

To: All ALEC Task Force Members

RE: Sunset Procedures

The Board of Directors has approved a set of procedures for reviewing all ALEC Model Legislation and resolutions. All model legislation must be reviewed before every 5<sup>th</sup> year after the bill has been adopted or re-reviewed by the Task Force and the ALEC Board. All model legislation under review is eligible for sunset according to the five year sunset review process. The entire process is outlined in this packet and should answer most questions. The upcoming task force meeting at the 2012 States and Nation Policy Summit in Washington DC will have a different focus than previous task force meetings. Most task forces will be reviewing dozens of past ALEC bills and resolutions.

ALEC's Board of the Directors and staff adopted this sunset procedure to enable all ALEC bills to be reviewed and updated as needed on a reasonable basis. This process has already proved that some legislation served its purpose and is no longer needed. We believe this will result in ALEC having clear and relevant legislation and policies that legislators are proud to promote.

The following is a quick executive overview of the process:

- Staff recommends which bills should be retained, amended or sent to sunset. All recommendations are sent for review to the Task Force Executive Committee.
- The Task Force Executive Committee will review staff recommendations. Bill and resolutions approved by two thirds of the Executive Committee will be sent directly to the ALEC Board. Any bill that is amended or requested to be reviewed will be sent to the full Task Force.
- The Full Task Force will review all bills the Executive Committee recommended for review, amendment, and bills that failed to receive a two thirds majority vote.
- All Task Force recommendations regarding model bills and resolutions to be sunset or retained shall be sent to the ALEC Board of Directors.
- The ALEC Board of Directors will vote on all bills that are to either be sunset or retained.

If you have any questions about this process please either contact your Task Force Director or you may contact me directly.

Sincerely,

Michael D. Bowman  
Senior Director of Policy & Strategic Initiatives

## Five Year Sunset Model Legislation and Resolutions

All ALEC model bills and resolutions will have an original adoption date and five year sunset date which can be renewed by a vote of the Task Force Executive Committee or the full Task Force and the ALEC Board of Directors.

All bills or model resolutions that are four years from adoption date will have one year for the Task Force to review and vote on whether to extend another five years. The Task Force Director will transmit all four year old model bills and resolutions to the Task Force Executive Committee no later than 65 Days before the next Task Force Meeting.

In the 65 Day Notice ALEC Staff will make one of the following recommendations for each four year model bill or resolution to the Task Force Executive Committee.

- The policy should sunset
- The policy should be amended
- The policy should be retained

The Task Force Co Chairs may appoint a special committee to review the recommendations from the ALEC staff. Executive Committees are to vote 40 Days prior the next Task Force Meeting. The Executive Committees shall vote by phone, in person, or by any electronic means.

If a two-thirds majority of the Task Force Executive Committee votes to retain the model bill or resolution that action is to be reported to the full Task Force. The model bill or resolution will be directly transmitted to the Board for consideration. No Task Force vote is necessary since the model bill or resolution is existing policy and both the Task Force Executive Committee and the Board will vote to extend the sunset.

If a majority of the Task Force Executive Committee agrees to sunset, amend, or retain the model bill or resolution the model policy moves onto the full Task Force. The Task Force Executive Committee will transmit all model bills that are to expire as sunset or that are to be amended to the full Task Force. At the Co-Chairs discretion, any bill or resolution up for task force consideration may be placed on the consent slate that will go before the full Task Force.

Any member of the Task Force may make a motion to separate any model bill or resolution from the Consent calendar but must have an additional four members of the Task Force rise in support to second the motion. It would take a majority of the public and private sector bill to take any action on the model bill or resolution.

All model bills retained, amended, or sunset will go before the public sector board for approval before adoption as described in Section IX.

Bills Needing to be Updated	Model Bills 5 years and older that have been recommended by the Civil Justice Task Force Executive Committee to be retained until updated.	
Bill Name	Description	Recommendation
Asbestos Claims Transparency Act	The Act provides a solution to the problem of the growing disconnect between compensation paid via the tort system and compensation provided through asbestos bankruptcy trusts. By requiring full and timely disclosure of all actual and potential asbestos claims, the Act facilitates communication between the asbestos trusts and the tort system in an effort to keep claimants from collecting damages from both sources. In doing so, the Act helps to ensure fair and appropriate compensation to asbestos claimants and avoid double recovery.	<b>RETAIN UNTIL UPDATE</b>
Joint and Several Liability Act	The Act provides that each defendant is liable only for damages in direct proportion to that defendant's fault. The Act also provides for consideration of fault of non-parties when assessing percentages of fault. Joint liability is imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act.	<b>RETAIN UNTIL UPDATE (Update being considered in the Fair Share Act to be discussed at this meeting)</b>
Litigation Accountability Act	This Act sets forth guidelines and procedures for determining when it is appropriate to impose sanctions for frivolous actions. Specifically, the Act states that an attorney or party who has brought or defended a civil action that a court determines lacks substantial justification either in whole or in part will be assessed court costs and attorneys' fees.	<b>RETAIN UNTIL UPDATE</b>
Noneconomic Damage Awards Act	The Act provides that an award for noneconomic damages shall be limited to a specific amount [the Act suggests \$250,000] or the amount awarded in economic damages, whichever amount is greater. Economic damages are fully compensated and are not subject to the limitation.	<b>RETAIN UNTIL UPDATE (Update recommended: remove the \$250,000 amount on the cap and instead allow states to decide on the number based on state comparison data)</b>

Retained Bills	Model Bills 5 years and older that have been approved by the Civil Justice Task Force Executive Committee to be retained. These bills will be sent to the ALEC Board of Directors for final approval.	
Bill Name	Description	Vote of Executive Committee
Admissibility in Civil Actions of Nonuse of a Seatbelt Act	The Act states that in civil actions a violation of the mandatory seatbelt usage statute does not establish negligence as a matter of law or negligence <i>per se</i> for comparative fault purposes, but the violation may be considered as evidence of comparative negligence or as evidence of failure to mitigate damages.	<b>RETAINED</b>
Alternative Dispute Resolution Act	The Act provides parties to a lawsuit with choices for resolving their dispute that save time and money, when compared to formal court proceedings, by encouraging alternative dispute resolution (ADR) procedures. Specifically, the Act requires the Chief Justice of the state supreme court to establish within each court of general jurisdiction an ADR program that includes procedures for limited discovery, confidential proceedings, and nonjudicial assistance in evaluating parties' claims. The program must also establish standards for determining which cases are appropriate for ADR, and consider specific factors. Further, the Act provides that if the parties choose outcome-determinative mediation, and a party subsequently rejects that outcome and proceeds with litigation, that party will be responsible for the opposing party's attorneys' fees and costs if the final judgment deviates more than ten percent from the rejected ADR outcome.	<b>RETAINED</b>

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Appeal Bond Waiver Act	In many states, a party must post a supersedeas bond prior to appealing a final court judgment. In some states, the amount of the bond is set at the discretion of the court, while in others, it is set by a statute and can be as much as 150 percent of the amount of the judgment. This bond is designed to protect a plaintiff who is successful at trial from being unable to enforce a judgment against an insolvent debtor after the case has been appealed. However, these bond laws were enacted at a time when million- and billion-dollar judgments were virtually unheard of. In the current system, these laws effectively deprive defendants of their fundamental right to an appeal. The Act addresses this problem by limiting the amount of the bond required in certain civil cases while still providing assurance that the defendant's funds would be available to satisfy the judgment after appeal.	<b>RETAINED</b>
Asbestos and Silica Claims Priorities Act	The Act provides a streamlined process within the tort system based on objective medical criteria that gives priority to individuals that suffer as a result of asbestos or silica exposure. The Act also contains reforms to curb forum shopping and prevent the improper joinder of asbestos and silica claims.	<b>RETAINED</b>
Asbestos Claims Transparency Act	The Act provides a solution to the problem of the growing disconnect between compensation paid via the tort system and compensation provided through asbestos bankruptcy trusts. By requiring full and timely disclosure of all actual and potential asbestos claims, the Act facilitates communication between the asbestos trusts and the tort system in an effort to keep claimants from collecting damages from both sources. In doing so, the Act helps to ensure fair and appropriate compensation to asbestos claimants and avoid double recovery.	<b>RETAINED</b>

Assumption of Risk Act	<p>Courts in some states have held that when the legislature adopted a comparative fault statute, which bases the award to the plaintiff on the defendant's percentage of responsibility for the injury to plaintiff, the legislature abolished the defense of assumption of the risk. The Act states that the assumption of risk defense remains a defense to liability. Under the Act, an individual will have assumed the risk of harm when he/she: (1) knew of and appreciated the risk; and (2) voluntarily exposed himself or herself to the danger that proximately caused the injury or damage.</p>	<b>RETAINED</b>
Class Actions Improvement Act	<p>This Act seeks to curb class action abuse by making several revisions to the basic class action statute or rule that has been adopted in some form by most states (i.e. Rule 23 of the Federal Rule of Civil Procedure). For the most part, the revisions clarify Rule 23 by making more explicit key interpretations of the rule that have been offered in recent years by federal (and some state) courts. In particular, the Act tracks Rule 23, principally making five changes that states could adopt in an effort to achieve modest (but significant) improvements to their statutes and/or court rules governing the use of the class action device.</p>	<b>RETAINED</b>
Commonsense Consumption Act	<p>The Act clarifies the separation of powers among the branches of government with regard to food issues. It prohibits courts from allowing novel legal theories to support lawsuits against the food industry for obesity, weight gain or health conditions related to obesity, weight gain or cumulative consumption as means of regulating industry.</p>	<b>RETAINED</b>

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Comparative Fault Act	The Act adopts a modified comparative fault system that bars a plaintiff's recovery where his or her fault exceeds that of the defendants and nonparties. The Act also requires assessment of the fault of nonparties, guaranteeing that named parties are not assigned artificially high percentages of responsibility. It further provides for an assumption of risk defense.	<b>RETAINED</b>
Fair Notice and Market Stability Act	The Act's purpose is to make clear that state court judgments are not meant to serve as <i>de facto</i> regulations. The Act sets out to achieve this goal and sustain a healthy judiciary while ensuring market stability by: (1) requiring that public policy decisions be made in open public proceedings with considerations of a broad range of concerns and interests; (2) limiting the impact of individual disputes to those named individuals; (3) providing a mechanism for defining appropriate conduct when a court overturns a statute or regulation; (4) clarifying that a state court judgment has no force or effect in other states; and (5) providing a defense from damages for relying upon or complying with legal regulations.	<b>RETAINED</b>

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Forum Non Conveniens Act	<p>The Act states that where a plaintiff is not a legal resident of the United States, a court may choose to stay or dismiss the claim under the doctrine of <i>forum non conveniens</i> where a more appropriate venue exists outside the state. With respect to a plaintiff who is a legal resident of the United States, a legal action may be stayed or dismissed under the doctrine of <i>forum non conveniens</i> if the party seeking to stay or dismiss the action proves by preponderance of the evidence that: (1) an alternate forum exists in which the claim or action may be tried; (2) the alternate forum provides an adequate remedy; (3) maintenance of the claim or action in the courts of the state would work a substantial injustice to the moving party; (4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim; (5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and (6) the stay or dismissal would not result unreasonable duplication or proliferation of litigation.</p>	<b>RETAINED</b>
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Full and Fair Noneconomic Damages Act	Pain and suffering awards are intended to compensate an injured plaintiff for the pain and suffering resulting from an injury caused by the defendant. They are not intended as punishment for the defendant or to deter future misconduct. Constitutional and statutory controls increasingly have been placed on punitive damages, but few legal guideposts exist to help jurors fix the amount of pain and suffering awards. As a result, there is an incentive for some to seek to drive up the amount of pain and suffering awards by focusing on the defendant's alleged misconduct. Jurors calculating the amount of these awards may be excessively influenced by the presentations of the parties at trial. Pain and suffering awards may therefore be improperly influenced by bias, passion, or prejudice. The Act precludes the improper use of "bad act" evidence in the calculation of pain and suffering damages. It also enhances the opportunities for meaningful judicial review of such awards.	<b>RETAINED</b>
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<p>Intrastate Forum Shopping Abuse Reform Act</p>	<p>Forum shopping has become a significant problem in civil litigation. Certain counties have become magnets for attracting claims with little or no connection to that county. The burdens placed on these magnets courts are unfair to the residents of those counties, who are forced to wait in line behind claims that would more appropriately be heard elsewhere. For residents of those counties, justice delayed is justice denied. Venue rules exist to ensure that claims are brought in the proper county within a state. The Act reforms venue rules to ensure that claims have a direct relationship with the county in which they are filed. Specifically, the Act provides that venue is appropriate in the county where: 1) the plaintiff resides; 2) where all or a substantial part of the events or omissions giving rise to the claim occurred; or 3) where the defendant resides or if the defendant is not a natural person, where the defendant's principal office in the state is located (and if inapplicable where the defendant's agent for service of process is located). The Act also includes the reasonable requirement in cases involving multiple plaintiffs that venue must be proper as to each plaintiff, although it allows for certain exceptions.</p>	<p><b>RETAINED</b></p>
<p>Joint and Several Liability Act</p>	<p>The Act provides that each defendant is liable only for damages in direct proportion to that defendant's fault. The Act also provides for consideration of fault of non-parties when assessing percentages of fault. Joint liability is imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act.</p>	<p><b>RETAINED</b></p>

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Jury Patriotism Act	<p>Improving the jury system is an important civic endeavor. Litigators frequently observe that if juries included a fair share of business owners, professionals, and working Americans, then they would be more likely to reach well-reasoned decisions and there might be fewer excessive and bizarre verdicts. The Act addresses and breaks down each of the barriers to jury service. It increases the flexibility of jury service by providing an easy postponement procedure that would allow any juror to reschedule service once for any reason. It eliminates long terms of service in favor of a one-day/one-trial system. To address financial hardship issues that undermine citizen participation in lengthy civil trials, the Act provides wage replacement or supplementation through a "lengthy trial fund" financed by court filing fees. The Act eliminates all automatic disqualifications or exemptions based on occupation. It also provides guidance to the courts with respect to the acceptable grounds to excuse a prospective juror from service. Finally, the Act increases the penalty for those who ignore a juror summons to better reflect the importance of jury service to society.</p>	<b>RETAINED</b>
Landowners' Liability Act	<p>The Act encourages landowners to make land and water areas available to the public for educational and recreational purposes by limiting the owners liability toward persons entering thereon for such purposes. The Act provides that owners of land may be compensated for expenditures incurred in defense against frivolous or purposeless suits arising under this Act.</p>	<b>RETAINED</b>

<p>Legal Consumers' Bill of Rights Act</p>	<p>The Act provides a "Legal Consumer's Bill of Rights" that: (1) identifies basic rights for every injured person in a state who may need the services of a personal injury lawyer; (2) promotes the free flow of information between injured consumers and personal injury lawyers; and (3) lessens economic burdens on the public. By requiring consumers to be given more information about legal services, the Act increases the efficiency of the market for legal services and lessens the current imbalance of information between personal injury lawyers and their clients. Consumers become empowered to be smarter shoppers for legal services.</p>	<p><b>RETAINED</b></p>
<p>Limits on Multiple Punitive Damages Resolution</p>	<p>The Resolution supports the principle of limiting the multiple imposition of punitive damages for harms arising out of a single act or course of conduct</p>	<p><b>RETAINED</b></p>
<p>Notice and Opportunity to Repair Act</p>	<p>The Act finds that alternative methods are needed to resolve legitimate construction disputes that would reduce the need for litigation while adequately protecting the rights of homeowners. The Act offers an alternative dispute resolution (ADR) mechanism that involves the claimant filing a notice of claim with the contractor that the claimant asserts is responsible for the defect, and providing the contractor with the opportunity to resolve the claim without litigation.</p>	<p><b>RETAINED</b></p>
<p>Periodic Payment of Judgments Act</p>	<p>The Act modifies the common law rule requiring that judgments be paid as a lump sum. The modifications provided by the Act allow a claimant to be paid in two or more installments funded by an annuity, by a casualty insurer, or by other satisfactory means.</p>	<p><b>RETAINED</b></p>
<p>Prejudgment and Post-judgment Act</p>	<p>The Act provides for the reform of statutory interest rates for both prejudgment and post-judgment interest and pegs these interest rates to the U.S. Treasury rate. The Act also provides a six month exception to prejudgment interest and a provision encouraging offers of settlement.</p>	<p><b>RETAINED</b></p>

Private Enforcement of Consumer Protection Statutes Act	<p>A more recent form of regulation through litigation comes in the form of state consumer protection act (CPA) litigation. Modeled after the Federal Trade Commission Act (FTC), state consumer protection acts are often referred to as “baby FTCs.” However, unlike the FTC Act, state CPAs provide consumers with a private right of action. In addition, state CPAs are often broadly worded, and many do not explicitly require claimants to show reliance, intent, or even injury. The lack of such requirements has created an incentive to sue and opened up a realm of litigation that has the potential to destroy businesses, raise consumer costs, and remove from the market the many product choices that Americans enjoy. The Act offers several helpful amendments to a state’s CPA. First, it limits damages to an injured party’s “out-of-pocket” loss (i.e. the difference between what was paid for the product or service and what it was worth in the absence of the unlawful act or practice). Second, it provides defendants with 10 day notice prior to a claim being filed to improve the opportunity for early settlement. Third, it requires “clear and convincing” evidence to support an award of statutory damages such as a compensatory damages multiplier, and requires a court to consider enumerated factors in awarding any “enhanced” damages. Fourth, it limits damages recoverable under class actions to actual out-of-pocket losses, and precludes punitive or exemplary damages for such actions. Finally, it limits attorney fee awards to willful acts of public deception and bad faith.</p>	<b>RETAINED</b>
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Regulatory Class Action Reform Act	<p>Regulatory class actions – in which plaintiff attorneys seek not only to win large monetary awards, but also to regulate the marketplace and manage relations between regulated firms and consumers – empower private attorneys with personal agendas to act as <i>de facto</i> regulators. Recognizing the threat to democratic principles and public accountability posed by regulatory class actions, the Texas legislature in 2003 enacted comprehensive class action reform legislation that contains a specific provision designed to ensure that regulatory authority statutorily invested in administrative agencies will not be usurped by courts through regulatory class actions. The Act mimics this provision in the Texas law by providing that before deciding a motion to certify a class action, the court shall rule on all pending motions asserting lack of jurisdiction because an agency of the state has exclusive or primary jurisdiction over the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. It further provides that the ruling of the court shall be reflected in a written order. If a motion provided for in the Act is denied and a class is subsequently certified, a person may obtain immediate appellate review of the order denying the motion.</p>	<b>RETAINED</b>
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Regulatory Compliance Congruity with Liability Act	<p>The Act assures that a state's regulatory system is congruent with its civil justice system and that these two principal areas of law do not work against each other. The Act does not give a free pass from liability to a business whose product or service causes harm. Rather, the legislation creates a supposition of propriety when producers meet existing government standards and regulations. The Act attempts to re-focus liability on those manufacturers and service providers that do not follow the law, and, as a corollary, provide an incentive for producers to comply with all regulatory standards. The Act provides three options to state legislators. Under the first option, if a product or service is in compliance with regulatory standards or was approved by a government agency, its manufacturer or provider is not subject to liability for claims related to the aspect of the product or service that is in line with government regulations. Under the second option, it would be presumed in court that a product or service that complies with government regulations is not subject to liability unless a plaintiff provides proof that overcomes that presumption. The third option embraces the principles that a person or business should not be punished when it follows the law and allows no punitive damages when the business is compliant with the law.</p>	<b>RETAINED</b>
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Reliability in Expert Testimony Standards Act	The Act is designed to ensure that state courts follow the same guidelines for admitting expert opinions about scientific and technical matters as judges in the federal courts. Under the Act, a proffered scientific opinion must have developed in accordance with the scientific method. The Act specifically requires courts to follow the standards and approach of <i>Daubert v. Merrell Dow Pharm., Inc.</i> , 509 U.S. 579 (1993), and its progeny. By ensuring that the federal and state standards are similar, the Act prevents forum shopping and keeps state courts from being flooded with “junk science” cases that cannot pass muster in federal courts.	<b>RETAINED</b>
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<p>Resolution in Support of Efforts to Promote Impartial, Independent and Highly-Qualified State Judiciaries</p>	<p>The Resolution encourages states that elect judges to consider options for encouraging well-qualified candidates to seek judicial office, increasing information available to the public with respect to candidate qualifications, and promoting independence and impartiality in the courts. Options to achieve these goals with regard to elected judges include: (1) increasing the level of legal experience required to be a judicial candidate; (2) requiring judicial candidates to complete a professional judicial education course on judicial ethics, administration, and other subjects relevant to judicial performance; (3) forming nonpartisan judicial qualification review committees that would ensure that candidates meet the minimum legal experience criteria set by law, complete required professional judicial education coursework, and issue non-binding evaluations of judicial candidates, including incumbent judges; (4) extending terms of service for members of the judiciary where terms are relatively short or retirement ages are unreasonably early to reduce excessive political influence and alleviate the burden of campaigning and fundraising on the judiciary; and (5) increasing judicial compensation where needed to encourage highly-qualified candidates to run for office and to retain qualified judges. In states employing a judicial appointment process, the Resolution supports bipartisan nominee qualification review committees made up of lawyers and non-lawyers that make recommendations to the legislature prior to its confirmation.</p>	<p><b>RETAINED</b></p>
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<p>Resolution on Animal Liability and Guardianship</p>	<p>The Resolution opposes legislation that reclassifies pet, livestock or animal owners as guardians or that otherwise alters the legal status of animals. It also opposes legislation that attempts to create: (1) the recovery of any type of non-economic damages for the loss or injury of a pet, livestock or other animal; (2) the inclusion of any type of non-economic damages in assessing economic damages, which are objectively verifiable monetary losses, or exemplary damages, which are damages awarded to penalize or punish a defendant; and (3) the redefining of the tort of negligent infliction of emotion distress to allow people to recover emotional distress damages in litigation involving animals.</p>	<p><b>RETAINED</b></p>
<p>Resolution on Protective Orders</p>	<p>The Resolution supports the idea that legislation relating to protective orders and sealed settlement agreements in civil litigation should ensure that: (1) a balance is maintained between the public's right to know and the protection of privacy, confidential, proprietary, and trade secret information; (2) the right of parties to protect the confidentiality of the terms of their private settlements and the integrity of judicial protective orders is preserved; and (3) the public's right to the assurance of safe products in the marketplace is protected by a requirement of notification to appropriate state or federal agencies with safety oversight over particular products.</p>	<p><b>RETAINED</b></p>
<p>Resolution Opposing Unfair Federal Consent Decrees</p>	<p>The Resolution supports policy ensuring that federal consent decrees are narrowly drafted, limited in duration, and respectful of state and local interests and policy judgments. The Resolution indirectly supports adoption by Congress of the Federal Consent Decree Fairness Act, which would impose requirements on consent decrees to effectively restrict the ability of federal judges to use such consent decrees to make policy decisions in place of state and local officials.</p>	<p><b>RETAINED</b></p>

<p>Ten-Year Statute of Repose Act</p>	<p>Statutes of repose prohibit filing of claims beyond a specified period of time after the date of sale of a product or provision of a service. The Act provides that a plaintiff must commence a cause of action within 10 years after the purchase date of the product alleged to have caused an injury during use or consumption; the date of the last professional action alleged to have caused the harm; or the date of substantial completion of the construction that is alleged to have caused the harm. It provides an exception for harms resulting from exposure to a toxic substance that was not manifest for more than 10 years after the final exposure to the toxic substance.</p>	<p><b>RETAINED</b></p>
<p>Volunteer Immunity and Charitable Organization Liability Limit Act</p>	<p>The Act is intended to promote the formation, financial stability, and healthy operation of charitable organizations and to encourage volunteer and charitable organizations by limiting the exposure of organizations and volunteers to lawsuits arising from their charitable activities. The Act provides that volunteers serving charitable organizations, and who act in good faith within the scope of their duties, are generally immune from liability, except to the extent of any existing applicable insurance coverage. The Act also limits a volunteer or charitable organization's actual damages to \$300,000 for each person, \$1,000,000 for each single occurrence of bodily injury or death, and \$100,000 for each act of property damage or any other injury. The Act does not apply to any acts or omissions by a volunteer or charitable organization that constitute intentional wrongdoing or that are done with reckless disregard for the safety of others.</p>	<p><b>RETAINED</b></p>

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Punitive Damages Standards Act	<p>The Act combines several tort reforms related to punitive damages into one bill. First, similar to other ALEC proposals, the Act requires a plaintiff to notify the defendant(s) prior to filing the lawsuit and make a good faith attempt at settlement. Second, the Act requires bifurcation of punitive damages when requested by any defendant, and, similar to the Full and Fair Noneconomic Damages Act, separates the “bad act” evidence from influencing the compensatory award. Third, the Act sets forth criteria for determining punitive damages, which prohibit consideration of a defendant’s wealth and incorporate guidelines set by the U.S. Supreme Court. Fourth, the Act requires clear and convincing evidence to support a punitive award. Fifth, it limits punitive damages to two times the compensatory award or \$250,000, whichever is greater. Sixth, it establishes a compliance with the FDA defense.</p>	<b>RETAIN UNTIL UPDATE</b>
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<p>Quality Education and Teacher and Principal Protection Act</p>	<p>The Act states that the filing of meritless lawsuits against school districts, teachers and administrators, and other school employees interferes with attempts to ensure the quality of public education, particularly where such lawsuits arise out of the good-faith efforts of educators to maintain classroom discipline or address threats to student safety. Meritless litigation also diverts financial and personnel resources to litigation defense activities, and reduces the availability of such resources for educational opportunities for students. The Act provides that entities of public education and their employees are generally not be liable with regard to the supervision, grading, suspension, expulsion, or discipline of students. The Act also specifically covers false reports against school personnel by both students and adults. In addition, the Act places the burden of proof on the plaintiff in maintaining any action, prohibits punitive damages against such public entities or their employees, provides for attorneys' fees and court costs to prevailing defendants, and limits contingency fee awards for attorneys representing plaintiffs to 25 percent.</p>	<p><b>RETAIN UNTIL UPDATE</b></p>
<p>Private Attorney Retention Sunshine Act</p>	<p>The Act addresses the problems caused by the backroom negotiation of contingency fee contracts between personal injury lawyers and government officials. It clarifies how and under what terms state governments may enter into contingency fee contracts with private attorneys. Specifically, the Act calls for an open and competitive bidding process for legal services in government contracts, provides for legislative oversight of contracts likely to result in more than \$1 million in attorneys' fees and expenses, and limits attorneys' fees to a hourly rate of \$1,000.</p>	<p><b>RETAIN WITH TECHNICAL AMENDMENT</b>  <b>(Recommended amendment: where "competitive bidding" is referenced, change the language to reflect an RFP evaluation process as the bill has never been intended to require acceptance of the cheapest bid. This amendment would serve to clarify the original intent of the bill.)</b></p>

Neutral Bills	Model Bills 5 years and older that the Civil Justice Task Force Executive Committee remains neutral on. Seeking input of Task Force.	
Drug and Alcohol Defense Act	<p>The Act establishes a complete defense in all personal injury actions if: (1) a claimant as a result of the influence of alcohol, drugs, or any combination of alcohol and drugs, is determined to be more than 50 percent liable for the accident or event which resulted in his or her harm, or (2) the claimant was harmed while engaging in, fleeing from, or being apprehended for a crime. The Act also provides options for states applying contributory negligence such that a claim is barred if a claimant under the influence of alcohol or drugs contributed at all to his or her injury, or alternatively was more than “slightly responsible” for the injury, as a result of such influence.</p>	NEUTRAL
Successor Asbestos Related Liability Fairness Act	<p>ALEC developed the Act to lessen the injustice from the application of outdated successor liability laws to asbestos cases, which provide that when a predecessor merges with another corporation, the successor can be held liable for the torts of the dissolved predecessor. This Act limits the asbestos liability of a successor corporation following a merger to the fair market value of the corporation at the time of the merger.</p>	NEUTRAL

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Sunset Bills	Model Bills 5 years and older that have been recommended by the Civil Justice Task Force Executive Committee to be allowed to sunset. These bills are subject to Task Force review before recommendations are sent to the ALEC Board of Directors.	
Bill Name	Description	Recommendation of Task Force Executive Committee
Accuracy in Pleading Act	This Act codifies a prior version of Rule 11 of the Federal Rules of Civil Procedure, which was changed (and weakened) in 1993. The Act provides a deterrent to litigants who make filings with insufficient legal or factual support by requiring attorneys bringing a case to attest to the facts and viability of the claim and by authorizing sanctions, including expenses and reasonable attorneys' fees, against violators. The Act requires unsigned documents to be stricken unless promptly corrected. The Act also imposes a continuing duty on the part of attorneys to correct any falsehoods in documents filed with a court.	<b>ALLOW TO SUNSET</b>
Adoption of the Common Law Act	The Act clarifies that when legislatures adopted the common law of England and then delegated to the courts the power to develop that body of law in accord with the interests and public policy of the state, the legislative intent was to provide the courts with laws of reference until and unless the legislature enacted rules to either complement or replace the common law. The Act reaffirms that, except for any causes of action that were specifically granted constitutional protection at the time of statehood, the legislature may alter or abrogate any pre-statehood or post-statehood common law cause of action.	<b>ALLOW TO SUNSET</b>

Civil Procedure Rule Equity Resolution	<p>Among the many problems plaguing the civil justice system is the abuse of the basic guidelines under which civil actions are pursued in the state court systems. Because the rules of civil procedure generally fall under the purview of the judicial branch rather than the legislature, the Resolution is designed to assist state legislatures in expressing support for critical reform of civil procedure rules. The Resolution calls upon the state judiciary to curb abuse in the rules of civil procedure by: (1) requiring that court pleadings be accompanied by testimony as to the truth of facts and law asserted in such pleading; (2) prohibiting the claim of a specific compensatory damage award; (3) providing for enforceable sanctions to deter discovery abuse; (4) requiring that class action suits demonstrate merit prior to initiation; and (5) providing for written jury instructions patterned to particular classes of civil cases.</p>	<b>ALLOW TO SUNSET</b>
Constitutional Guidelines for Punitive Damage	<p>The Act is intended to help state courts conform punitive damages awards to the federal constitutional requirements by establishing guidelines based on the punitive damages jurisprudence of the U.S. Supreme Court. The Act provides for appellate review as of right for any punitive damage award, de novo appellate review, and a determination that the award comports with the three guideposts announced in BMW of N. America v. Gore. In addition, the Act sets a general limit on the ratio of punitive to compensatory damages of 9:1, but also permits a 15:1 ratio where the punitive award is more modest in amount (less than \$50,000).</p>	<b>ALLOW TO SUNSET</b>

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<p>Expedited Medical Review Panel Act</p>	<p>The Act provides for an expedited risk review panel process to shorten the time to conclusion of a medical malpractice claim, and to reduce the costs of moving claims through the legal process. The medical review panel includes physician members, and is authorized to examine only medical evidence such as medical charts, x-rays, lab results, diagnostic and other medical tests, and a position paper prepared by each of the parties. The panel's sole duty is to express its expert opinion on whether the defendant(s) failed to act within the appropriate standard of care. The panel's expert report is not admissible in any subsequent legal proceeding, and use of the panel may be waived by agreement of the parties.</p>	<p><b>ALLOW TO SUNSET</b></p>
<p>Fairness in Litigation Act</p>	<p>The Act provides that in any action brought by the state government seeking to recover for any benefits or services it provided or paid directly or indirectly, the claimant shall be subject to the same procedural and substantive law that would apply to a claim brought against such defendant by the person on whose behalf the benefits or services were provided or paid or are obligated to be provided or paid.</p>	<p><b>ALLOW TO SUNSET</b></p>
<p>Fairness in Statute of Limitation Reopeners Re</p>	<p>The Resolution urges the limiting of the reopening of statutes of limitation without the application of appropriate standards in product liability litigation. It supports the general proposition that statutes of limitations relating to products liability should not be reopened, but, in the event that they are reopened, clear evidentiary standards are needed and damages should be limited solely to economic injury.</p>	<p><b>ALLOW TO SUNSET</b></p>

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Offer of Settlement Act	<p>The Act encourages dispute resolution by creating incentives for reasonable settlement offers advanced prior to trial. Specifically, the Act states that when a complaint sets forth a claim for money, if the offeree rejects the offer and the judgment finally obtained by the offeree was not at least 10 percent more favorable than the last offer, the offeree shall pay the offerors's reasonable attorneys' fees and costs incurred after the rejection of the last offer. When a complaint sets forth a claim for property or other nonmonetary relief, if the offeree rejects the offer and the judgment finally obtained by the offeree is not more favorable than the last offer, the offeree shall pay the offeror's reasonable attorneys' fees and costs and incurred after rejection of the last offer.</p>	<b>ALLOW TO SUNSET</b>
Pre-Complaint Notice Act	<p>The Act requires that notices be provided to all parties prior to initiating a lawsuit to provide an opportunity to resolve the dispute at the earliest stages. Specifically, the Act requires a claimant to file a notice to the intended defendants 90 days before filing suit. If the applicable statute of limitations would expire during the 90-day period of notice, the period of notice is reduced to the number of days remaining prior to expiration of the statute of limitations. Pre-complaint notice is not required for certain enumerated actions, such as those involving forfeiture, bankruptcy, civil investigative demands, temporary restraining orders, preliminary injunctive relief, or fraudulent conveyance of property. The Act also requires the pre-complaint notice to be appended to the pleadings and authorizes penalties for noncompliance with any of the Act's provisions.</p>	<b>ALLOW TO SUNSET</b>

Product Liability Resolution	The Resolution recognizes that most manufacturers engage in interstate commerce and that the product liability law would benefit from the establishment of a uniform federal product liability standard. The Resolution encourages legislatures to enact product liability laws that provide clear liability standards, limit the application of joint and several liability, require clear and convincing evidence for any awards of punitive damages, and avoid double payments by offsetting workers' compensation payments.	<b>ALLOW TO SUNSET</b>
Product Safety Analysis Incentive Act	The Act provides an incentive for manufacturers to conduct post-accident product safety analyses by prohibiting the use of such an analysis by a plaintiff to prove negligence or to prove that a product was defective or unreasonably dangerous. A manufacturer's product analysis may only be used to impeach a witness for the manufacturer who expressly denies the feasibility of a remedial measure or safety improvement.	<b>ALLOW TO SUNSET</b>
Resolution in Support of Uniformity in Prescription Drug Labeling	The Resolution supports the principle that prescription drugs labeling and warnings should be uniformly determined by the FDA based on broad evaluation of the scientifically demonstrated risks and benefits of the product for the general public, and not through individual, conflicting tort lawsuits.	<b>ALLOW TO SUNSET</b>
Resolution on Congressional Mandates and Defective-Product Liability	The Resolution supports fair and consistent defective-product liability protection for products that are expressly authorized for use and/or approved by the federal government.	<b>ALLOW TO SUNSET</b>

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<p>Resolution on Quality Managed Care in a Litig</p>	<p>The Resolution provides reasons for states to oppose expansion of tort liability in the health care system since such expansion will result in the provision of unnecessary medical treatments, increased costs for employers and consumers, and the loss of health coverage for hundreds of thousands or millions of Americans. The Resolution states that a more appropriate way to ensure that consumers have the ability to address their concerns with coverage decisions made by health plans is to make certain that consumers have access to rigorous and effective appeals programs that provide prompt, fair, and equitable resolution of consumer concerns while at the same time preserving the availability of affordable health coverage for Americans.</p>	<p><b>ALLOW TO SUNSET</b></p>
<p>Separation of Powers: Prevention of Retroacti</p>	<p>In tort law, courts have generally developed legal rules based on prior decisions. In recent times, however, courts in some states have created brand new tort law duties that have no precedent in past decisions. In creating those new duties, courts have imposed liability on a retroactive basis. Fundamental principles of fairness, as well as constitutional mandates, prevent legislatures from making law on an ex post facto basis; the same principle applies to the judicial branch with regard to retroactive lawmaking. Accordingly, the Act would prohibit such retroactive lawmaking by the judiciary.</p>	<p><b>ALLOW TO SUNSET</b></p>
<p>Statute of Limitation Reduction Act</p>	<p>The Act provides that a plaintiff must commence a cause of action within two years of the time that he or she discovers or, in the exercise of reasonable diligence, should have discovered the harm which is the subject of action. The Act also provides that wrongful death actions must be commenced within one year from the date of death.</p>	<p><b>ALLOW TO SUNSET</b></p>

Summary Judgment Procedure Act	<p>Summary judgment is a useful method for terminating litigation where there is no material issue of fact. The Act would provide guidelines for fact-finding and summary judgment patterned after Rule 56 of the Federal Rules of Civil Procedure. Specifically, the Act would require a trial court, when not granting summary judgment on the whole case and permitting trial, to ascertain from the pleadings and interrogation of counsel what material facts exist that are in good faith controverted and which are not, and make an order specifying the facts that appear not in substantial controversy. These facts would be deemed established at trial. In addition, when a summary judgment motion is supported by an affidavit made on personal knowledge, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but rather must rest on affidavits setting forth specific facts showing that there is genuine issue for trial. The Act also addresses the unavailability of affidavits. Further, the Act authorizes costs and attorneys' fees related to any submission of affidavits made in bad faith.</p>	<b>ALLOW TO SUNSET</b>
Workers' Compensation Fraud Warning Act	<p>The Act authorizes an insurer or self-insured employer to provide notice to an injured worker on or along with a check for temporary disability benefits that it is unlawful to make any knowingly false or fraudulent material statement for the purpose of obtaining workers' compensation. Such a notice would state that the acceptance of employment with a different employer that requires the performance of activities that the worker has stated that he or she cannot perform because of injury could constitute fraud and result in criminal prosecution.</p>	<b>ALLOW TO SUNSET</b>