STATEMENT OF MARK BEHRENS, ESQ.
SHOOK, HARDY & BACON L.L.P.
1155 F STREET, N.W., SUITE 200
WASHINGTON, D.C. 20004
(202) 639-5621
MBEHRENS@SHB.COM

ON BEHALF OF THE AMERICAN TORT REFORM ASSOCIATION

IN SUPPORT OF H.B. 1 TO AMEND 42 PA. C.S. § 7102 (COMPARATIVE NEGLIGENCE) TO PROVIDE FOR MODIFIED JOINT LIABILITY

BEFORE THE PENNSYLVANIA HOUSE JUDICIARY COMMITTEE

MARCH 29, 2011

TESTIMONY OF MARK A. BEHRENS, ESQ.
SHOOK, HARDY & BACON L.L.P.
ON BEHALF OF THE AMERICAN TORT REFORM ASSOCIATION

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on behalf of the American Tort Reform Association (ATRA) in support of H.B. 1.

ATRA is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

H.B. 1 would amend Pennsylvania's comparative fault statute, 42 Pa. C.S. § 7102, to provide for modified joint liability. This important legislation, which has passed out of the legislature twice in previous sessions, would make Pennsylvania more competitive and attractive to job creators by reforming the state's "outlier" full joint liability system. The vast majority of states that have abolished contributory negligence in favor of comparative fault principles, as Pennsylvania has done in 42 Pa. C.S. § 7102(a), have also chosen to modify or abolish joint liability. The approach taken in H.B. 1 to modify joint liability is more modest than that adopted by most other states but would still help bring Pennsylvania law more in line with the legal "mainstream." H.B. 1 would help address one the reasons that Philadelphia was recently named the #1 "Judicial Hellhole" in the country by the American Tort Reform Foundation.

I am a partner in the Public Policy Group of Shook, Hardy & Bacon L.L.P.'s Washington, D.C. office. Most of our firm's practice involves representing corporate defendants in multi-state litigation. In addition, I am an elected member of the American Law Institute, headquartered in Philadelphia, and have taught advanced tort law as a member of the adjunct faculty at The American University's Washington College of Law and as a Distinguished Visiting Practitioner in Residence at Pepperdine University School of Law in California. I am a 1990 graduate of Vanderbilt University Law School, where I served on the *Vanderbilt Law Review* and received an American Jurisprudence Award in tort law. I graduated from the University of Wisconsin in 1987 with a B.A. in Economics.

The Policy Underlying Joint Liability Was Lost With the Adoption of Comparative Fault

The rule of joint liability, commonly called joint and several liability, provides that when two or more persons engage in conduct that might subject them to individual liability and their conduct produces a single, indivisible injury, each defendant may be held liable for a plaintiff's entire compensatory damages award. Thus, a jury's finding that a particular defendant may have been only 1% at fault is overridden and that defendant may be forced to pay 100% of the entire award if other responsible defendants are insolvent or unable to pay their "fair share."

The all-of-nothing doctrine of contributory negligence in place at the turn of the last century provided the foundation for justifying joint and several liability.[1] Under the contributory negligence doctrine, a plaintiff that was even partially at fault for his or her own injury was totally barred from any recovery. The plaintiff had to be totally innocent to obtain a recovery. The justification for requiring one defendant to bear the burden of an insolvent defendant's negligence was that as between a culpable defendant and an innocent plaintiff, the culpable defendant should bear the full burden of the plaintiff's injuries. Since the defendant was at least somewhat at fault and the plaintiff was not at fault at all, if someone had to bear the loss it was thought fairer for the blameworthy party to do so rather than to leave a blameless plaintiff with less than a full recovery.

Over time, states moved to remedy the harsh consequences of the all-or-nothing contributory negligence rule and began to apply comparative fault principles. Under comparative fault, a plaintiff who is partially to blame for his or her own injury is not barred from recovery but will have his or her recovery reduced in proportion to that individual's share of fault for the harm. Thus, a plaintiff who is found to be 40% at fault will have his award reduced by 40%.

With the advent of comparative responsibility, as adopted in 42 Pa. C.S. § 1702(a), the justification for requiring defendants to bear the entire share of insolvent defendants was lost. As the Tennessee Supreme Court explained:

> Our adoption of comparative fault is due largely to considerations of fairness: the contributory negligence doctrine unjustly allowed the entire loss to be borne by a negligent plaintiff, notwithstanding that the plaintiff's fault was minor in comparison to defendant's. Having thus adopted a rule more closely linking liability and fault, it would be inconsistent to simultaneously retain a rule, joint and several liability, which may fortuitously impose a degree of liability that is out of all proportion to fault.[2]

Joint and several liability has also been justified on the ground that each defendant's tortious conduct is a legal cause of the entirety of the plaintiff's injury. Of course, with the adoption of comparative fault, the plaintiff who is comparatively negligent is also a legal cause of the entirety of the injury.

---

[1] *See* VICTOR E. SCHWARTZ, COMPARATIVE NEGLIGENCE § 15.03 (5th ed. 2010).

[2] *McIntyre v. Balentine*, 833 S.W.2d 52, 58 (Tenn. 1992); *see also Dix Assocs. Pipeline Contractors, Inc. v. Key*, 799 S.W.2d 24, 27-28 (Ky. 1999) (reasoning that the same "fundamental fairness" concerns that led it to replace the contributory negligence bar with a comparative fault rule also mandated elimination of joint liability).

Full Joint Liability Reflects Unsound Public Policy

Over the past several decades, the shortcomings of full "deep pocket" joint liability rules have become increasingly apparent. Joint liability is unfair and blunts incentives for safety, because it allows negligent actors to under-insure and puts full responsibility on those who may have been only marginally at fault.

Joint liability has caused manufacturers of protective sporting goods equipment, such as safety helmets, to withdraw products from the market or be chilled from introducing new products. Joint liability also brought about a serious public health crisis that critically threatened the availability of implantable medical devices, such as pacemakers, heart valves, artificial blood vessels, and hip and knee joints. Companies had ceased supplying raw materials and component parts to medical implant manufacturers, because they found that the costs of responding to litigation far exceeded potential sales revenues, even though courts were not finding the suppliers liable. Congress had to enact legislation, the Biomaterials Access Assurance Act of 1998, so that people who might find themselves in need of a lifesaving medical device would be able to obtain it in this country.

Most States Have Modified or Abolished Joint Liability

The clear trend over the past several decades has been a move away from joint and several liability. Recognizing the need for reform, forty states, either through court decision or legislation, have abolished or limited application of joint liability.

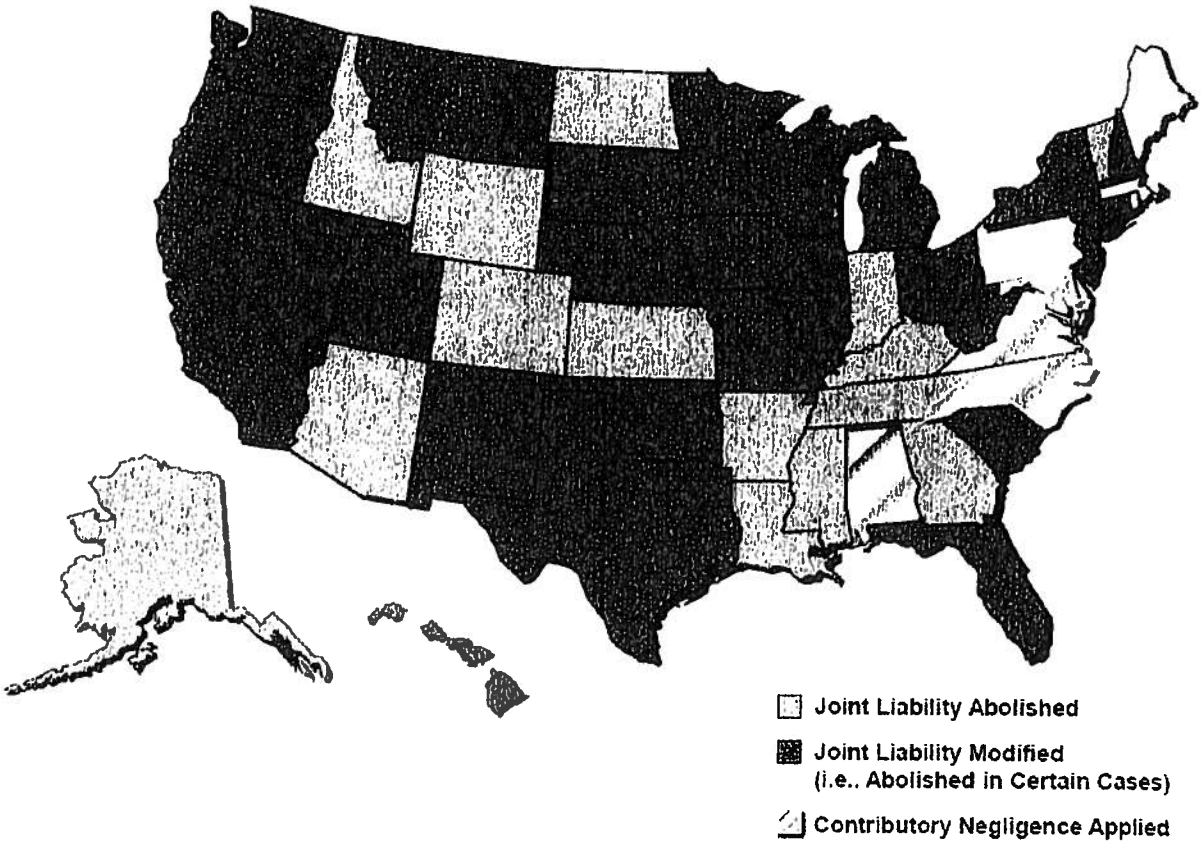
- All but ten states, including Pennsylvania, have modified joint liability rules. Of these ten states, half retain contributory negligence as a complete bar to recovery.
- Seventeen states have either completely abolished joint liability, providing the defendants are only liable for paying their share of fault, or provided only narrow exceptions in which joint liability continues to apply.
- Seventeen states retain joint liability for defendants that meet some threshold level of culpability, such as those that are at least fifty percent at fault. Washington applies joint liability only when the plaintiff bears no degree of fault and other limited situations.
- Five states retains joint liability for economic damages, but have eliminated joint liability for noneconomic damages.

A compendium of state joint liability laws is attached as an appendix to this testimony.[3]

---

[3] The total does not add up to fifty-one (fifty states and the District of Columbia) because some states have adopted a combination of these approaches, i.e. a threshold level and distinction between economic and noneconomic damages.

Joint Liability Reform



Pennsylvania Law

Like many other states, Pennsylvania initially applied the doctrine of joint liability during the age of contributory negligence over 150 years ago. *See Klauder v. McGrath*, 35 Pa. 128 (1860).

In 1976, Pennsylvania abandoned contributory negligence as a complete bar to recovery. 42 Pa. C.S. § 7102(a) provides that a plaintiff whose negligence is not greater than the negligence of the defendant or defendants against whom recovery is sought may recover damages, but that amount is to be reduced in proportion to the amount of negligence attributed to the plaintiff. Under Pennsylvania's current Comparative Negligence Act, even when one of several defendants is found to be less negligent than the plaintiff in a particular case, that defendant may be required to pay the plaintiff's entire award, so long as the plaintiff's

negligence is not greater than all defendants in the aggregate. *See Elder v. Orluck*, 515 A.2d 517 (Pa. 1986).

After Pennsylvania's adoption of comparative fault, legal commentators have suggested that Pennsylvania should also reform its joint liability law.[4] In the 1980s, legislators introduced several bills in the General Assembly to modify or abandon joint liability.[5] Although thirty-five years have passed since adoption of comparative fault, and while most other states have limited joint liability, Pennsylvania has yet to do so. It is apparent that the judiciary will not intervene, as it has in some states, to modify the doctrine of joint and several liability. As the Pennsylvania Supreme Court stated in a 2007 opinion, "We should be and are reluctant to disturb the elemental doctrine of joint and several liability in the absence of express direction from the legislature."[6] The General Assembly must act.

The Proposed Legislation: A Moderate Approach

H.B. 1 would place Pennsylvania in the mainstream of American law by generally providing that when a defendant is less than 60% responsible for an individual's injuries, that defendant pays only its share of liability. When a defendant is 60% or more responsible, joint liability continues to apply and that defendant is potentially liable for all of the plaintiff's damages if the plaintiff cannot obtain recovery from another responsible party. Joint liability would also continue to apply to intentional misrepresentations, intentional torts, certain environmental contamination claims, and certain violations of the Liquor Code. In such situations, a defendant that ultimately pays more than it proportionate share of the verdict would have a right to seek contribution from any other responsible defendant for that defendant's proportionate share.

With respect to apportionment of fault, the bill limits the population of potentially responsible nonparties that a jury may consider. The bill only permits the jury to consider nonparties that entered a settlement agreement with the plaintiff, which may not include all those that contributed to the plaintiff's injuries. In addition, the bill does *not* permit a jury to apportion fault to employers who are immune from tort liability due to workers' compensation laws. The jury will be able to impose full liability on the manufacturer of a product that allegedly harmed a worker due to defective design despite the employer's negligence in training and supervising the worker, or providing appropriate protective equipment. Such provisions favor plaintiffs.

Thus, H.B. 1 provides a moderate approach to modernizing Pennsylvania's joint liability law. It does not completely abolish joint liability in favor of "pure" several liability, as a number

---

[4] *See, e.g.*, R. Michael Lindsey, *Compensation, Fairness, and the Cost of Accidents—Should Pennsylvania Legislature Modify or Abrogate the Rule of Joint and Several Liability Among Concurrently Negligent Tortfeasors?*, 91 Dick. L. Rev. 947 (1987).

[5] *See id.* at 968-71.

[6] *Carrozza v. Greenbaum*, 916 A.2d 553, 565-66 (Pa. 2007).

of states have done, and contains several exceptions in which joint liability will continue to apply.

Twice, this Legislature has supported bills like H.B. 1. In 2002, the General Assembly passed the "Fair Share Act," but the Pennsylvania Supreme Court held the law unconstitutional because it was improperly appended to another law requiring DNA samples from incarcerated felony sex offenders.[7] To remedy this issue, another session of the General Assembly passed a new Fair Share Act that was not coupled with other legislation. That bill, S.B. 435, received a clear majority from the General Assembly – passing the state Senate on December 6, 2005, by 32-18, and the House of Representatives on March 14, 2006, by a vote of 118-81. Governor Ed Rendell vetoed the bill, however, and it did not become law. Now that several more years have passed, and the trend in the law is even clearer, the General Assembly should pass this important legislation once again.

Conclusion

ATRA urges the Committee to vote in favor of H.B. 1, a moderate bill that is firmly rooted in the mainstream of American law. H.B. 1 would make Pennsylvania more competitive in attracting job creators, ensure that fault principles apply consistently for both plaintiffs and defendants in light of Pennsylvania's comparative fault law, and help address the public policy problems and unfairness created by full joint liability.

---

[7] *See DeWeese v. Weaver*, 880 A.2d 54 (Commw. Ct. 2005), *aff'd*, *DeWeese v. Cortes*, 906 A.2d 1193 (Pa. 2006); *Estate of Hicks v. Dana Corp.*, 909 A.2d 298 (Pa. 2006). The Pennsylvania Constitution requires that "no bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof." Pa. Const., Art. III, § 3.

STATE JOINT & SEVERAL LIABILITY LAWS

JOINT LIABILITY APPLIES

1. Alabama*
2. Delaware
3. District of Columbia*
4. Maine
5. Maryland*
6. Massachusetts (limited to proportionate share of common liability)
7. North Carolina*
8. **Pennsylvania**
9. Rhode Island
10. Virginia*

**Contributory negligence also applies.*

JOINT LIABILITY MODIFIED

Abolished with Narrow Exceptions

1. Alaska
2. Arizona
3. Arkansas
4. Colorado
5. Georgia
6. Idaho
7. Indiana
8. Kansas
9. Kentucky
10. Louisiana
11. Michigan
12. Mississippi
13. North Dakota
14. Tennessee
15. Utah
16. Vermont
17. Wyoming

Abolished with Broader Exceptions

1. Connecticut
2. Florida
3. Hawaii
4. Nevada
5. New Mexico
6. Washington
7. West Virginia

Abolished When the Defendant is Less than a Certain % at Fault (Threshold Approach)

1. Illinois – 25%
2. Iowa – 50%
3. Minnesota – 50%
4. Montana – 50%
5. Missouri – 51%
6. Nevada – less than Plaintiff's fault
7. New Hampshire – 50%
8. New Jersey – 60%
9. New York – 50%
10. Ohio – 50%
11. Oklahoma – 50%
12. Oregon – Equal or less than Plaintiff or 25%
13. South Carolina – 50%
14. South Dakota – 50%
15. Texas – 50%
16. West Virginia – 30%
17. Wisconsin – 51%

Abolished for Noneconomic Damages

1. California
2. Iowa
3. Nebraska
4. New York
5. Ohio

	JOINT LIABILITY LAWS
AL	Joint liability applies. Contributory negligence also applies.
AK	Joint liability has been abolished. Fault may be apportioned to nonparties unless the person was identified as a potentially responsible person, the person is not protected from civil liability by statute, and the parties had sufficient opportunity to join that person in that action but chose not to do so. ALASKA STAT. § 09.17.080.
AZ	Joint liability has been abolished except in cases involving concert of action or the other person was acting as an agent or servant of the party. Fault may be apportioned to nonparties. Reallocation of uncollectible shares is available in contribution actions. ARIZ. STAT. §§ 12-2506, 12-2508.
AR	Joint liability has been abolished, except in concert of action cases. If the trial court finds that any defendant's share will not be "reasonably collectible," the remaining defendants' shares shall be adjusted as follows: if a defendant is found to be 10% or less at fault, the court may not increase that party's proportionate share; if a defendant is more than 10% but less than 50% at fault, the court may increase that party's proportionate share up to 10 percentage points; if a defendant is found to be more than 50% at fault, the court may increase that party's proportionate share up to 20 percentage points. ARK. CODE ANN. §§ 16-55-201, 16-55-203. Provision of Civil Justice Reform Act permitting fault to be apportioned to nonparties, ARK. CODE ANN. § 16-55-202, declared unconstitutional in *Johnson v. Rockwell Automation, Inc.*, 308 S.W.3d 135 (Ark. 2009).
CA	Joint liability has been abolished for noneconomic damages. Fault may be apportioned to nonparties. CAL. CIV. CODE § 1431.2.
CO	Joint liability has been abolished, except in concert of action cases. Fault may be apportioned to nonparties. COLO. REV. STAT. § 13-21-111.5.
CT	Joint liability has been abolished in negligence actions. If a defendant is insolvent or its share is otherwise uncollectible, the remaining defendants may be required to pay that defendant's share of the damages according to their percentages of fault. CONN. GEN. STAT. ANN. § 52-572h.

	JOINT LIABILITY LAWS
DE	Joint liability applies. However, "when there is such a disproportion of fault among joint tort-feasors as to render inequitable an equal distribution among them of the common liability by contribution, the relative degrees of fault of the joint tort-feasors shall be considered in determining their pro rata share." DEL. CODE ANN. § 10-6302.
DC	Joint liability applies. Contributory negligence also applies.
FL	Joint liability has been abolished in negligence actions except where the action is to recover actual economic damages for pollution, any action based upon an intentional tort, or any action where joint and several liability is specifically provided by statute. Fault may be apportioned to nonparties. FLA. STAT. ANN. § 768.81.
GA	Joint liability has been abolished. Fault may be apportioned to nonparties. GA. CODE ANN. § 51-12-33.
HI	Joint liability has been abolished, except for the recovery of economic damages in personal injury or death cases, and except in actions involving intentional torts, torts relating to environmental pollution, toxic and asbestos-related torts, torts relating to aircraft accidents, and strict and products liability actions, and certain motor vehicle accidents, and for the recovery of noneconomic damages in actions other than those involving intentional torts, torts relating to environmental pollution, toxic and asbestos-related torts, torts relating to aircraft accidents, and strict and products liability actions, and certain motor vehicle accidents where the defendant is less than 25% at fault. HAW. REV. STAT. § 633-10.9.
ID	Joint liability has been abolished, except in cases where parties were acting in concert or one party was acting as the agent or servant of another party. IDAHO CODE ANN. § 6-803.
IL	Defendants are jointly liable for past and future medical expenses. For all other damages, joint liability is abolished for defendants found to be less than 25% at fault, except in cases involving discharges of pollutants into the environment. Reallocation of uncollectible shares is available in contribution actions. 735 ILCS 5/2-1117; 735 ILCS 5/2-1118; 740 ILCS 100/3.
IN	Joint liability has been abolished. Fault may be apportioned to nonparties. IND. CODE ANN. § 34-51-2-8.

	JOINT LIABILITY LAWS
IA	Joint liability has been abolished for defendants determined to be less than 50% at fault. Joint liability has also been abolished for noneconomic damages for defendants determined to be 50% or more at fault. IOWA CODE ANN. § 668.4.
KS	Joint liability has been abolished. *Brown v. Keill*, 580 P.2d 867 (Kan. 1978).
KY	Joint liability has been abolished. Fault may be apportioned to persons released from liability. KY. REV. STAT. ANN. § 411.182.
LA	Joint liability has been abolished, except for defendants who conspire to commit intentional or willful acts. Fault may be apportioned to nonparties. LA. CIV. CODE ANN. art. 1804, 2323, 2324.
ME	Joint liability applies. ME. REV. STAT. ANN. tit. 14, § 156.
MD	Joint liability applies. Contributory negligence also applies.
MA	Each defendant is liable to the extent of that defendant's proportionate share of the entire common liability, without regard to its relative degree of fault. Thus, in a two-defendant case, a defendant found 1% negligent can be compelled to pay 50% of the judgment. MASS. GEN. LAWS ANN. Ch. 231B §§ 1-2.
MI	Joint liability has been abolished, except in cases involving a crimes involving gross negligence or the use or alcohol or a controlled substance for which the defendant is convicted, and medical malpractice actions in which the plaintiff is determined to be without fault. Fault may be apportioned to nonparties. In medical malpractice actions, post-verdict reallocation is available to address uncollectible amounts. MICH. COMP. LAWS §§ 600.6304, 600.6312.

	JOINT LIABILITY LAWS
MN	Joint liability has been abolished, except in cases involving concert of action, intentional torts, statutory liability for discharges of certain pollutants, or the defendant is determined to be more than 50% at fault. Uncollectible amounts shall be reapportioned among all parties, including a claimant at fault, according to their respective percentages of fault. In product liability cases, uncollectible amounts shall be reapportioned among all liable defendants in the chain of manufacture or distribution, but not among the plaintiff or others at fault that are not in the chain or manufacture or distribution. MINN. STAT. ANN. § 604.02.
MS	Joint liability has been abolished except in concert of action cases. Fault may be apportioned to nonparties. MISS. CODE ANN. § 85-5-7.
MO	Joint liability has been abolished for any defendant found to be less than 51% at fault. Fault may be apportioned to nonparties. MO. STAT. § 537.067.
MT	Joint liability has been abolished, except in cases involving a violation of a state environmental law relating to hazardous or deleterious substances, or the defendant is determined to be more than 50% at fault. Fault may be apportioned to nonparties. MONT. CODE ANN. §§ 27-1-703, -705.
NE	Joint liability has been abolished for noneconomic damages, except in concert of action cases. NEB. REV. STAT. § 25-21,185.10.
NV	Joint liability has been abolished for defendants determined to be less at fault than the plaintiff, except in products liability actions, strict liability actions, intentional torts, concert of action cases, and actions involving the emission, disposal or spillage of a toxic or hazardous substance. NEV. REV. STAT. ANN. § 41.141.
NH	Joint liability has been abolished for defendants determined to be less than 50% at fault, except in concern of action cases. Reallocation of uncollectible shares is available in contribution actions. N.H. REV. STAT. ANN. § 507:7-e.

	JOINT LIABILITY LAWS
NJ	Joint liability has been abolished for defendants determined to be less than 60% at fault, except that in environmental tort actions defendants may be held jointly liable for compensatory damages if fault cannot be apportioned, or if fault can be apportioned, but a non-settling tortfeasor is insolvent, then the uncollectible share shall be reallocated to solvent defendants according to their percentage of liability. N.J. STAT. ANN. § 2A:15-5.3.
NM	Joint liability has been abolished, except in intentional tort cases, strict product liability cases, cases involving vicarious liability, or "situations not covered by any of the foregoing and having a sound basis in public policy." Fault may be apportioned to nonparties. N.M. STAT. ANN. § 41-3A-1.
NY	Joint liability has been abolished for noneconomic damages for defendants determined to be less than 50% at fault, except when the defendant is found liable for use, operation, or ownership of a motor vehicle; having acted with reckless disregard for the safety of others; certain provisions of labor law; unlawfully releasing hazardous substances; and product liability actions where the manufacturer of the product is not a party to the action, jurisdiction over the manufacturer could not be obtained, and liability would have been imposed on the manufacturer through strict liability. Fault of a nonparty may not be considered if the claimants proves that with due diligence he or she was unable to obtain jurisdiction of such person. N.Y. CIV. PRAC. L. & R. §§ 1601-1602.
NC	Joint liability applies. Contributory negligence also applies. N.C. GEN. STAT. ANN. § 1B-1.
ND	Joint liability has been abolished except in concert of action cases. Fault may be apportioned to nonparties. N.D. CENT. CODE § 32-03.2-02.
OH	Joint liability is abolished for economic damages for defendants determined to be 50% or less at fault in tort cases. Joint liability is abolished for noneconomic damages in tort cases. Fault of nonparties can be considered. OHIO REV. CODE ANN. § 2307.22-.24.

	JOINT LIABILITY LAWS
OK	Joint liability is abolished except where a defendant is found greater than 50% at fault, a defendant acted in a willful and wanton manner or with a reckless disregard of the consequences of the conduct and the conduct proximately caused the plaintiff's harm, and contract actions and actions brought by or on behalf of the state. OKLA. STAT. tit. 23, § 15.
OR	Joint liability has been abolished, except for civil actions resulting from violation of a state or federal statute or regulation regarding the spill, release, or disposal of hazardous substances or hazardous waste, or violation of state or federal standards for air or water pollution. If the court finds that any defendant's share will not be collectible, the uncollectible share shall be shared among the other parties, except where the defendant is equal to or less at fault than the claimant or the defendant is 25% or less at fault. Fault may be apportioned to third party defendants. OR. REV. STAT. § 31.610.
PA	Joint liability applies.
RI	Joint liability applies. R.I. GEN LAWS § 10-6-2.
SC	Joint liability has been abolished for defendants determined to be less than 50% at fault except where the conduct is willful, wanton, reckless, grossly negligent or intentional, or the conduct involves the use, sale, or possession of alcohol or illegal use, sale or possession of drugs. Fault of nonparties can be considered. S.C. CODE ANN. § 15-38-15.
SD	Joint liability is limited to two times the percentage of fault of any defendant found to be less than 50% at fault. S.D. CODIFIED LAWS ANN. § 15-8-15.1.
TN	Joint liability has been abolished. *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992).
TX	Joint liability has been abolished unless the defendant is determined to be more than 50% at fault or committed an enumerated felony in concert with another person. TEX. CIV. PRAC. & REM. CODE ANN. § 33.013.

	JOINT LIABILITY LAWS
UT	Joint liability has been abolished. Fault of nonparties can be considered. If the combined percentage of fault attributed to immune persons is less than 40%, the trial court shall reduce that percentage of fault to zero and reallocate it to the non-immune parties. UTAH CODE ANN. §§ 78B-5-818, -820.
VT	Joint liability has been abolished. VT. STAT. ANN. tit. 12, § 1036.
VA	Joint liability applies. Contributory negligence also applies. VA. CODE ANN. § 8.01-443.
WA	Joint liability has been abolished, except in concert of action cases, or the person was acting as an agent or servant of the party, the plaintiff is determined to be without fault, or the claim involves hazardous wastes or solid waste disposal sites, tortious interference with business relationships, or the manufacture or marketing of fungible products in generic form. Fault can be apportioned to nonparties. WASH. REV. CODE ANN. § 4.22.070.
WV	Joint liability is abolished for defendants determined to be 30% or less at fault, except in actions involving intentional torts, concert of action, strict product liability, or the willful and unlawful emission, disposal or spillage of a toxic or hazardous substance. Joint liability has been abolished in medical liability actions. W. VA. CODE §§ 55-7-24, 55-7B-9.
WI	Joint liability has been abolished for defendants found to be less than 51% at fault, except in concert of action cases. WIS. STAT. ANN. § 895.045(1).
WY	Joint liability has been abolished. Fault can be apportioned to nonparties. WYO. STAT. ANN. § 1-1-109(e).