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Indiana's Liability Environment

and Opportunities for Legal Reform

Indiana has taken steps to curb excessive liability, address litigation abuse, and promote balance in its civil justice system, though it has not enacted comprehensive reforms in many years. The Hoosier State should seize the opportunity to modernize its legal environment and make Indiana an even better place to do business.

Cary Silverman and Christopher E. Appel,
Shook, Hardy & Bacon LLP

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Introduction and Executive Summary

Indiana has a strong tradition of adopting reforms that promote balance and predictability in its civil justice system, deter excessive liability, and prevent lawsuit abuse. But this legacy is not set in stone, and emerging challenges underscore the need for continued action to protect Indiana's economy. This paper provides an overview of the state's litigation landscape through the lens of legislative achievements, judicial impact, and how the state can pursue further reforms in 2026 and beyond.

Legislative Achievements

The Indiana General Assembly has an established track record of enacting reforms to improve the state's civil justice environment. Indiana was the first state to pass medical liability reform legislation.[1] During the 1980s, the legislature instituted a modified comparative fault system, abolished joint and several liability for most negligence actions, modified the state's collateral source rule, and strengthened sanctions for frivolous lawsuits.[2] In the 1990s and 2000s, Indiana adopted safeguards to prevent excessive punitive damages awards, secured significant product liability reforms, and addressed a host of other issues to improve fairness and predictability in the state's legal system.[3]

Indiana has taken some important proactive measures to address emerging areas of potential lawsuit abuse. The state was one of the first to enact legislation in response to the rise of third-party litigation funding (TPLF).[4] It was also an early adopter of liability protections related to COVID-19, shielding businesses and healthcare providers from certain pandemic-related lawsuits.[5] During the past few years, the legislature also eliminated an archaic law that prohibited jurors from considering whether a person in a car accident wore a seat belt.[6] However, significant lawsuit-related costs are still a burden on the state's economy, and much work remains to be done.

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Lawsuits Cost Hoosiers

Indiana residents pay the price of a burdensome tort system. Indiana bore an estimated $7.9 billion in tort costs in 2022, equating to $2,962 per household, according to a study published by The Brattle Group based on insurance data.[7]

Indiana fared better than several of its neighbors, but pays significantly more per household and in tort costs as a percentage of state GDP than the Buckeyes to the east.[8]

Indiana's civil justice system also impacts its business climate. While the state has rated favorably in several recent rankings, others give a mixed picture. For example, CNBC's 2025 annual Top States for Business ranked Indiana 9th overall, including an A- for its "business friendliness," a category that includes the state's lawsuit and liability climate.[9] Indiana also retained its 6th-best ranking in Chief Executive's 2025 annual listing of Best and Worst States for Business.[10] However, other reports such as U.S. News' 2025 Best States placed Indiana in the bottom half in terms of state business environments.[11] As this lack of consensus indicates, there is room for Indiana to further improve its reputation as a state with a fair legal climate that is open for business.

Areas of Rising Importance

This paper explores six steps Indiana can take to improve its civil justice environment.[12]

Noneconomic Damages

Pain and suffering, emotional distress, and other noneconomic damages are highly subjective and not easily quantified by a dollar amount. While intended to compensate for an injury, these awards can vary widely and may result in disproportionate damages, creating unfairness and unpredictability in the civil justice system. Indiana should establish, for all personal injury actions, a maximum level for the portion of an award that is noneconomic damages.

Misleading Lawsuit Advertising

Television, billboard, and social media ads have enticed people to file lawsuits with unreasonable expectations of fast, easy, large awards. In addition, by flashing multimillion-dollar verdicts, ads have conditioned the public to believe that such award amounts are normal and that those dollars actually make it into the pockets of clients, when these outliers are often substantially reduced or thrown out altogether on appeal.[13] Indiana should consider legislation that responds to common misleading lawsuit advertising practices.

Settlement Efficiency

When parties refuse reasonable settlement offers and instead proceed through the time and expense of a trial—only to obtain a less favorable judgment—they may be required to pay their opposing party's attorney fees.[14] Indiana limits these fees awards to a $250 hourly rate and total of $5,000. Indiana should increase these limits to provide a stronger deterrent against unnecessary litigation that wastes both party and judicial resources.

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Public Nuisance Law

Plaintiffs' lawyers have increasingly sought to transform public nuisance into a "super tort," using it to target manufacturers of lawful products and impose sweeping liability. Legislators should codify Indiana's public nuisance law, preserving clear and rational boundaries on the tort and preventing its misuse through unsound litigation.

Liability for Another's Unlawful Act

After a tragic crime, plaintiffs' lawyers sometimes attempt to shift the blame from the perpetrator to a business and property owner. These lawsuits often claim that a business failed to prevent a shooting or assault on its premises, despite the inherent unpredictability of such acts. Indiana should enact legislation that reasonably constrains these claims.

Bifurcating Trials

Too often, highly emotional evidence or juror sympathy for a severely injured plaintiff can compromise the jury's task of evaluating liability and damages in a dispassionate manner. Bifurcation addresses this concern by dividing a trial into a liability phase and a damages phase. By establishing an option to separate these issues, Indiana can reduce prejudice, encourage impartial decision-making, and focus trials, potentially leading to faster, more efficient resolution of cases.

The Indiana Legislature's Record on Legal Reform

Indiana has a history of adopting legislation to modernize liability rules, calibrate damages to promote reasonable compensation, and prevent abusive litigation. Although these actions have helped to strengthen the state's competitive position, there remains much that can be done to shore up Indiana's civil justice system—a crucial pillar of its economic progress.

Past Reforms Set Stage for Future Improvements

Beginning in the 1970s, the Indiana General Assembly established a legacy of impactful reforms across a range of core liability issues. Those reforms demonstrated a level of ambition that legislators have an opportunity to match in the present day.

Medical Liability Claims

Indiana's early adoption of medical liability reform in 1975 marked the beginning of sustained efforts aimed at promoting stable access to care and fair compensation. The General Assembly initially set $500,000 as the maximum amount recoverable in an action brought under the Indiana Medical Malpractice Act (MMA).[15] The legislature has since increased this limit four times, most recently in 2019 to its current $1.8 million level.[16]

In addition, the MMA requires claims to be reviewed by a panel of medical experts before litigation advances to protect against unmeritorious cases.[17] The Act also establishes a patient compensation fund to act as a financial safety net that pays damages above the healthcare provider's primary malpractice insurance limits.[18] The MMA preserves patient recovery by limiting attorney's fees in medical malpractice actions to 32% of any recovery, and 15% of any recovery from the patient compensation fund.[19]

As a result of these reforms, Indiana has a relatively stable medical liability environment. According to the Indiana State Medical Association, physicians in Indiana pay malpractice insurance premiums that are approximately 40% to 70% lower than those in surrounding states—a substantial difference attributed to "the durability of the MMA and the state's tort-reform structure."[20]

Collateral Source Reform

Indiana, in 1986, was an early adopter of collateral source reform, allowing courts to consider, in some cases, payments the plaintiff already received as compensation for the injury at issue in the lawsuit.[21] The purpose of this law was to avoid situations in which a person receives double recovery for an injury.

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Punitive Damages

In 1991, the U.S. Supreme Court observed that punitive damages had "run wild" around the country.[22] As the Court incrementally developed constitutional due process safeguards to rein in excessive punitive awards,[23] the Indiana General Assembly responded with significant legislative reforms. Most notably, the legislature allowed punitive damages up to three times the amount of compensatory damages or $50,000, whichever is greater.[24] The legislature also required that punitive damages be proven by clear and convincing evidence.[25] Together, these reforms complement the U.S. Supreme Court's punitive damages jurisprudence to prevent the imposition of unsound, disproportionate punishment.[26]

Product Liability Reforms

The General Assembly adopted significant reforms to the Indiana Product Liability Act (IPLA) during the 1990s. In 1995, the legislature amended the statute to more broadly encompass theories of recovery based upon either strict liability or negligence, and limited strict liability claims only to product manufacturers.[27] The legislature also adopted comparative fault principles for the allocation of liability and damages and eliminated joint and several liability in products cases.[28]

A few years later, the General Assembly repealed the entire IPLA and recodified it. The updated statute included a rebuttable presumption that a product is not defective if it complied with all applicable government standards or conformed to the generally recognized "state of the art" at the time it was designed or made.[29] The law also recodified product misuse and alteration defenses[30] and included a statute of repose requiring any product liability action to be brought within 10 years after the delivery of the product to the initial user or consumer.[31]

Core Tort Liability Rules

In addition to the key reforms discussed, Indiana has adopted other laws to improve its legal environment. For instance, before eliminating joint liability in product cases, the General Assembly had largely eliminated joint and several liability for other tort cases when enacting a modified comparative fault system. Under this system, a plaintiff who is more than 50% at fault for his or her own injury cannot recover.[32]

Indiana also maintains reasonable limits on the scope of recovery for wrongful death. The state's wrongful death act provides that only a decedent's personal representative may bring a claim for damages.[33] Damages for an adult person may include recovery of economic losses, such as reasonable medical, hospital and funeral expenses, as well as noneconomic damages up to $300,000 for loss of love and companionship.[34] Highly subjective damages for "grief" are specifically prohibited, as are punitive damages.[35]

Further, the legislature has long empowered courts to sanction parties that pursue frivolous claims or defenses, or litigate in bad faith, by awarding attorney's fees to the opposing party.[36] To support working jurors' ability to serve on lengthy trials, the General Assembly has also increased juror compensation to as much as $90 per day, helping ensure balanced and representative participation in deciding issues of liability and damages.[37]

Indiana's Recent Accomplishments

Indiana's civil justice reform achievements since 2020 demonstrate the state's continued ambition to be responsive to new liability issues as well as revisit unsound laws.

COVID-19 Liability Protections

The COVID-19 pandemic introduced tremendous uncertainty into the legal system, as healthcare providers raced to treat patients while protecting themselves from contracting the virus, and businesses navigated how to remain operational while safeguarding workers and customers. Within the first year of the pandemic, the General Assembly enacted comprehensive liability protection for healthcare providers, businesses, schools, government entities, and individuals.[38]

Specifically, legislation provided immunity from civil tort liability to any person or entity for damages "arising from COVID-19" on any premises or in connection with any activity managed or sponsored by the person or entity.[39] The law also expressly barred class actions arising from COVID-19 exposure, treatment, or related conduct, and clarified that these liability protections were in addition to any others available under state or federal law.[40] In addition, the statute carved out exceptions for gross negligence or willful or wanton misconduct, provided such conduct is proven by clear and convincing evidence.[41]

The law also established clear beginning and end dates for immunity during this public health emergency. It applied to any action accruing after March 1, 2020, and sunset at the end of 2024.[42] With these actions, the General Assembly provided essential liability protection in the face of an unprecedented situation while preserving the ability to readily extend immunity if necessary.

Misleading tactics in advertisements designed to recruit clients for lawsuits have scared people away from taking medication that their doctor has prescribed or seeking a beneficial treatment. These ads have resulted in actual harm to patients, including death.

Misleading Lawsuit Advertising

The General Assembly has also taken important steps to address the pernicious effects lawsuit advertising can have on public health.[43] Misleading tactics in advertisements designed to recruit clients for lawsuits have scared people away from taking medication that their doctor has prescribed or seeking a beneficial treatment.[44] These ads have resulted in actual harm to patients, including death.[45] The American Medical Association (AMA) has recognized that "[t]he onslaught of attorney ads has the potential to frighten patients and place fear between them and their doctor" and "jeopardize patient care."[46] It has called upon state legislatures to address this issue.[47]

In 2021, Indiana became one of the first states to act.[48] The General Assembly enacted legislation prohibiting "commercial communications" for legal services from opening with "sensationalized warnings or alerts" that lead consumers to believe they are watching a government-sanctioned medical alert, health alert, consumer alert, or public service announcement.[49] The law bars advertising that is likely to cause consumers to fail to use or to discontinue medications or remove a medical device without appropriate independent medical advice. In addition, it is a deceptive act to misrepresent the risks of a drug or medical device, to leave consumers with the false impression that the risks outweigh the benefits, or to suggest—falsely—that the FDA has recalled the product.

The law also requires advertising claims targeting medications or medical devices to be substantiated by competent and reliable scientific evidence or backed by a final court adjudication on the merits. It authorizes enforcement by the state attorney general, a manufacturer or seller of the medical device or drug, or a consumer who viewed the advertisement against entities involved in or benefiting from the deceptive act, except Indiana-licensed attorneys.[50] Courts are authorized to impose an injunction, order those engaged in deceptive lead generation practices to reimburse or provide other restitution to aggrieved consumers, and require a violator to pay reasonable litigation expenses.[51]

Additional reforms discussed in the next chapter can expand upon this law by addressing other advertising practices that mislead consumers and adversely impact the civil justice system.

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Third-Party Litigation Funding

In 2023 and 2024, Indiana joined a growing number of states that have worked to rein in TPLF,[52] enacting safeguards for both consumer lawsuit lending[53] and commercial litigation financing.[54]

Consumer lawsuit lending often targets the poor and injured, offering cash advances to desperate people to cover personal expenses while a lawsuit is pending in exchange for repayment from the recovery at predatory rates.[55]

In 2023, Indiana enacted legislation amending an earlier statute governing consumer lawsuit lending arrangements—referred to in Indiana as civil proceeding advanced payment (CPAP) agreements—by requiring claimants or their attorneys to provide written notice to other parties and insurers whenever a claimant has entered into such an arrangement with a CPAP provider.[56] The law also provides that the existence and content of consumer CPAP agreements are discoverable under the Indiana Rules of Trial Procedure.

Commercial litigation financing, by comparison, refers to large-scale investment in mass tort litigation or other major litigation or portfolios of cases brought by a law firm. Dedicated commercial litigation finance firms, hedge funds, institutional investors, foreign sovereign wealth funds, and wealthy individuals are investing billions of dollars each year into funding U.S. lawsuits in exchange for a portion of any recovery obtained by a law firm.[57] Experts have observed that litigation financing is

"reshaping every aspect of the litigation process—which cases get brought, how long they are pursued, when are they settled."[58] An outside funder's presence can turn what is traditionally a negotiation between two opposing parties into a multi-party affair with a "behind the scenes" funder interested solely in maximizing a return on their investment. Indeed, major funders recognize, and even tout, that their presence "make[s] it harder and more expensive to settle cases."[59] These arrangements can create serious ethical problems, as often-undisclosed funders may exert control over potential case settlements or other major litigation decisions in place of the law firm's client.[60]

In 2024, the General Assembly addressed these wide-ranging concerns in several ways. The law it enacted prohibits a "commercial litigation financier" from influencing, directing, or making litigation decisions, including decisions about how the underlying civil proceeding is conducted and how any settlement or resolution is reached.[61] It also prohibits a party from disclosing or sharing information with a commercial litigation financier that is subject to a court's sealing or protective order. In addition, the law prohibits a commercial litigation financier from entering into a litigation financing agreement that is directly or indirectly financed by a "foreign entity of concern."[62]

Seat Belt Evidence Reform

In addition to responding to newer developments, in 2024, the General Assembly revisited an archaic law that blindfolded jurors from learning that a person injured in an automobile accident was not wearing a seat belt.[63] This prohibition was adopted at a time when people still questioned the effectiveness of seat belts in preventing injuries.

Since that time, studies have proven that seat belt use "is the most effective way to save lives and reduce injuries in crashes."[64] Today, nearly every state, including Indiana, mandates their use.[65]

Whether or not the occupants of a vehicle wore seat belts is key to accurately evaluating issues in litigation such as causation, allocation of fault, and mitigation of damages. In other words, juries are unable to fairly consider if a person's injuries would have been less severe, or if a person would have survived a crash, if they had properly worn a seat belt. Yet, in Indiana, defense lawyers were generally barred from mentioning seat belt use in court under a gag rule widely viewed as a "vestige of a bygone legal system and an oddity in light of modern societal norms."[66]

Legislation enacted in 2024 provides that evidence of a plaintiff's failure to wear a seat belt is admissible to mitigate damages in a personal injury or wrongful death action if the plaintiff was at least 15 years old at the time of the incident and was inside a motor vehicle manufactured after Sept. 1, 1986, that had at least one inflatable restraint system.[67] In taking this approach, Indiana joined other states in discarding this outdated seat belt gag rule.[68]

Next Steps: Addressing Areas of Rising Importance

While Indiana has a track record of successfully enacting civil justice reforms, maintaining a strong legal environment for business requires a proactive approach to new and evolving challenges. Further action is needed to continue the state's leadership by addressing areas of rising importance, six of which are discussed here.

Noneconomic Damages

Pain and suffering, emotional distress, and other forms of noneconomic damages have long presented significant challenges for the civil justice system. Unlike medical bills or lost wages—which can be documented, calculated, and verified—noneconomic damages redress intangible injuries that are often difficult for judges and juries to reduce to a dollar amount. Although these awards are meant to provide fair compensation, they frequently lead to highly inconsistent results. Similar cases can produce vastly different outcomes, creating concerns that some plaintiffs may receive windfall recoveries while defendants may be subject to unpredictable and disproportionate damage awards.

Personal injury lawyers have also placed greater emphasis on obtaining higher awards for pain and suffering and other noneconomic damages. The U.S. Supreme Court's adoption of due process safeguards against excessive punitive damage awards, combined with state legislative reforms such as Indiana's statutory limit on punitive awards,[69] has left personal injury lawyers to seek alternative ways to obtain jackpot judgments. As a result, noneconomic compensatory damages are increasingly a key driver of "nuclear verdicts" (those above $10 million) in personal injury and wrongful death cases.[70]

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Indiana has long recognized the importance of predictable and fair awards from trial to trial. For example, the legislature has limited the total amount recoverable in medical liability cases to $1.8 million[71] and permitted noneconomic damages up to $300,000 in certain wrongful death cases.[72] Indiana also permits punitive damage awards to be no more than the greater of three times the amount of compensatory damages awarded, or $50,000.[73]

One component of legislation introduced in the 2026 session would set a $1 million maximum for the portion of an award that

compensates for noneconomic losses in personal injury actions.[74] Though that provision was later withdrawn from the bill, it remains an important reform for lawmakers to consider. In taking this approach, Indiana would join 10 other states that have similar laws. For example, Mississippi and Tennessee also have a $1 million maximum.[75]

Some states have a lower level, such as Idaho.[76] Other states, such as Colorado and Maryland, allow slightly higher amounts.[77]

The presence of a noneconomic damages limit has significant implications for state economies. Notably, a forthcoming research publication from ILR and The Brattle Group will note that, if all states that did not have noneconomic damages limits in place in 2022 had adopted such limits, the U.S. would have experienced $81 billion less in tort costs (out of a $529 billion total) in 2022. That would have broken down to about $1.3 billion in savings for Indiana, or nearly $500 per household.[78]

Misleading Lawsuit Advertising Revisited

When Indiana adopted legislation in 2021 to combat misleading lawsuit advertising (discussed in the previous chapter) it was one of the first states to respond to the troubling rise of massive ad campaigns that undermined public health and safety through scaremongering tactics that could lead a person to stop using a prescribed medication or not seek needed treatment.[79] A federal appellate court has upheld one such law as "just the sort of health and safety warnings that have been long considered permissible."[80]

While Indiana has addressed misleading advertising practices that jeopardize public health, it has not tackled deceptive features of other lawsuit ads. These ads often have problematic messages that entice viewers to file a lawsuit by misleading them about how much they are likely to receive, how quickly they will receive it, and even the need to litigate the claim at all.

In addition, lawsuit ads sometimes flash multimillion-dollar verdicts, suggesting that viewers may be entitled to a similar award. What viewers are not told is that courts often significantly reduce such excessive amounts and sometimes throw out the verdict entirely.[81] This practice can also normalize awards at these astronomical levels in the eyes of the public (even though they are far from common), and, by doing so, make it more likely that future jurors will return excessive amounts.

The rapid growth of TPLF—including direct financing of lawsuit advertising and lead generation efforts—has only heightened these concerns.[82]

State legislatures and some courts have started to respond. For example, Georgia enacted a law that prohibits attorneys from falsely portraying actors as clients or making statements likely to lead a person to have an unjustified expectation of future success based on past performance.[83] A Louisiana law requires any legal services ad that refers to a monetary settlement or jury verdict obtained by the advertising attorney to disclose all fees paid to the attorney that are associated with the settlement or award.[84] In addition, the Texas Supreme Court amended a rule regulating advertising of an attorney's past successes to require that "[a] lawyer who knows that an advertised verdict was later reduced or reversed, or never collected, or that the case was settled for a lesser amount, must disclose the amount actually received by the client

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with equal or greater prominence to avoid creating unjustified expectations on the part of potential clients."[85] In 2025, the Alabama Supreme Court similarly updated its rules governing lawyer communications.[86]

Indiana's General Assembly should amend the state's pioneering law to extend to all forms of misleading lawsuit advertising practices. In addition to applying the prohibition on misrepresenting lawsuit ads as public service announcements or consumer alerts, the legislature should stop common deceptive practices that cause consumers to reach erroneous conclusions regarding the need to file a claim, likelihood of success, availability of compensation, or likely amount of recovery.

Such practices include:

- Representing amounts of verdicts, awards, or judgments that do not reflect amounts collected because they were reduced, reversed, or otherwise modified or invalidated by a trial or appellate court;
- Representing individual or aggregate amounts recovered that cannot be verified through court judgments, settlements, or other records;
- Using statements or symbols indicating that the sponsor or the attorney or law firm featured in the advertisement can obtain immediate cash or quick settlements;
- Representing that consumers may qualify or be eligible for compensation from a settlement, fund, verdict, award, or judgment that does not exist or from which compensation is available only to parties to those actions; or
- Representing that consumers can passively obtain compensation through a class action or other means when filing an individual claim is necessary and not disclosed to consumers in the advertisement and when responding to the solicitation.

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Settlement Efficiency

Indiana law has long encouraged parties to resolve disputes without litigation. Under existing law, a party that rejects a reasonable settlement offer risks being on the hook for the other side's attorney's fees.[87] "Qualified settlement offers" subject to fee-shifting must be made in writing at least 30 days before trial and resolve all claims or defenses at issue in the civil action.[88] If the final judgment in the case is less favorable than the terms of the rejected qualified settlement offer, the court must award attorney's fees to the party whose offer was rejected.

For many years, Indiana limited the maximum recovery of attorney's fees to $1,000, with hourly rates capped at $100. The legislature increased these limits to allow recovery up to $5,000 in fees at a rate not to exceed $250 per hour in 2024.[89] Still, these amounts fall well short of reflecting the reasonable costs of legal services today.

The General Assembly should further raise these limits so that the law provides a meaningful incentive for parties to negotiate in good faith to reach fair settlements and offers a more effective deterrent against unnecessary litigation that wastes both party and judicial resources.

Public Nuisance Law

Another emerging litigation trend that warrants legislative attention is the effort by plaintiffs' lawyers to transform public nuisance into a "super tort," capable of imposing sweeping liability on manufacturers of lawful products. Historically, a public nuisance claim provides a means to address disruptive activities on a property that unreasonably interfere with the public's use of land.[90] Traditional public nuisance lawsuits target activities like blocking public roads or using property for gambling, drug-dealing, or prostitution.

As past ILR research has documented, plaintiffs' lawyers have sought to redefine and dramatically expand the concept of "unreasonable interference with public rights," recasting public nuisance as a catch-all doctrine that could apply to an almost limitless range of circumstances.[91]

In a bevy of lawsuits filed across the country, contingency-fee lawyers hired by state and local governments have claimed that manufacturers and distributors of lawful products—including fuel, paint, automobiles, firearms, pharmaceuticals, and even beverages sold in plastic bottles—may be held liable under public nuisance for the societal costs associated with the use (or misuse) of those products. In many such cases, the challenged products are not only lawful but also heavily regulated, widely used, and valued by consumers.

For example, in 2023, Indianapolis sued automakers Kia and Hyundai, alleging they created a public nuisance by making their cars too easy to steal.[92] The lawsuit attempts to sidestep the fact that intervening criminal activity caused the alleged harm.

These attempts to distort public nuisance law erode predictability and fairness in the civil justice system by exposing entire industries to potentially boundless liability untethered from established legal principles. They also risk chilling innovation and destabilizing essential sectors of the economy, such as energy production, by creating

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uncertainty about whether lawful commercial conduct may later be reframed as a "public nuisance." Many courts have rejected attempts to expand public nuisance law and recognized that it is inappropriate to use the judiciary in this manner.[93]

Legislation introduced in Indiana in 2026 would address these concerns by codifying the state's public nuisance law and reaffirming its proper scope.[94] It would make clear that public nuisance doctrine applies only to rights commonly held by all members of the public to the use of public land, air, and water, and must implicate unlawful conditions prohibited by state or federal law. Further, legislation would properly distinguish a government entity and private person's ability to bring a public nuisance action and the available remedies. In doing so, the legislation would reinforce the integrity of Indiana's civil justice system and provide much-needed clarity for businesses, courts, and communities alike.[95]

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Liability for Another's Unlawful Act

Plaintiffs' lawyers have also sought to expand tort liability by targeting property owners and businesses for criminal or unlawful acts committed by others. These lawsuits typically allege that a business failed to anticipate and prevent criminal activity—such as a shooting, robbery, or assault—that occurred on its premises. But such incidents are often sudden, isolated, and inherently difficult to predict, even for entities that take reasonable steps to protect the safety of customers and workers.

Similar liability theories have been advanced against rideshare platforms, asserting that app developers should be held responsible for unlawful acts committed by users of their services. These claims attempt to shift responsibility away from the perpetrators of crimes and instead impose it on businesses with no involvement in, or control over, the alleged wrongdoing.

This growing trend threatens to erode longstanding principles of tort law, which traditionally require a clear causal connection between a defendant's alleged wrongful conduct and the harm that occurred. Holding property owners and businesses financially responsible for others' criminal acts—simply because they have deeper pockets—effectively converts them into insurers against societal violence.

For example, following a tragic mass shooting at a mall food court, the mall's owner and security company were sued for not preventing the attack. There was no reason for the property owner or the mall's security to suspect such a random attack.[96] Nevertheless, the lawsuit broadly alleges that the businesses had a "duty to provide a safe shopping mall," and points to the fact that the shooter wore a large backpack when he entered the property.[97] After lower courts denied a motion to dismiss, finding that the "foreseeability" of even a seemingly random and potentially unpreventable attack must be subject to lengthy litigation, the decision was appealed to the Indiana Supreme Court.[98]

As an amicus brief filed in that case recognized, Indiana court rulings have led to "varied and inconsistent decisions and results," making it "nearly impossible to predict whether a duty exists to prevent this sort of harm."[99] As a result, Indiana businesses have experienced "uncertainty and insecurity as they struggle to determine what

duties they owe to protect their invitees from third-party criminal actions."[100]

The General Assembly should address this issue in a manner that provides clear guidance to business as to their obligations, protects public safety, and avoids unwarranted litigation and excessive liability. Such legislation would also preserve and facilitate access to stores such as supermarkets and pharmacies in high-crime areas.[101] Florida and Georgia both achieved these goals as part of their comprehensive tort reform legislative packages.[102]

Bifurcating Trials

Although jurors are expected to evaluate evidence objectively, the realities of a trial often present circumstances in which strong emotions or juror sympathy for a severely injured plaintiff can overshadow a careful analysis of facts and law.

Recognizing this challenge, state legislatures and courts have turned to trial bifurcation as a tool to reduce undue prejudice that may result from emotionally charged evidence inflaming jurors' passions or skewing their perceptions about a case.

In a bifurcated trial, the jury evaluates liability and damages in two distinct phases. In the first phase, the jury considers only whether the defendant is legally responsible for the alleged harm. Evidence is limited to issues such as duty, breach, causation, and available defenses, without exposing jurors to highly emotional or graphic evidence that is relevant only to the amount of damages and may overwhelm them and hinder their ability to impartially assess liability.

Only if the jury finds a defendant liable does the case proceed to the second phase, which focuses exclusively on damages. At this point, the same jury considers evidence relating to the nature and extent of the plaintiff's injuries, medical treatment, and economic losses, and determines a reasonable award.

Bifurcation can also lead to more efficient proceedings: if a jury finds no liability in the first phase, the trial ends, conserving judicial resources and reducing litigation costs for all parties.

On the other hand, if a jury finds liability, the parties may agree to settle the case, avoiding further litigation and appeals. Even when both phases are necessary, the narrowed focus of each stage often results in more efficient presentation of evidence and a clearer, more organized trial structure.

Indiana should establish a bifurcation option at a party's request in any civil action. Several states have enacted laws along these lines.[103]

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The Judicial Impact on Indiana's Litigation Environment

The Indiana Supreme Court significantly influences the state's litigation environment. It has the final word on matters of state law, including tort liability and interpretations of state statutes and regulations. The court also decides constitutional challenges to legislative efforts to address excessive liability and litigation abuse. On most civil justice issues, the court has respected and complemented the legislature's policy decisions.

Judicial Respect for Legislative Reform

The Indiana Supreme Court has traditionally reinforced the General Assembly's role of setting state policy on civil justice issues.

After Indiana became the first state to adopt medical malpractice reform legislation, the Indiana Supreme Court upheld the statute's constitutionality, emphasizing the law's clear purpose "to protect the health of the citizens of this State by preventing a reduction of healthcare services."[104] The court rejected separate constitutional challenges to the Indiana MMA's limits on damages and attorney's fees, medical review panel requirement, modified statute of limitations, and establishment of a patient's compensation fund.

In doing so, the court observed that medical malpractice claims, "by reason of their potential number and size, pose a special economic threat" to healthcare providers that the Act addresses by "balancing the interests involved."[105]

The Indiana Supreme Court has likewise respected the General Assembly's authority to regulate punitive damages. The court has upheld the constitutionality of Indiana's limit on punitive damages.[106] The court has observed that "for nearly as long as we have had punitive damages in Indiana, we have recognized their controversial nature" and that the legislature's policy judgment regarding punitive awards "is no different" from other exercises of its "broad power to limit common law causes of action and remedies."[107]

Sound Decisions on Key Liability Issues

The Indiana Supreme Court has often rejected invitations to expand liability or endorse practices that could foster lawsuit abuse. Instead, for the most part, it has issued balanced, principled decisions on significant civil justice issues, strengthening predictability and fairness in the state's legal system. Recent decisions illustrate this approach.

Phantom Damages

The Indiana Supreme Court has limited "phantom damages," which refer to charges for medical treatment that may appear on a bill or in a billing system, but no one has paid or will pay due to lower negotiated rates paid by insurers.[108] The court found that although "the discount of a particular provider generally arises out of a contractual relationship with health insurers or government agencies and reflects a number of factors . . . this evidence is of value in the fact-finding process leading to the determination of the reasonable value of medical services."[109] The court subsequently extended this rationale to reimbursements by government payers, finding a discounted amount to be a "probative, relevant measure of the reasonable value of the plaintiff's medical care that the factfinder should consider."[110]

Apex Doctrine

In 2022, the Indiana Supreme Court adopted a framework to address a common litigation tactic in which plaintiffs' lawyers attempt to depose high-ranking corporate executives who have no firsthand knowledge of the events involved in a lawsuit.[111] These "apex depositions" are misused as a tactical weapon to harass corporate officers with intrusive, time-consuming depositions, or to coerce settlements for reasons unrelated to the merits of a claim. In response, courts and legislatures have adopted the "Apex Doctrine," which protects high-level business executives or government officials from being compelled to sit for depositions about matters in which they have no unique personal knowledge.[112]

The Indiana Supreme Court appreciated that "high-ranking officials can be uniquely vulnerable to numerous, repetitive depositions and that parties may seek to depose these individuals for non-truth-seeking purposes."[113] It established "a legal framework that harmonizes [the Apex Doctrine's] underlying principles with [Indiana's] existing discovery rules."[114] Under this approach, a party can show "good cause" exists to block an apex deposition through affidavits stating the executive lacks unique personal knowledge, the information can be obtained through less burdensome means, the deposition would be cumulative or duplicative, or the burden of the deposition outweighs its likely benefit.

Consumer Class Actions

In 2023, the state high court determined that a plaintiff pursuing a class action under the Indiana Deceptive Consumer Sales Act must demonstrate an actual injury to bring a claim.[115] In that case, a consumer who contracted with a roofing company for inspection and repair work—but then refused to permit the company to complete the agreed-upon repairs—challenged the validity of the contract and sought statutory damages on behalf of all customers who had contracted with the company. The court concluded that the consumer lacked standing to sue because he failed to show any alleged deception caused him harm. The court explained that the Act requires a consumer to allege a "loss," and there "can be no 'loss' without actual damages arising from an actual injury."[116]

"The Indiana Supreme Court has often rejected invitations to expand liability or endorse practices that could foster lawsuit abuse. Instead, for the most part, it has issued balanced, principled decisions on significant civil justice issues, strengthening predictability and fairness in the state's legal system."

Insurance Bad Faith

In 2025, the Indiana Supreme Court recognized a "safe harbor" for insurers against bad faith liability when they deposit a policy's limits with the trial court while continuing to defend their insured.[117] The court announced this liability protection in a case involving an insured motorist who crashed into another vehicle and was sued by the driver and passengers of the car he struck in three separate personal injury actions. Fearing exhaustion of the policy's $100,000 limit before addressing each of the claims, the insurer filed an interpleader action and deposited the policy limit with the trial court while continuing to defend the insured motorist in the actions. The Indiana Supreme Court held that insurers adopting this approach satisfy their duty to "try to minimize their insureds' overall liability" and therefore will not be subject to a bad-faith claim alleging the insurer breached its settlement duties.[118]

Scope of Tort Duties

The state high court has declined to expand tort duties in ways that could significantly increase litigation. In 2025, it dismissed a tortious-interference claim against an auto-parts supplier that had denied a private inspection company access to its facility, reaffirming the "treasured right" of property owners to exclude others from their premises.[119] The court held that tort law may not impose a duty granting others access to private property because, "absent a contractual or statutory duty, a landowner is entitled to deny entry onto its premises for any reason or no reason at all."[120]

In a case implicating both motor vehicles and property ownership, the court adopted a "bright-line" rule that property owners owe no duty to motorists on adjacent roadways for alleged visual obstructions confined to their premises.[121] In that case, the spouse of a motorcyclist injured at an intersection brought a negligence claim against the owner of property adjacent to the intersection, alleging tall grass on the property blocked the view of the roadway. The court held that "when a land use or condition that may impose a visual obstruction is wholly contained on a landowner's property, there is no duty to the traveling public."[122]

The Indiana Supreme Court appreciated that "high-ranking officials can be uniquely vulnerable to numerous, repetitive depositions and that parties may seek to depose these individuals for non-truth-seeking purposes."

Liability-Expanding Interpretations of Medical Liability Law

Despite the Indiana Supreme Court's track record of upholding civil justice reform legislation and reaching sound decisions on many liability issues, there are exceptions.[123] Several of these arise in the context of claims brought under the Indiana MMA, where the court has occasionally departed from its otherwise consistent approach.

In 2025, the court held that a trial judge may certify a class of hospital patients while the complaint remains pending before a medical review panel under the MMA.[124] The court determined that although the MMA "generally requires" a medical review panel to issue an opinion before litigation may proceed, class certification represents a "preliminary determination" that may be decided before the panel expresses its view of whether the claims have merit.[125] As the U.S. Supreme Court has explained, the decision to certify a class substantially raises the stakes of litigation and can exert an "in terrorem" effect on defendants, pressuring them to settle regardless of the underlying merits of a case.[126]

In 2024, the Indiana Supreme Court ruled that a plaintiff's medical expert need not specify the applicable standard of care in an affidavit supporting a claim brought under the MMA.[127] The court concluded that the standard of care allegedly violated may be inferred from an expert's affidavit, reversing a court of appeals decision that had required the expert to identify the standard explicitly. In reaching this decision, the state high court overruled its precedents mandating that an expert expressly articulate the applicable standard of care in a supporting affidavit.[128]

In a 2022 case, the court expanded the scope of vicarious liability for medical malpractice by allowing claims against a non-hospital medical facility under an apparent-agency theory.[129] In that case, a patient sued a radiologist who was an independent contractor at a diagnostic imaging center, arguing the center was vicariously liable for the radiologist's alleged negligence despite the absence of an employment relationship. The court agreed, holding that the imaging center could be vicariously liable under an apparent-agency theory and extending the doctrine beyond the traditional doctor-hospital setting.

Despite the Indiana Supreme Court's track record of upholding civil justice reform legislation and reaching sound decisions on many liability issues, there are exceptions.

Conclusion

Indiana's legacy of civil justice reform has historically enabled the state to maintain a litigation environment marked by balance, predictability, and respect for legislative policymaking. As new legal and economic circumstances emerge, the General Assembly should act to carry this legacy forward and advance the conditions of growth and prosperity for all Hoosiers.

Decades of forward-looking legislative action—ranging from medical liability reforms and collateral source modernization to punitive damages limitations and product liability updates—created a framework that promotes fairness and predictability while deterring litigation abuse. More recent reforms addressing COVID-19-related liability, misleading lawsuit advertising, TPLF, and outdated evidentiary restrictions show that the General Assembly is still prepared to act decisively to preserve that framework.

The Indiana Supreme Court has played a largely positive role in maintaining a balanced civil justice system. The court has reinforced legislative policy decisions by upholding the constitutionality of significant reforms, and issued decisions that promote fairness, preserve traditional tort principles, and prevent unwarranted expansions of liability.

Looking ahead, new challenges threaten to undermine Indiana's progress. Escalating noneconomic damage awards; the proliferation of misleading lawsuit advertising; obstacles to efficiently settling litigation; attempts to transform public nuisance law; efforts to shift liability for criminal acts to innocent businesses and property owners; and increasingly inflammatory courtroom tactics all present significant and growing concerns.

Addressing these issues would strengthen Indiana's litigation environment, close emerging avenues for abuse, and reinforce the state's reputation as a national leader for legal reform.

Endnotes

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3 Ind. Code Ann. §§ 34-20 et al. (product liability), 34-51-3-1 et al. (punitive damages).

4 Ind. Code Ann. §§ 24-12-3-1, 24-12-11 (commercial litigation financing), 24-12-4-2 (consumer lawsuit lending).

5 Ind. Code Ann. §§ 34-30-32-1 et seq.

6 Ind. Code Ann. §§ 9-19-10-7, 9-19-11-8.5.

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8 *Id*. at 21-22.

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15 Ind. Code Ann. § 34-18-14-3(a).

16 *See id*.; *see also* Mark Schocke, "The Future of the Indiana Medical Malpractice Act," Indiana Lawyer, July 12, 2016.

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19 Ind. Code Ann. § 34-18-18-1.

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22 *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1, 18 (1991).

23 *See* Victor E. Schwartz et al., The Supreme Court's Common Law Approach to Excessive Punitive Damage Awards: A Guide for the Development of State Law, 60 S.C. L. Rev. 881 (2009).

24 Ind. Code Ann. § 34-51-3-4.

25 Ind. Code Ann. § 34-51-3-2.

26 *See* Schwartz et al., *supra*, at 881.

27 Ind. Code Ann. §§ 34-20-1-1, 34-20-2-3.

28 Ind. Code Ann. §§ 34-20-7-1, 34-20-8-1.

29 Ind. Code Ann. § 34-20-5-1; *see also* Chris Jeter, "DTCI: 15 Years of Court Interpretation on Presumption and Products Liability," Indiana Lawyer, Nov. 4, 2014.

30 Ind. Code Ann. §§ 34-20-6-4, 34-20-6-5.

31 Ind. Code Ann. § 34-20-3-1.

32 Ind. Code Ann. § 34-51-2-6.

33 Ind. Code Ann. § 34-23-1-1.

34 Ind. Code Ann. § 34-23-1-2(c)(3), (e).

35 Ind. Code Ann. § 34-23-1-2(c)(2).

36 Ind. Code Ann. § 34-52-1-1(b).

37 Ind. Code Ann. § 33-37-10-1.

38 S.B. 1, 122d Gen. Assemb., Reg. Sess. (Ind. 2021), codified at Ind. Code §§ 34-30-32-1 et seq.; *see also* Olivia Robinson, "New Indiana Law Gives Employers Civil Tort Immunity Related to COVID-19," KDDK, Feb. 23, 2021.

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43 *See generally* Cary Silverman, *Bad for Your Health: Lawsuit Advertising Implications and Solutions* (U.S. Chamber of Commerce Inst. for Legal Reform, Oct. 2017).

44 *See*, e.g., Pedro A. Serrano et al., Effect of Truvada Lawsuit Advertising on Preexposure Prophylaxis Attitudes and Decisions Among Sexual and Gender Minority Youth and Young Adults at Risk for HIV, 35 AIDS 131-39 (2021); Jesse King & Elizabeth Tippett, Drug Injury Advertising, 18 Yale J. Health Pol'y, L. & Ethics 114 (2019); Christopher F. Tenggardjaja et al., Evaluation of Patients' Perceptions of Mesh Usage in Female Pelvic Medicine and Reconstructive Surgery, 85 Urology 326, 327 (2015).

45 Mohamed Mohamoud et al., Discontinuing of Direct Oral Anticoagulants in Response to Attorney Advertisements: Data from the FDA Adverse Event Reporting System, 53 Annals of Pharmacotherapy 962-63 (Sept. 2019).

46 *See* Am. Med. Ass'n, Press Release, *AMA Adopts New Policies on Final Day of Annual Meeting* (June 15, 2016); *see also* Jessica Karmasek, "AMA: Lawyer Ads Are Alarming Prescription Drug Users, Jeopardizing Health Care," Forbes, July 21, 2016.

47 Am. Med. Ass'n, House of Delegates, Resolution 222 (A-19) (2019) (calling on state legislatures to prohibit attorney advertisements that misuse governmental logos or the term "recall," provide a clear warning on the dangers of stopping a course of treatment without consulting a physician, and require written consent before sharing personal health information).

48 H.B. 1125, 122d Gen. Assemb., Reg. Sess. (Ind. 2021), codified at Ind. Code §§ 24-5-26.5-1 et seq. Other states enacting legislation to address misleading lawsuit ads include Florida (2023), Georgia (2023), Kansas (2022), Louisiana (2022), Tennessee (2019), and West Virginia (2020).

49 Ind. Code Ann. § 24-5-26.5-9.

50 Ind. Code Ann. §§ 24-5-26.5-13, 24-5-26.5-14.

51 Ind. Code Ann. § 24-5-26.5-15.

52 Mark Behrens & Christopher E. Appel, A Survey of State Laws Regulating Third-Party Litigation Funding, 21-8 Mealey's Personal Injury Report (Aug. 2025).

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54 H.B. 1160, 124th Gen. Assemb., Reg. Sess. (Ind. 2024), codified at Ind. Code §§ 24-12-3-1, 24-12-11.

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57 *See The Westfleet Insider: 2023 Litigation Finance Market Report*, at 3 (Westfleet Advisors, 2024) (indicating that major dedicated commercial litigation funders alone reported more than $15 billion invested in U.S. litigation in 2023).

58 Leslie Stahl, "Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight," CBS's "60 Minutes," Dec. 18, 2022 (interview with Prof. Maya Steinitz).

59 Jacob Gershman, "Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight," *Wall St. J.*, Mar. 21, 2018 (quoting Allison Chock, chief investment officer for IMF Bentham's U.S. division (now Omni Bridgeway)).

60 *See* John Beisner et al., *Selling More Lawsuits, Buying More Trouble*, at 18-22 (U.S. Chamber Inst. for Legal Reform, Jan. 2020).

61 The legislation defines a "commercial litigation financier" as "a person that enters into ... a commercial litigation financing agreement *with a plaintiff* in a civil proceeding," which may significantly limit the law's effect because commercial TPLF arrangements are typically between a funder and a plaintiff's lawyer or law firm, not "with a plaintiff." Behrens & Appel, *supra*, at 6 (discussing Indiana's law).

62 Ind. Code Ann. § 24-12-11-1.

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64 *See generally* Centers for Disease Control & Prevention, "Facts About Seat Belt Use," https://www.cdc.gov/ (Apr. 24, 2024) (citing studies).

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66 *Nabors Wells Svcs., Ltd. v. Romero*, 456 S.W.2d 553, 555 (Tex. 2015).

67 Ind. Code Ann. §§ 9-19-10-7, 9-19-11-8.5.

68 H.B. 57, 1st Extraordinary Sess., (La. 2020) (repealing La. Rev. Stat. § 32:295.1(E)); S.B. 439 (W. Va. 2021), codified at W. Va. Code Ann. § 17C-15-49a).

69 Ind. Code Ann. § 34-51-3-4.

70 *See generally* Cary Silverman & Christopher E. Appel, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* (U.S. Chamber Inst. for Legal Reform, May 2024).

71 Ind. Code Ann. § 34-18-14-3(a).

72 Ind. Code Ann. § 34-23-1-2(c)(3), (e).

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74 H.B. 1417 (Ind. 2026).

75 Miss. Code Ann. § 11-1-60(2)(b); Tenn. Code § 29-39-102 (limiting noneconomic damages awards to $750,000 for each injured plaintiff, which rises to $1 million in cases involving certain catastrophic injuries or deaths).

76 Idaho Code § 6-1603 (2025); Idaho Indus. Comm'n, *Benefits—Non-Economic Caps Effective 07/01/25* (July 2025) (As of July 1, 2025, Idaho's noneconomic damage cap is $509,013.28); Okla. Stat. tit. 23, § 61.3 (limiting noneconomic damages in personal injury cases to $500,000, but allowing up to $1 million in cases of permanent mental injury, and providing an exception in cases involving a defined permanent and severe physical injuries); *see also* Alaska Stat. § 09.17.010 (limiting noneconomic damages in personal injury cases to the greater of $400,000 or injured person's life expectancy in years multiplied by $8,000, and, in cases involving "severe physical impairment or severe disfigurement," setting the maximum at the greater of $1 million or injured person's life expectancy in years multiplied by $25,000).

77 Colo. Rev. Stat. §§ 13-21-102.5(3)(a), 13-21-203(1) ($1.5 million in any tort action other than medical liability actions, and to $2.125 million for surviving parties entitled to bring wrongful death actions); Md. Cts. & Jud. Proc. Code § 11-108 (limiting noneconomic damages in personal injury actions to $965,000, as adjusted in October 2025 (rising $15,000 each year), and permiting an award of 150% of this cap in certain wrongful death actions ($1,447,500)).

78 David McKnight & Paul Hinton, *Tort Costs in America: The Impact of Limits on Noneconomic Damages* (U.S. Chamber Inst. for Legal Reform, forthcoming in 2026).

79 At least six other states have joined Indiana in adopting legislation to address misleading lawsuit ads, including Florida, Kansas, Louisiana, Tennessee, Texas, and West Virginia. These laws vary from state to state, but most, like Indiana, prohibit common misleading practices, such as presenting a lawsuit ad as a "medical alert," implying the content of the advertisement is government-approved, or suggesting a product has been recalled when it has not. Some laws include provisions that protect the public by prohibiting the sale or misuse of a person's private medical records to solicit that person to file or join a lawsuit. *See* Fla. Stat. Ann. § 501.139 (enacted 2023); Ga. Code Ann. §§ 10-1-424.1, 10-1-427, 51-1-57 (enacted 2023); Ind. Code §§ 24-5-26.5 et seq. (enacted 2021); Kan. Stat. Ann. §§ 50-6,144, 50-6,145 (enacted 2022); La. Rev. Stat. § 51:3221 (enacted 2022); Tenn. Code Ann. §§ 47-18-3001 et seq. (enacted 2019); W. Va. Code Ann. §§ 47-28-1 et seq. (enacted 2020).

80 *Recht v. Morrisey*, 32 F.4th 398, 417 (4th Cir. 2022).

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84 S.B. 115 (La. 2020), codified at La. Rev. Stat. § 37:223.

85 Order Amending Comment 10 to Rule 7.01 of the Texas Disciplinary Rules of Professional Conduct, Misc. Docket No. 22-9011 (Tex. Jan. 31, 2022).

86 Order on Alabama Rules of Professional Conduct and Rules of Disciplinary Procedure (Ala. May 13, 2025).

87 Ind. Code Ann. § 34-50-1-6.

88 Ind. Code Ann. §§ 34-50-1-1 et al.

89 Ind. P.L. 117 (2024) (S.E.A. No. 226).

90 *See generally* Victor Schwartz & Phil Goldberg, The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort, 45 Washburn L.J. 541 (2006).

91 *See* Elbert Lin et al., *Taming the Litigation Monster: The Continued Threat of Public Nuisance Litigation* (U.S. Chamber Inst. for Legal Reform, Dec. 2022).

92 *See* Tyler Fenwick, "'Profits Over Public Safety': Indianapolis Files Suit Against Kia, Hyundai for Shoddy Anti-theft Features," Ind. Lawyer, July 20, 2023.

93 *See*, e.g., *In re Nat'l Prescription Opiate Litig.*, 265 N.E.3d 1, 10-11 (Ohio 2024); *People v. PepsiCo., Inc.*, 222 N.Y.S.3d 907, 916 (N.Y. Sup. Ct., Erie County, Oct. 31, 2024); *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. 2021); *State v. Lead Indus. Ass'n*, 951 A.2d 428, 447 (R.I. 2008); *In re Lead Paint Litig.*, 924 A.2d 484, 501 (N.J. 2007); *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1114-16 (Ill. 2004).

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95 Prior to amendment, H.B. 1417 also included a provision that would have explicitly recognized that making or selling a product (for which Indiana has product liability laws) cannot constitute a public nuisance.

96 Arleigh Rodgers & Rick Callahan, "Mall Shooter Told Ex He Would `Take Others' If He Died," Assoc. Press, Dec. 21, 2022.

97 *See* Tom Davies, "Fate of Greenwood Mall Shooting Lawsuit Now with Indiana Supreme Court," Indiana Capital Chronicle, Jan. 16, 2026.

98 *See Simon Property Group, L.P. v. Stewart*, 263 N.E.3d 776 (Ind. Ct. App. 2025), on appeal to Indiana Supreme Court (oral argument heard before the Indiana Supreme Court on Jan. 15, 2026).

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100 *Id.* at 12.

101 Georgia enacted legislation setting standards for negligent security cases after a string of nuclear verdicts against businesses including Kroger and CVS. *See* William Rabb, "Insurers for High Crime Areas on Notice After Georgia Court Affirms $43M Verdict," Ins. J., Nov. 12, 2021.

102 *See* H.B. 837, §§ 7, 8 (Fla. 2023); S.B. 68, § 6 (Ga. 2025).

103 *See* S.B. 68, § 6 (Ga. 2025) (to be codified at Ga. Code 51-12-15); *see also* 22 N.Y. CRR § 202.42(a) ("Judges are encouraged to order a bifurcated trial of the issues of liability and damages in any action for personal injury where it appears that bifurcation may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action."). Other states similarly require, upon request, bifurcation of a jury's consideration of compensatory and punitive damage claims so that evidence supporting a punitive award does not taint—and inflate—the compensatory damages award. *See, e.g.*, Mo. Rev. Stat. § 510.263; N.C. Gen. Stat. § 1d-30; Ohio Rev. Code Ann. § 2315.21(B); Tex. Civ. Prac. & Rem. Code Ann. § 41.009(a).

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105 *Id.* at 597, 604.

106 *State v. Doe*, 987 N.E.2d 1066 (Ind. 2013).

107 *Id.* at 1069, 1072.

108 *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009).

109 *Id.* at 858.

110 *Patchett v. Lee*, 60 N.E.3d 1025, 1027 (Ind. 2016).

111 *National Collegiate Athletic Ass'n v. Finnerty*, 191 N.E.3d 211 (Ind. 2022).

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113 *Finnerty*, 191 N.E.3d at 221.

114 *Id.* at 217.

115 *Hoosier Contractors, LLC v. Gardner*, 212 N.E.3d 1234 (Ind. 2023).

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125 *Id.* at 383.

126 *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011).

127 *Korakis v. Memorial Hosp. of South Bend*, 225 N.E.3d 760 (Ind. 2024).

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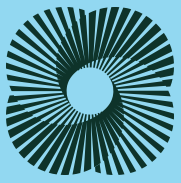

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