

Ranking the States: LAWSUIT CLIMATE 2010



Conducted for the U.S. Chamber
Institute for Legal Reform by
Harris Interactive Inc.
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Kentucky: Survey Gives Bottom 10 Ranking to State Liability System¹ *Kentucky ranks number 40 out of 50 states in survey of corporate lawyers*

Here are some possible explanations:

More cases are being filed in Kentucky courts.

- According to the Kentucky Administrative Office of the Courts, the number of civil lawsuits filed in the state's circuit courts, which decide civil cases seeking over \$4,000, surged from 39,439 in 2002 to 63,958 in 2009, a jump of 60%.²
 - Kentucky's district courts, which hear civil cases seeking less than \$4,000 and small claims, experienced a similar surge of civil suits from 97,871 in 2002 to 138,982 in 2009, a 42% rise.³
- In his 2008 State of the Judiciary address, Kentucky Chief Justice John D. Minton, Jr., recognized that "[n]ew case filings are at an all-time high."⁴

There is a growing perception that plaintiffs may be able to recover damages in Kentucky more easily and more frequently than in other states.

- While many states have adopted limits on highly subjective noneconomic damage awards (i.e. for pain and suffering) in medical malpractice or all civil cases, Kentucky has not taken action.
- Likewise, Kentucky has no statutory limit on the size of punitive damage awards.
- Seeds for the growth of punitive damages were planted in 1988 when the Kentucky Supreme Court invalidated a moderate change to state law that would have required "clear and convincing" evidence of wrongful conduct to support such an award.⁵
 - 2/3 of states have adopted this middle-of-the-road approach, which falls between the "preponderance of the evidence" standard used for civil liability and the "beyond a reasonable doubt" standard applied in criminal cases.
 - The American Bar Association and even the U.S. Supreme has encouraged states to adopt this reform.⁶

Recent attorney scandals stain Kentucky's reputation.

- In 2009, two Kentucky personal injury attorneys, William Gallion and Shirley Cunningham, Jr., were found guilty of fraud and conspiracy to commit fraud after taking approximately 50% of their clients' \$200 million fen-phen litigation settlement. For their "unmitigated greed," federal Judge Danny Reeves sentenced Gallion to 25 years and Cunningham to 20 years in prison and ordered them to pay \$127.7 million in restitution to the 421 former clients.

A shaky legal climate impacts the state's economy.

- In the 2010 Harris survey, two-thirds (67%) of respondents report that the litigation environment in a state is likely to impact decisions at their company, such as where to locate or do business.
- Unemployment in Kentucky soared to 10.5% for 2009, the highest rate in 26 years.⁷
- As Kentucky's leaders work to recover from the current economic downturn, they need to think about whether the policies they are considering will help create jobs or create lawsuits and expand liability against local businesses.

¹ Go to www.jobsnotlawsuits.com for a copy of "Ranking the States: Lawsuit Climate 2010 State Liability Systems Survey" conducted for the U.S. Chamber Institute for Legal Reform by Harris Interactive Inc.

² See http://courts.ky.gov/NR/rdonlyres/A44C9604-3100-4761-998C-4749FF4E429C/0/INS017_CI_Cases_FLS_and_CLS_Stwide.pdf.

³ See http://courts.ky.gov/NR/rdonlyres/D9064B0D-563B-44F4-96E5-320F8B2CBC14/0/INS016_DI_Cases_FLS_and_CLS_Statewide.pdf.

⁴ Chief Justice John D. Minton Jr., Testimony Before the Interim Joint Committee on the Judiciary, Nov. 18, 2008, Frankfort, Kentucky, at <http://courts.ky.gov/NR/rdonlyres/D6E74AA7-F525-4CBA-A659-FA49A1B5CBEE/0/MintonJointCommittee.pdf>.

⁵ *Williams v. Wilson*, 972 S.W.2d 260 (Ky. 1998).

⁶ *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 23 n.11 (1991).

⁷ Press Release, *Kentucky's annual jobless rate jumps to 26-year high of 10.5 percent in 2009*, Education and Workforce Development Cabinet, at <http://educationcabinet.ky.gov/newsroom/pressreleases/2009annuallyrate.htm>.