from 6 years to 3 years.

SOUTH DAKOTA REFORMS

Joint and Several Liability Reform: SB 263 (1987): S.D. Codified Laws Ann. § 15-8-15.1. Provides 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.”

Punitive Damages Reform: SB 280 (1986): S.D. Codified Laws Ann. § 21-1-4.1. Requires a plaintiff to prove by “clear and convincing” evidence that a defendant acted with “willful, wanton, or malicious” conduct.

TENNESSEE REFORMS

Punitive Damages Reform: *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896 (Tenn. 1992). Requires a plaintiff to prove punitive damages by “clear and convincing” evidence.

TEXAS REFORMS

Contributory Negligence Reform: SB 5 (1987). Affirms the law that bars recovery of damages in negligence cases if the plaintiff is more than 50% responsible for his injuries and extends the law to include negligence cases for financial damages against professionals. Bars recovery of damages against the manufacturer, distributor, or retailer of a product if the plaintiff is 60% or more responsible for his injuries.

Forum Non Conveniens: HB 755 (2005). Restores the discretion of trial court judges to dismiss lawsuits with little or no connection to Texas under the doctrine of *forum non conveniens*.

Forum Non Conveniens Doctrine: HB 4 (2003). Provides that the court must decline jurisdiction if there is a better forum for the suit.

Joint and Several Liability Reform: HB 4 (2003). Defendant pays only assessed percentage of fault unless defendant is 50% or more responsible. Defendants can designate (as opposed to join) other responsible third parties whose fault contributed to causing plaintiff's harm. In toxic tort cases, the threshold for joint and several liability raised from 15% to 50%.

Joint and Several Liability Reform: SB 28 (1995). Bars 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.

Joint and Several Liability Reform: SB 5 (1987). Bars 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.

Product Liability Reform: HB 4 (2003). Provides for a 15 year statute of repose for product liability cases. In cases involving latent diseases, the plaintiff must have been exposed within 15 years of the product's sale and must show symptoms more than 15 years after the sale. Provides for an innocent seller provision which prohibits actions against non-manufacturing sellers except in specific circumstances such as if the seller participated in the design of the product or knew of the defect at the time of the sale. Provides for the presumption that a product is not defective if it meets mandatory government standards or was approved or licensed by the FDA. Allows plaintiff to rebuff by showing material omission or misrepresentation to agency, or that standards were insufficient to provide reasonable safety.

Product Liability Reform: SB 4 (1993). Requires proof of an economically and technologically feasible safer alternative design available at the time of manufacture in most product liability actions for defective design. Provides a defense for manufacturers and sellers of inherently unsafe products that are *known* to be unsafe. Establishes a fifteen-year statute of repose for product liability actions against manufacturers or sellers of manufacturing equipment. Provides protection for innocent retailers and wholesalers.

Punitive Damages Reform: SB 25 (1995): Tex. Civ. Prac. & Rem. Code §§ 41.003, 41.008. Limits 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. Requires 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.” Requires the determination of awards for punitive damages to be made in a separate proceeding at the request of the defendant.

Punitive Damages Reform: HB 4 (2003). Tex. Civ. Prac. & Rem. Code §§ 41.003. Requires unanimous jury verdict to award punitive damages. Specifies that jury must be so instructed.

Punitive Damages Reform: SB 5 (1987). Requires a plaintiff to show that a defendant’s actions were fraudulent, malicious, or grossly negligent. Limits the award of punitive damages to the greater of four times the amount of actual damages or \$200,000.

UTAH REFORMS

Joint and Several Liability Reform: HB 74 (1999): Utah Code Ann. § 78-27-40. Clarifies the 1986 statute that abolished joint liability to address the Utah Supreme Court decision in *Field v. The Boyer Company*.

Joint and Several Liability Reform: SB 64 (1986). Bars application of the rule of joint and several liability in the recovery of all damages.

Product Liability Reform: Statute of Repose: SB 92 (1991). Establishes a 10-year statute of repose for actions brought against architects, engineers, and builders for design error or faulty construction. Requires that actions be brought within two years from the date that the defect is discovered. Requires that breach of contract or warranty claims be brought within 6 years of the date of completion. The reform does not apply to claims involving intentional or willful misconduct or warranties exceeding the statutory period of six years. *The statute of repose which provided death benefits to dependents only when work-related injury caused death within six years of accident violated the open courts provision of the State Constitution. Hales v. Industrial Commission of Utah, 854 P.2d 537 (Utah App. 1993).*

Product Liability Reform: Government Standards Defense: SB 25 (1989). Includes all the provisions of the 1977 product liability statute, except the eight-year statute of repose, which was ruled unconstitutional. The bill includes a presumptive government standards defense for all products.

Punitive Damages Reform: SB 24 (1989): Utah Code Ann. § 78-18-1. Requires 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.") Provides a government standard defense for FDA approved drugs. Requires the determination of awards for punitive damages to be made in a separate proceeding on a defendant's motion. Requires 50% of all punitive damage awards over \$20,000 to be paid to the state fund.

VERMONT REFORMS

Joint and Several Liability Reform: (1985). Bars application of the rule of joint and several liability in the recovery of all damages.

VIRGINIA REFORMS

Joint and Several Liability Reform: Bars application of the rule of joint and several liability in the recovery of all damages.

Punitive Damages Reform: SB 402 (1987): Va. Code Ann. § 8.01-38.1. Limits 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.*

Sound Science Reform: HB 1977 (1989). Requires expert witnesses to have had a clinical practice in the area of specialty about which he/she is to testify within one year of the date of the injury.

WASHINGTON REFORMS

Joint and Several Liability Reform: SB 4630 (1986): Wash. Rev. Code Ann. § 4.22.070(1)(b). Bars application of the rule of joint and several liability in the recovery of all damages, except in cases 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.

WEST VIRGINIA REFORMS

joint and Several Liability Reform - SB 421 (2005).

Bars the application of joint and several liability for defendants 30 percent or less at fault. In such situations, defendants pay only percentage of fault as determined by the jury. Provides that if a claimant has not been paid after six months of the judgment, defendants 10 percent or more responsible are subject to reallocation of uncollected amount. Defendants less than 10 percent at fault or whose fault is equal to or less than the claimant's percentage of fault are not subject to reallocation.

Joint and Several Liability Reform: W.V. Code Ann. § 55-7B-9. Bars application of the rule of joint and several liability in the recovery of damages, where the defendant is found to be less than 25% at fault.

WISCONSIN REFORMS

Joint and Several Liability Reform: SB 11 (1995): Wis. Stat. Ann. § 895.045(1). Bars 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. Provides that a plaintiff's negligence will be measured separately against each defendant. *The statute retroactively abolishing joint liability for any defendant found to be less than 51% at fault violated the Due Process Clauses of the State and Federal Constitutions. Matthies v. Positive Manufacturing Co., 2001 WL 737384 (Wis. July 2, 2001).*

Punitive Damages Reform: Clear and Convincing Evidence” Wangen v. Ford Motor Co., 294 N.W.2d 437 (Wis. 1980). Requires a plaintiff to prove punitive damages by “clear and convincing evidence.”

Punitive Damages Reform: Malicious Conduct: SB 11 (1995). Requires a plaintiff to show that a defendant acted “maliciously or in intentional disregard of the rights of the plaintiff” for the recovery of punitive damages.

WYOMING REFORMS

Joint and Several Liability Reform: SF 35 (1994). Amends the joint and several liability reform passed in 1986. Defines when an individual is at fault. Specifies the amount of damages recoverable in cases where more than one party is at fault. Clarifies the relationship between fault and negligence.

Joint and Several Liability Reform: SB 17 (1986): Wyo. Stat. Ann. § 1-1-109(e). Bars application of the rule of joint and several liability in the recovery of all damages.