

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda--underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

& MEETINGS

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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Comparative Fault Act

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

Summary

This Act adopts a modified comparative fault system which bars a plaintiff's recovery whose fault exceeds that of the defendants and nonparties. This ensures that only deserving plaintiffs are compensated. A key part of this Act is the assessment of the fault of nonparties, which guarantees that named parties are not assigned artificially high percentages of responsibility. To apply comparative fault, the jury must allocate fault or responsibility to each party. This allocation also provides the information necessary to allocate responsibility for damages if the state has eliminated or modified joint and several liability. If the state has a statute governing joint and several liability, legislators should ensure that the provisions of the comparative fault statute are consistent with that statute.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act shall be known and may be cited as the Comparative Fault Act.

Section 2. {Definitions.} The following words, as used in this Act, shall have the meaning set forth below, unless the context clearly requires otherwise:

(A) "Fault" means an act or omission of a person that is a proximate cause of injury or death to another person or persons, damage to property, tangible or intangible, or economic injury, including but not limited to negligence, malpractice, strict liability, absolute liability, or failure to warn. Fault shall not include any tort that results from an act or omission committed with a specific wrongful intent.

(B) "Comparative fault" means the degree to which the fault of each person was the proximate cause of the alleged injury or death or damage to property, tangible or intangible.

(C) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity or unincorporated association of persons.

Section 3. {Comparative fault standard.} In any action for personal injury, property damage, or wrongful death, recovery shall be predicated upon principles of comparative fault and the liability of each person who caused the injury shall be allocated to each person in direct proportion to that person's percentage of fault. Where the percentage of fault chargeable to the plaintiff is less than the aggregate fault of all defendants and nonparties, the plaintiff may recover damages, but the plaintiff's recovery of damages will be diminished in proportion to the percentage of fault chargeable to the plaintiff. Where the plaintiff's percentage of fault is equal to or exceeds the aggregate fault of all defendants and nonparties, the plaintiff shall be barred from any recovery.

Section 4. {Fault of nonparties}

(A) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who contributed to the alleged injury, death, or damage to property, tangible or intangible, regardless of whether said person was, or could have been, named as a party to the suit. Negligence or fault of a nonparty may be considered if the plaintiff entered into a settlement agreement with the nonparty or if the defending party gives notice within 120 days of the date of trial that a nonparty was wholly or partially at fault. The notice shall be given by filing a pleading in the action designating such nonparty and setting forth such nonparty's name and last-known address, or the best identification of such nonparty that is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault.

(B) Nothing in this Act is meant to eliminate or diminish any defenses or immunities that currently exist, except as expressly noted herein. Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of named parties. Where fault is assessed against nonparties, findings of such fault shall not subject any nonparty to liability in this or any other action, or be introduced as evidence of liability in any action.

Section 5. {Assumption of the risk.}

(A) In any tort action, a defendant shall not be liable if the injured person assumed the risk of injury or harm to property. Assumption of the risk shall mean that the injured person:

(1) knew of and appreciated the risk; and

(2) voluntarily exposed himself or herself to the danger which proximately caused the injury or damage.

(B) The elements of assumption of the risk may be inferred, as a matter of either fact or law, from circumstantial evidence that the injured person must have known and appreciated the risk and voluntarily encountered it.

Section 6. {Imputed fault.} Nothing in this Act is intended to, in any way, disturb the doctrine of imputed negligence, or fault currently followed in this jurisdiction.

Section 7. {Effect of contributory fault.} Contributory fault shall not bar recovery in any action for personal injury, property damage, or wrongful death, except as otherwise provided in Section 5.

Section 8. {Burden of proof.} The burden of alleging and proving fault shall be upon the person who seeks to establish such fault.

Section 9. {Limitations.} Nothing in this Act shall be construed to create a cause of action. Nothing in this Act shall be construed in any way to alter the immunity of any person.

Section 10. {Severability clause.}

Section 11. {Repealer clause.}

Section 12. {Effective date.}

Were your laws
repealed?

ALEC's Sourcebook of American State Legislation 1995

From CMD: This "model" bill, if adopted, would bar an American from recovering any damages for injuries if a company or companies were 49% at fault but the American were 51% at fault. That is, even if companies' actions contributed to the injuries of an American, those companies would escape any liability for their negligence or other fault if the American's actions contributed even slightly more to the accident than them. Prior to 1995, for example, in Wisconsin a defendant's liability was not eliminated merely because it was not a majority at fault and it would be liable for any percentage of negligence attributable to it. This model bill would also add a regressive "assumption of risk" provision which would bar recovery of any damages caused by corporate defendants' actions if the American purportedly assumed the risk of the activity, even if a company's negligence contributed to the American's injury or death.

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