BACKGROUND PAPER 95-11

TORT REFORM

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I. INTRODUCTION

In recent years, the United States system of Civil Justice has been the focus of much national debate. During the early 1980s the so called "insurance crisis" gave rise to a movement commonly referred to as tort reform. At the national level, the Reagan Administration formed an executive Tort Policy Working Group and the subject of tort reform was declared a major public policy concern. While interest has continued to ebb and flow at varying levels throughout the Bush and Clinton administrations, the serious policy actions have occurred at the state level. As with many issues, the states have been the laboratories for experiments in tort reform.

In Nevada, tort reform appears to be of substantial interest to state legislators in 1995. This interest is due to a number of factors including allegations of rising costs of insurance (particularly malpractice insurance), escalating health care costs, and reports of increasing jury awards. Similar concerns in the late 1980s led Nevada legislators to adopt limits on punitive damages and establish a medical malpractice screening panel. Tort reform was a relatively quiet issue in the early 1990s but now appears to be ebbing and peaking in terms of legislative and public interest.

This background paper provides legislators with a basic guide to tort reform and its many components. It analyzes the tort reform movement generally and discusses the status of various tort reform components in Nevada and other states. The paper also highlights medical malpractice as it relates to tort reform. The various parts of tort reform are complex and this paper does not attempt to advocate or oppose them. The purpose of this paper is to make these complex issues understandable.

II. OVERVIEW OF TORT REFORM ISSUES

There is no useful definition of a "tort," which will allow all tortious conduct to be distinguished from all non-tortious conduct. *Black's Law Dictionary* defines tort as a "civil wrong or injury, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages." The overall purpose of tort law is to compensate a plaintiff for an injury sustained as a result of the unreasonable conduct of another. The main concept that distinguishes tort law from other laws, particularly contract law, is that the law is not based on the idea of consent.

The bulk of tort law can be divided into three major categories relating to the nature of the defendant's conduct. Torts can be categorized as: (1) intentional; (2) negligent; or (3) strict liability.

Intentional torts can be generally described as conduct by a defendant that is intended to bring about some sort of physical or mental affect upon another person, but does not

require a desire to harm that person. Intentional torts include assault, battery, false imprisonment, infliction of mental distress, and various forms of trespass.

The most common type of tort action in the United States is negligence. The essence of the tort of negligence is that the conduct of the tort feasor imposes an unreasonable risk upon others. In contrast to intentional torts, where the tort feasor's mental state is an element of the tort, in negligence cases the tort feasor's mental state is irrelevant. In order to establish a claim for negligence, the plaintiff must show that the defendant owed a duty to conduct himself according to certain standards, that the defendant failed to conform his conduct to those standards, that the plaintiff's harm is proximately caused by the defendant's act of negligence, and that the plaintiff has suffered actual damages.

Strict liability is a form of tort action which is not based upon intent or negligence. Rather, it is based upon the notion that those who engage in certain kinds of activities do so at their own peril and must pay for any damages which result, even if the activity has been carried out in the most careful possible manner. Strict liability is most often imposed in cases involving abnormally dangerous activities and product liability. However, certain product liability claims are also founded upon theories of negligence rather than strict liability.

In addition to the three major categories of torts, other miscellaneous torts include defamation, interference with certain advantageous relations, invasion of privacy, misrepresentation, misuse of legal proceedings, and nuisance.

There are two mainstream theories that are used to rationalize the tort system in America. First, the tort system is designed to compensate plaintiffs for unreasonable harm. Secondly, the American tort system attempts to act as a deterrent for certain kinds of conduct. This theory is founded on the notion that society must limit an excess of harm-causing behavior by imposing liability for the negligent infliction of harm. Tort law can induce people who are thinking of behaving negligently to reconsider their behavior. These arguments have both economic and societal components.

The structure of American tort law, and the theories behind its existence, create the backdrop upon which the substantive reform in recent years has been played out. For the past 2 decades, there has been steadily increasing criticism of the tort litigation system--primarily because litigation is an expensive mechanism for compensating injured parties. Arguably, outcomes are random and unpredictable. This unpredictability may defeat the system's intended goals of compensating plaintiffs, spreading the risk fairly, and motivating safer behavior.

The first wave of tort reform was triggered by a dramatic increase in the number and size of medical malpractice and product liability claims in the 1970s. This was followed by a more general crisis of insurance availability and affordability in the mid-1980s.

Many states have considered and enacted various tort reform measures since that period. The effectiveness of enacted reforms varies greatly and no one state has comprehensively addressed all components of so-called tort reform.

III. TORT REFORM COMPONENTS

This section describes various tort reform measures that have been considered by the U.S. Congress and state legislatures in recent years. In addition to an explanation of the various components, this section discusses the status of such components in Nevada law and the tort laws of other states. (See Appendix A for a series of charts and lists that summarize state tort reform components.)

A. Joint and Several Liability

The rule of joint and several liability attempts to address the issue that arises where two or more defendants are liable for a plaintiff's injury. Pure joint and several liability makes each of the defendants liable for the entire amount of damages regardless of their degree of responsibility. Tort reformers argue that this produces an unfair outcome since a defendant who is only minimally responsible for a plaintiff's harm may have to pay the entire award because the defendant who is principally responsible is insolvent. The rule also creates the effect for turning some lawsuits into a search for "deep pockets." Advocates of the tort system argue that joint and several liability is necessary because it increases the probability that a seriously injured or damaged plaintiff will be fully compensated.

Tort reformers propose to abolish the rule of joint and several liability and adopt a rule of pure several liability. This rule would provide that a party would be liable for damages only in an amount proportionate to his/her responsibility for a plaintiff's harm. Another option proposed by tort reformers would hold a defendant jointly and severally liable for a plaintiff's economic damages (actual damages), but proportionately liable for a plaintiff's noneconomic damages (emotional distress, loss of companionship, and pain and suffering). Florida provides an example of a state that has abolished joint and several liability as to noneconomic damages. Other states, such as Hawaii and Illinois, have abolished the rule for low-fault defendants. Various other states have taken this approach and the limitations vary depending upon the percentage of fault attributed to the defendants. Utah and Wyoming are examples of states that have totally abolished joint and several liability. Nevada has abolished the rule of joint and several liability except in the following cases:

- Cases involving intentional torts;
- Cases involving toxic waste;

- Cases where the defendants are found to have acted in concert; and

- Product liability cases.

The approach taken by Nevada in abolishing joint and several liability, but creating certain exceptions appears to be the most popular reform taken among the states.

B. Limitations on Noneconomic Damages

Damages for noneconomic losses are damages for pain and suffering, emotional distress, and loss of consortium or companionship. These damages are characterized as having no precise cash value. Tort reformers argue that it is very difficult for juries to assign a dollar value to these losses and, as a result, awards tend to be erratic and, because of the highly-charged environment of personal injury trials, excessive. Supporters of the current tort system argue that stripping or limiting the ability of the jury to determine damages is contrary to the fundamental principles of a jury system.

Currently, 14 states have placed dollar limits on recoveries of noneconomic damages in medical malpractice cases. Some states have applied the noneconomic damage cap in a manner to exclude cases of disfigurement or severe physical impairment from the cap. Other states have limited the applicability of noneconomic damage caps to personal injury claims (see Appendix B for a list of the various limitations on damages that states have imposed). The State of Nevada has no caps or restrictions on noneconomic damages.

C. Collateral Source Rule

The collateral source rule has its origins at common law and provides that evidence may not be admitted at trial to show that a plaintiff's losses have been compensated from other sources. The American Tort Reform Association (ATRA) estimates that 35 percent of total payments to medical malpractice claims are for expenses already paid from other sources. Tort reformers argue that the collateral source rule has the effect of allowing a plaintiff double recovery. They also argue that jurors are often motivated to return a verdict in favor of the plaintiff, irrespective of the merits of the plaintiff's claims, if they are uncertain whether the plaintiff has the means to pay the bills connected with his injury.

Supporters of the current tort system argue that the collateral source rule should be preserved since the right of subrogation permits recoupment of duplicative payments. For example, an insurance company that has made payments to an insured who has a personal injury cause of action is entitled to recoup those payments under the theory of subrogation from either the tort feasor or the insured. Also, insurance payments are a contractual benefit that a plaintiff has bargained and paid for and should not be interfered with by the judicial system.

According to the ATRA, 20 states have amended the collateral source rule since 1986. States have traveled down two different avenues in reforming the collateral source rule; one is to allow the evidence to be considered and the other is to mandate an offset. First, some states, such as Colorado and Kentucky, permit evidence of collateral source payments to be admitted at trial and considered by the jury. Collateral source payments may then be offset in certain circumstances, but it is not mandatory. Second, states such as Florida and New York require the court to reduce jury verdicts by the amounts of such collateral payments. The State of Nevada follows the common law collateral source rule which provides that evidence of collateral sources may not be admitted at trial.

D. Punitive Damages

Punitive damages are awarded not to compensate a plaintiff, but to punish a defendant for intentional or malicious misconduct and to deter similar future misconduct. Proponents of tort reform argue that the frequency and severity of punitive damages has grown in recent years. They argue that the impossibility of predicting damages that may be awarded in a particular case, and the trend toward excessive amounts when they are awarded, have seriously distorted settlement and litigation processes and have led to inconsistent outcomes among similar cases.

Twenty-nine states have recently amended their punitive damage laws. Five additional states generally prohibit punitive damages except in very limited cases. States have taken varying approaches to punitive damage reform. Illinois and Minnesota do not permit a claim for punitive damages in the plaintiff's complaint, but allow amendment before trial on a showing that there is a reasonable prospect they will be awarded. Other states require that awards be based on a "clear and convincing" evidence standard, rather than the usual preponderance of the evidence standard. California requires a bifurcated trial in which the jury hears evidence supporting a claim for punitive damages only after it has found the defendant liable for compensatory damages. Eleven states have placed caps or limits on the amount of punitive damage awards. Several states require that part of a punitive damages award be deposited in a state fund. The constitutionality of this approach is currently being considered by the U.S. Supreme Court.

The 1989 Nevada Legislature enacted substantial amendments to the punitive damages provisions. The Nevada law limits punitive damage awards to $300,000 in cases in which compensatory damages are less than $100,000. Punitive damage awards in cases where compensatory damages are $100,000 or more are limited to three times the amount of compensatory damages. The law creates a number of exceptions to the punitive damage cap. The limitations do not apply in cases against a manufacturer, distributor, or seller of a defective product; an insurer who acts in bad faith; a person who violates housing discrimination laws; a person involved in a case for damages caused by toxic, radioactive or hazardous wastes; and a person for defamation.

In addition, the revision requires the higher standard of liability of "oppression, fraud or malice." The law also requires punitive damages be established by "clear and convincing evidence." Finally, the revisions bifurcate trials, allowing financial evidence only after a finding of liability.

E. Product Liability

As discussed earlier, the law of strict product liability is meant to compensate persons injured by unreasonably unsafe products without regard to negligence or intent. Proponents of tort reform argue that this kind of tort liability is unfair because it holds manufacturers liable even though they could have done nothing to avoid a plaintiff's injury. States have taken a broad range of steps in the area of product liability reform. Appendix A provides a state-by-state and issue-by-issue summary of the status of tort reform measures in state legislatures. Beginning on page 19, the publication provides a listing of various measures enacted by state legislatures to reform product liability law. The American Tort Reform Association has an agenda which sets forth its views as to the necessary elements of any effective product liability reform measure. It calls for the following:

- The measure will govern all product liability actions, irrespective of the theory on which they are brought.

- It will permit a plaintiff to recover damages only upon proof that the product was defective and that the defect was the cause of the harm. The statute should set out clear rules for determining when a product is defective, and clear standards for establishing liability based on manufacturing defects, design defects, and warning defects. The following clear rules should be included regarding proof of causation:

    1. A product has been defectively manufactured if it fails in relevant respects to comply with the manufacturer's own product specifications. A product has been defectively designed only if there was a feasible alternative design which would have avoided the injury in question without materially altering the consumer's expected use and enjoyment of the product. Also, the costs of incorporating the new precaution in the design must not outweigh the human and financial harms preventable by the design; and

    2. A product is defective for failure to warn only if the manufacturer failed to provide information that a reasonable person would have provided based upon a risk identifiable at the time of manufacture.

- The statute should not hold the manufacturer liable for harm caused by a product that cannot be made entirely safe where the risk of using is known or should be known to product users.

- The statute should not hold the product sellers liable for harm caused by a product unless they have control over the product's manufacture, its design, or the safety warnings that accompany it.

- Finally, it will not hold the manufacturer liable for harm caused by a product after it has been out of the manufacturer's control for some period of time (for example, 10 years).

F. Prejudgment Interest

Nine states have enacted either a prohibition of, or limitations on, prejudgment interest. Iowa, Michigan, Minnesota, and Texas, have prohibited prejudgment interest on awards for future damages. Louisiana, Maine, Nebraska, and Rhode Island have tied prejudgment interest and post-judgment interest to certain government rates (for example, the U.S. Treasury Bill rate or the prime lending rate with floors and caps). The State of Texas has limited the period during which prejudgment interest may accrue if the defendant has made an offer to settle.

The State of Nevada has prohibited prejudgment interest on amounts representing future damages. Other interest on damages in tort cases, if not established by the court, are set by law at the prime lending rate plus 2 percent.

G. Limitations on Attorney Fees

Under the traditional American system, a plaintiff's attorney is paid on a contingency basis in most tort cases. Attorneys collect an average of 33 percent of the plaintiff's award. Since financial incentives play a role in lawyers' decisions whether or not to accept tort cases, reformers argue that limiting fees may reduce the number of cases filed and reduce frivolous cases. They also argue that since a paramount goal of the tort system is to fully compensate plaintiffs, attorney fees that come out of the award should be limited. Supporters of the system argue that such limitations are unnecessary and unfairly limit the parties' ability to contract.

Approximately one-half of the states either specify a limit on attorney fees or authorize the courts to set attorney fees. In most cases, attorney fees are not direct limits on the amount attorneys can charge their clients. Rather, there are limits on the portion of the damage award that may be applied toward attorney fees. Some states make attorney fee limits only applicable in medical malpractice cases and not tort claims in general. Indiana, Michigan, Oklahoma, Tennessee, and Utah place absolute limitations on the percentage of the damage award that may be claimed by an attorney. These percentages range from 15 percent in Indiana to 50 percent in Oklahoma. Some states have established a sliding scale that caps attorney fees. For example, in California, attorney fees are limited to 40 percent of the first $50,000, 33.3 percent of the next

$50,000, 25 percent of the next $50,000, and 15 percent of damages that exceed $600,000.

The State of Nevada has no statutory limits on attorney fees in tort cases.

H. Periodic Payments

One tort reform measure enacted in some states requires that certain large damage awards or damages based on expenses that will be incurred over a lifetime, be paid periodically. The argument in favor of this approach is that it helps reduce the impact of large awards on defendants and insurers by allowing damages to be awarded according to a schedule of periodic payments. This approach also reduces the risk that the plaintiff will deplete funds that are intended to be used to pay future medical and economic costs. Opponents of this approach argue that it hinders the fundamental goal of tort law that plaintiffs be fully compensated for damages in a timely manner.

Approximately 14 states have provisions mandating periodic payments of future economic damages, if damages exceed a threshold level. In most cases, the threshold level is between $100,000 and $250,000. Another 16 states allow for, but do not mandate, periodic payments. In these states, periodic payments can be requested by the parties; in others, it can be imposed at the court's discretion.

The State of Nevada has no statutory provisions addressing periodic payment of awards. However, it appears the court may have the judicial discretion to approve such an arrangement, if agreed to by the parties. The court may even have the authority to order such an arrangement under certain circumstances. The statutory law is silent in this regard.

I. Medical Malpractice

The issue of medical malpractice reform has been pervasive in the late 1980s and early 1990s, due in part to the rising costs related to health care. With the exception of punitive damages and product liability, the majority of the reform measures discussed in this memorandum that apply to torts in general would also apply to medical malpractice claims. Punitive damages are not awarded frequently in medical malpractice cases since they require proof of malicious conduct on the part of the physician. Product liability reform would apply to certain products manufactured within the health care field. Collateral sources, joint and several liability, noneconomic damages, periodic payments, and prejudgment interest are all applicable in medical malpractice cases, as they are to torts in general.

All of these measures have been considered to one degree or another, as they impact medical malpractice. Alternative dispute resolution has received a great deal of attention with regard to medical malpractice. Almost every state in the Nation has a

general arbitration provision that can be applied to medical malpractice claims. Sixteen states have specific provisions that require the use of arbitration in medical malpractice proceedings.

Nevada has established a mandatory pretrial screening panel. The purpose of this panel is to eliminate non-meritorious suits. The panel's judgment does not preclude the parties from going to court. However, findings of the screening panel are admissible in court, and if the court agrees with the screening panel's recommendations, the judgment must be issued accordingly. Also, attorney fees and court costs may be awarded against parties who lose in court after the screening panel has issued a non-favorable decision.

The screening process in Nevada was first established in 1985 and appeared to have the effect of stabilizing both the frequency and severity of medical malpractice claims. However, in 1992 and 1993, the medical malpractice screening panel reported a 40 percent increase in the frequency of claims. According to reports by Nevada's Division of Insurance, within the Department of Business and Industry, the severity of claims has also increased. Nevada doctors paid approximately $16 million in medical malpractice insurance premiums in 1993 and the division's records indicate that four large judgments against different Nevada doctors during 1993 exceeded the total amount of premiums paid by all Nevada doctors in that year.

IV. COMPARISON OF NEVADA AND CALIFORNIA TORT LAWS

Many Nevada legislators have inquired about the tort reform components utilized in California, particularly with regard to medical malpractice. The following chart provides a summary comparison of tort reform measures in Nevada and California.

State	Arbitration Provisions	Attorney Fee Limits	Caps on Noneconomic Damages	Caps on Punitive Damages	Collateral Source Offset	Periodic Payment of Awards	Screening Panel
NV	None	None	None	Yes	None	None	Mandatory
CA	Yes	Yes	Yes	No	Discretionary	Mandatory	None

The current tort reform package in California was first enacted in 1975 and is commonly referred to as MICRA (Medical Injury Compensation Reform Act). What follows is an explanation and comparison of Nevada and California tort reform elements with an emphasis on medical malpractice.

A. Arbitration Provisions

All states have voluntary binding arbitration provisions in general, including Nevada and California. However, some states have enacted arbitration provisions specific to medical malpractice. *California Code of Civil Procedure* (CCCP), Section 1295, allows written contracts for medical services to include a mandatory binding arbitration clause. The law provides for a limited right of appeal. Nevada does not specifically address arbitration because of the mandatory pretrial screening procedure.

B. Attorney Fee Limits

About half of the states place a limitation on the amount or percentage of the damage award that may be collected by a plaintiff's attorney in a medical malpractice case. In California, CCCP, Section 6146, limits contingent fees to: 40 percent of the first $50,000; 33.3 percent of the next $50,000; 25 percent of the next $50,000; and 15 percent of damages that exceed $600,000. Other states provide a maximum percentage regardless of the amount of the award. Nevada has no statutory limitations.

C. Limitations on Noneconomic Damages

Some states have placed a cap on noneconomic damages such as payments for disfigurement, emotional distress, loss of companionship, loss of enjoyment, mental anguish, physical and emotional pain, suffering, and other nonpecuniary losses. In California, CCCP, Section 3333.2, limits noneconomic damages to $250,000. Compensatory damages are not limited. Nevada does not place limitations on noneconomic damages.

D. Limitations on Punitive Damages

The 1989, the Nevada Legislature limited punitive damages in most civil cases, including medical malpractice, to $300,000 or three times the amount of compensatory damages, whichever is greater. Because punitive damage awards require a finding of fraud, malice, or oppression, they are rare in medical malpractice cases. California does not limit punitive damages in medical malpractice cases.

E. Collateral Source Rule

Under traditional rules of evidence, a defendant may not introduce evidence of the plaintiff's collateral sources (e.g., insurance) that may cover some of the plaintiff's losses. Some states have amended the collateral source rule regarding medical malpractice cases to either require the jury to offset the award against collateral source payments or allow the defendant to introduce collateral source evidence and allow the jury the discretion of offsetting the award. In California, CCCP, Section 3333.1, provides the jury with the discretion to offset damages against collateral sources of

payments. Nevada follows the traditional collateral source rule and does not allow collateral source evidence.

F. Periodic Payment of Awards

If a victim is severely injured, damages are based on medical and other expenses that will be incurred over a lifetime. Allowing periodic payments of such expenses over time lessens the impact of large awards on malpractice carriers. In California, CCCP, Section 667.7, requires the court, if requested by either party, to order periodic payments for any award of future damages in excess of $50,000. The court may condition the payment schedule to accommodate predictable variations in the plaintiff's needs. Nevada law does not provide for periodic payments, although it appears a judge may have the inherent authority to approve such an arrangement.

G. Medical Malpractice Screening Panels

Some states, including Nevada, have established pretrial screening panels to review the merits of a case and assist in weeding out non-meritorious suits. (Discussed in detail in Section III of this paper). Certain states, like Nevada, require the use of screening panels while others provide that the use of the panels is voluntary. California does not utilize pretrial screening panels.

V. CONCLUSION

Torts and tort reform are complex and difficult issues. There are numerous arguments for and against each of the components of tort reform. Nevada legislators can expect to hear contradictory evidence and zealous and forceful arguments from the many different parties interested in these issues. Following is a list of additional materials that may be of assistance in considering the various tort reform measures that may appear before the Nevada Legislature.

VI. SELECTED REFERENCES

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Major Advocacy Groups

Alliance of American Insurers

American Tort Reform Association

National Trial Lawyers Association

VII. APPENDICES

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APPENDIX A

Tort Reform Record,
The American Tort Reform Association,
December 1993

ATRA Tort Reform Record

1212 New York Avenue, N.W. • Suite 515 • Washington, D.C. 20005 • (202) 682-1163

TORT REFORM RECORD

December 31, 1993

The American Tort Reform Association was organized in 1986 to bring greater fairness and efficiency to the civil justice system through public education and the enactment of state legislation. Today it represents approximately four hundred non-profit organizations, professional societies, trade associations and businesses. ATRA accomplishes its mission primarily by coordinating and supporting the activities of legislative coalitions in each of the states, by keeping its members informed of developments and mobilizing them for action, and by keeping media attention focused on the need for civil justice reform.

The Tort Reform Record is published every June and December to record the accomplishments of the latest legislative year. It includes a single-page state-by-state summary of the reforms enacted by the states since January, 1986. An issue-by-issue elaboration of what each state has done is included. Separate documents are available on professional liability, periodic payment of awards and frivolous suit sanctions. ATRA also provides position papers and model bills on each of these issues.

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SUMMARY

Alabama	Coll Srces, Puni Evid Standard
Alaska	Jt & Sev, Non Ec Cap-$500,000, Coll Srces, Puni Evid Stand
Arizona	Jt & Sev, FDA Def to Puni, Coll Srces
Arkansas	
California	Jt & Sev, Puni Evid Stand, Products Defense
Colorado	Jt & Sev, Non Ec Cap $250,000, Coll Srces, Puni Cap=Compen
Connecticut	Jt & Sev, Coll Srces
Delaware	Products Defense
D.C.	
Florida	Jt & Sev, Coll Srces, Puni Cap=3 x Compen, Products Defense
Georgia	Jt & Sev, Puni Cap=$250,000, Products Defense
Hawaii	Jt & Sev, Non Ec Cap=$375,000, Coll Srces
Idaho	Jt & Sev, Non Ec Cap=$400,000, Coll Srces, Puni Evid Stand
Illinois	Jt & Sev, Coll Srces, Puni Evid Stand
Indiana	Coll Srces
Iowa	Jt & Sev, Coll Srces, Prej Int, Puni Evid Stand and Bifur Trial, Products Defense
Kansas	Non Ec Cap=$250,000, Puni Cap=lesser of def ann gross income or/$5M, Products Defense
Kentucky	Jt and Sev, Coll Srces, Puni Evi Stand
Louisiana	Jt & Sev, Prej Int, Products Bill
Maine	Prej Int
Maryland	Non Ec Cap=$350,000
Massachusetts	
Michigan	Jt & Sev, Coll Srces, Prej Int
Minnesota	Jt & Sev, Non Ec Cap=$400,000, Coll Srces, Prej Int, Puni Evid Stand & Bifur Trial
Mississippi	Jt & Sev, Puni Ev Stand, Bifur Trial, No puni if no compens
Missouri	Jt & Sev, Coll Srces, Puni=Bifurcated Trial, Products Bill
Montana	Jt & Sev, Coll Srces, Pun Evid Stand, Products Defense
Nebraska	Jt & Sev, Prej Int
Nevada	Jt & Sev, Puni Cap, Puni Evid Stand
New Hampshire	Jt & Sev, Puni Prohib, Products Defense
New Jersey	Jt & Sev, Puni Evid Stand, Coll Srces, Products Bill
New Mexico	Jt & Sev
New York	Jt & Sev, Coll Srces, Products Defense
North Carolina	
North Dakota	Jt & Sev, Coll Srces, Puni Evid Stand, Puni cap=$250,000, Bifur Trial
Ohio	Jt & Sev, Coll Srces, Puni Evid Stand, Products Bill
Oklahoma	Prej Int, Puni Cap=Comp
Oregon	Jt & Sev, Non Ec Cap=$500,000, Coll Srces, Puni Evid Stand, Products Defense
Pennsylvania	
Rhode Island	Prej Int
South Carolina	Pun Evid Stand
South Dakota	Jt & Sev, Puni Evid Stand
Tennessee	
Texas	Jt & Sev, Prej Int, Puni Cap=4 x Comp or $200,000, Products Bill
Utah	Jt & Sev, Puni Evid Stand, Products Bill
Vermont	Products Defense
Virginia	Puni Cap=$350,000
Washington	Jt & Sev, Products Defense
West Virginia	
Wisconsin	
Wyoming	Jt & Sev

ABOLITION OR MODIFICATION OF

THE RULE OF JOINT AND SEVERAL LIABILITY

Please note that the courts of the following states do not currently apply the doctrine of joint and several liability: Indiana, Kansas and Oklahoma.

1985

Iowa

Abolished joint liability for defendants who are less than 50% responsible

1986

California

Abolished for non-economic damages

Colorado

Totally abolished joint and several liability (an amendment approved in 1987 allowed joint liability when tortfeasors consciously acted in a concerted effort to commit a tortious act)

Connecticut

Modified to prohibit joint liability except where liable party's share of judgment is uncollectible (1987 legislation by opposition limited this reform to non-economic damages only)

Florida

Abolished as to non-economic damages in negligence actions

Also abolished for economic damages for defendants less at fault than plaintiff

This rule does not apply for:

- economic damages for pollution
- intentional torts
- actions governed by a specific statute providing for joint and several liability
- actions involving damages no greater than $25,000

Hawaii

- Abolished for low fault defendants (25% of fault or less)
- Applies for non-economic damages only
- Does not apply to auto, product, or environmental cases

Illinois

- Abolished for low fault defendants (25% of fault or less)
- Does not apply to medical expenses awarded as damages
- Does not apply to medical malpractice or environmental liability cases

Michigan

Limited joint and several (except in products liability actions and actions involving a blame-free plaintiff), held defendants severally liable except when uncollectible shares of a judgment are reallocated between solvent co-defendants according to their degree of negligence; joint and several liability was abolished for municipalities

New York

Limited joint and several liability; a defendant who is 50% or less at fault is only severally liable for non-economic damages. However, the limitation does not apply to:

- o actions in reckless disregard of rights of others
- o motor vehicle cases
- o actions involving the release of toxic substances into the environment
- o intentional torts
- o contract cases
- o products liability cases where the manufacturer could not be joined
- o construction cases and other specific actions

Utah

Totally abolished joint and several liability

Washington

Abolished except for cases in which:

- o defendants acted in concert
- o plaintiff is fault free
- o hazardous or solid waste disposal sites are involved
- o business torts are involved
- o manufacturing of generic products is involved

Wyoming

Totally abolished joint and several liability

1987

Arizona

Abolished except in cases of:

- o intentional torts
- o hazardous waste

Georgia

Limited to several only when plaintiff is assessed a portion of the fault

Idaho

Abolished except in cases of:

- o intentional torts
- o hazardous wastes
- o medical and pharmaceutical products

Louisiana

Joint and several liability applies only to the extent necessary to cover 50% of the plaintiff's damages. (Current law which provided that the defendant is only liable for his/her share of damages when the defendant's liability is less than the plaintiff's remained unchanged.)

Missouri

Limited to several only when plaintiff is assessed a portion of the fault

Montana

Abolished joint liability for defendants who are 50% or less responsible

Nevada

Abolished except in:

- product cases
- cases involving toxic wastes
- cases involving intentional torts
- cases where defendants acted in concert

New Jersey

Modified the doctrine in the following way:

If the defendant is found to be less than 20% liable, the defendant is held responsible for only his degree of fault; between 20% and 60% the defendant can be held responsible for full economic damages and only his share of non-economic damages; over 60%, the defendant can be held liable for payment of all damages.

New Mexico

Codified common law application of several except in:

- cases involving intentional torts;
- cases in which the relationship of defendants could make one defendant vicariously liable for the acts of others
- cases involving the manufacture or sale of a defective product (In these cases the manufacturer and retailer can be held liable for their collective percentage of fault but not the fault of other defendants.)
- situations "having sound basis in public policy"

North Dakota

Abolished except for:

- intentional torts
- cases in which defendants acted in concert
- products liability cases

Ohio

Abolished for non-economic damages when the plaintiff is also assessed a portion of the fault

Oregon

- o Abolished joint and several liability with regard to non-economic damages
- o Abolished joint and several liability for economic damages when the defendant is less than 15% at fault
- o Exempted some environmental torts

South Dakota

Limited joint for those who are 50% or less responsible -- they pay no more than twice their share

Texas

Abolished joint liability for those who are 20% or less responsible except when:

- o plaintiff is fault free and defendant's share exceeds 10%
- o damages result from environmental pollution or hazardous waste

1988

Alaska

Joint and several liability was abolished through a ballot initiative, Proposition 2, on the November 8, 1988, ballot

Kentucky

Codified common law rule that when jury apportions fault, defendant is only liable for that share of fault

Minnesota

Limited joint and several liability for those who are 15% or less responsible -- they pay no more than four times their share

1989

Mississippi

Modified joint and several liability -- by applying the doctrine of joint and several only to the extent necessary for the injured party to receive 50% of his recoverable damages

New Hampshire

Abolished joint and several liability for defendants who are less than 50% responsible

1991

Nebraska

Modified the doctrine by:

- o replacing current slight-gross negligence rule with a 50/50 rule in which the plaintiff wins if the plaintiff's responsibility is less than the responsibility of all the defendants
- o eliminating joint and several liability for non-economic damages.

LIMITATIONS ON AWARDS OF

NON-ECONOMIC DAMAGES

1986

Alaska

$500,000 cap (except for physical impairment or disfigurement)

Colorado

$250,000 cap (unless court finds justification by "clear and convincing evidence" for a larger award which cannot exceed $500,000)

Hawaii

$375,000 cap but cap applies only to actual physical pain and suffering; other non-economic damages have no limit

Maryland

$350,000 cap

Minnesota

$400,000 cap on all awards based on loss of consortium, emotional distress, or embarrassment (not pain and suffering)

1987

Idaho

$400,000 cap -- adjusted for annual wage increase

Kansas

$250,000 cap on pain and suffering (not other non-economic losses)

Oregon

$500,000 cap on non-economic damages

REDUCTION OF COMPENSATORY AWARDS

BY COLLATERAL SOURCES

1986

Alaska

Admissible as evidence and offset with broad exclusions

Colorado

Admissible as evidence and offset with broad exclusions

Connecticut

Admissible as evidence and offset with broad exclusions

Florida

Mandatory offset with broad exclusions

Hawaii

- Provided for payment of valid liens (arising out of claim for payment made from collateral sources for costs and expenses arising out of injury) from special damages recovered
- Prevented double recoveries by allowing subrogation liens by insurance companies or other sources; third parties are allowed to file a lien and collect the benefits paid to plaintiff from the plaintiff's award; the amount of damages paid by the defendant to the plaintiff is not affected

Illinois

- Only collateral sources for benefits over $25,000 can be offset
- Offset cannot reduce judgment by more than 50%

Indiana

Admissible as evidence with certain exclusions; court may reduce awards at its discretion; jury may be instructed to disregard tax consequences of its verdict

Michigan

Admissible after the verdict and before judgment is entered; courts can offset awards but cannot reduce the plaintiff's damages by more than amount awarded for economic damages

Minnesota

Admissible as evidence but only for the Court's review; offset is provided for but collateral sources having rights of subrogation are excluded

New York

Mandatory offset

1987

Alabama

Collateral sources allowed as evidence -- reduction not mandated

Iowa

Collateral sources allowed as evidence -- reduction not mandated

Missouri

Collateral sources allowed as evidence but if used as evidence, defendant waives the right to a credit against the judgment for that amount

Montana

Collateral source rule abolished -- reimbursement from collateral source is admissible in evidence -- unless the source of reimbursement has a subrogation right under state or federal law, court is required to offset damages over $50,000

New Jersey

Mandatory offset of collateral source benefits other than workers' compensation and life insurance benefits

North Dakota

Mandatory offset of collateral source benefits other than life insurance or insurance purchased by recovering party

Ohio

Mandatory offset of any benefits received less the total of any costs paid for the benefit

Oregon

Allowed a judge to reduce awards for collateral sources

Excludes:

- life insurance and other death benefits
- benefits for which plaintiff has paid premiums
- retirement, disability, and pension plan benefits
- federal social security benefits

1988

Kentucky

The jury must be advised of collateral source payments and subrogation rights of collateral payors

1990

Idaho

Allowed the court to receive evidence of collateral source payments and reduce jury awards to the extent that they include double recoveries from sources other than federal benefits, life

insurance or contractual subrogation rights

1993

Arizona

Extended the existing collateral source legislation from medical malpractice issues to other forms of liability litigation (under this legislative approach, a jury would not be bound to deduct the amounts paid under a collateral source provision, but would be free to consider it in determining fair compensation for the injured party)

PROHIBITION OF, OR LIMITS, ON PREJUDGMENT INTEREST

1986

Michigan

Prohibited prejudgment interest on awards for future damages

Minnesota

Prohibited prejudgment interest on awards for future damages

Nebraska

Reduced rate of interest to 1% above the rate on U.S. Treasury Bill Offer of settlement provision allows the award of prejudgment interest for unreasonable failure to settle

Oklahoma

- Prohibited prejudgment interest on punitive damage awards
- Rate of interest reduced to 4% above the rate on U.S. Treasury Bill

1987

Iowa

Repealed prejudgment interest for future damages (other interest accrues from the date of commencement of the action at a rate based on U.S. Treasury Bill)

Louisiana

Tied prejudgment interest to the prime rate plus 1% with a floor of 7% and a cap of 14%

Rhode Island

Tied prejudgment interest to U.S. Treasury Bill rate–accrues from date suit is filed

Texas

Limited the period during which prejudgment interest may accrue if the defendant has made an offer to settle

1988

Maine

Tied prejudgment and postjudgment interest rate to U.S. Treasury Bill rate

REFORM OF THE LAW OF PUNITIVE DAMAGES

1986

Alaska

Requires "clear and convincing" evidence

Colorado

Punitive award may not exceed compensatory award; court may reduce if deterrence achieved without award, but may also increase to three times compensatory if misbehavior continues during trial

Florida

Punitive award may not exceed three times compensatories unless plaintiff can demonstrate by "clear and convincing" evidence that a higher award would not be excessive

Illinois

Plaintiffs no longer able to plead punitives in original complaint; subsequent motion to add punitive claim must show at hearing reasonable chance that the plaintiff will win punitive award at trial; defendant must be shown to have acted "willfully and wantonly"; court has discretion to award among plaintiff, plaintiff's attorney, and State Department of Rehabilitation Services

Iowa

Punitive damages may only be awarded where "willful and wanton disregard for the rights and safety of another" is proven; 75% or more of the award goes to State Civil Reparations Trust Fund (In 1987 the evidence standard was elevated to "clear, convincing, and satisfactory" evidence)

New Hampshire

Punitive damages prohibited

Oklahoma

Award may not exceed compensatory award unless plaintiff establishes his case by "clear and convincing " evidence, in which case, there is no dollar limitation

South Dakota

Requires "clear and convincing" evidence of "willful, wanton, or malicious" conduct

1987

Alabama

requires proof of "wanton" conduct by "clear and convincing" evidence

California

Requires "clear and convincing" evidence of oppression, fraud, or malice; the trial is bifurcated allowing evidence of defendants' financial condition only after a finding of liability

Georgia

$250,000 cap – product liability actions are excluded from the cap

Idaho

Requires preponderance of evidence of "oppressive, fraudulent, wanton, malicious or outrageous" conduct

Missouri

Bifurcated trial for punitives - The jury still sets the amount for punitive damages if in the 1st stage they find defendant liable for punitives; defendant's net worth is admissible only in punitive section of trial; 50% of the punitive damage award goes to state fund; multiple punitive awards prohibited under certain conditions

Montana

- Requires "clear and convincing" evidence of "actual fraud" or "actual malice"
- Bifurcates the trial with evidence of defendant's net worth only admissible in second section of trial
- Requires judge to review all punitive awards and issue an opinion on whether he increased, decreased or let stand the punitive award

New Jersey

- Requires evidence of "actual malice" or "wanton and willful disregard" of the rights of others
- Provides for a bifurcated trial
- Provides for a FDA government standards defense to punitives
- Excludes environmental torts

North Dakota

- Punitives not allowed in original complaint
- Plaintiff has to show prima facie evidence for claim for punitives
- Plaintiff must show "oppression, fraud or malice"

Ohio

Requires "clear and convincing" evidence; judge sets amounts; punitives cannot be awarded unless plaintiff has proved "actual damages" were sustained because of defendant's "malice, aggravated or egregious fraud, oppression or insult"; provides a government standard defense for FDA approved drugs

Oregon

- Requires "clear and convincing" evidence
- Provides a FDA defense to punitives

Texas

Caps punitive award at 4 times the actual damages or $200,000 whichever is greater

Plaintiff must show defendant's conduct was "fraudulent, malicious or grossly negligent"

Virginia

$350,000 cap

1988

Kansas

Caps punitive award at lesser of defendant's annual gross income or $5 million (the 1992 legislature amended this statute to allow a judge who felt annual gross income was not a sufficient deterrent, to look at 50% of the defendant's net assets, awarding the lesser of that amount or $5 million); (Note: 1987 legislation had required the court, not the jury, to determine the amount of the punitive damages award and required "clear and convincing" evidence)

Kentucky

Requires "clear and convincing" evidence that conduct constituted "oppression, fraud or malice"

South Carolina

Requires "clear and convincing" evidence for punitives

1989

Arizona

Provides a government standard defense for FDA approved drugs and devices

Nevada

- Limits punitive damage awards to $300,000 in cases in which compensatory damages are less than $100,000 and to three times the amount of compensatory damages in cases of $100,000 or more (Note: limits do not apply in cases against a manufacturer, distributor, or seller of a defective product; an insurer who acts in bad faith; a person violating housing discrimination laws; a person involved in a case for damages caused by toxic, radioactive or hazardous waste; a person for defamation)
- Requires a higher standard of liability, "oppression, fraud or malice";
- Requires "clear and convincing evidence";
- Bifurcates the trial allowing financial evidence only after a finding of liability

Utah

Provides for a higher standard of liability (from "reckless" to "knowing and reckless"), a government standard defense for FDA approved drugs, bifurcation of trials involving punitives, a "clear and convincing" evidence standard and the payment to a state fund of 50% of punitive damage awards over $20,000

1990

Minnesota

(1986 legislation prohibited punitive claims in the original complaint)

- Raises the standard of conduct for punitive damages from the current "willful indifference" to a standard of "deliberate disregard;"

- Establishes a defendant's right to insist on a bifurcated trial when a claim includes punitive damages
- Provides trial and appellate judges the power to review all punitive damage awards

1992

New York

Requires that 20% of all punitive damages be paid to the New York State General Fund

1993

Mississippi

- Establishes a clear and convincing evidence standard for the award of punitive damages
- Requires bifurcation of trials on the issue of punitive damages
- Prohibits the award of punitive damages in the absence of a compensatory awards
- Prohibits the award of punitive damages against an innocent seller
- Lays down factors for the jury to consider when determining the amount of a punitive damages award

North Dakota

- Limits punitive damages to the greater of $250,000 or two times compensatory damages
- Allows for bifurcated trials on the issue of punitive damages and
- Prohibits a defendant's financial worth from being admitted in the punitive damages portion of a trial

PRODUCT LIABILITY

1986

Colorado

- Establishes a two-year statute of limitations for product liability suits
- Establishes a ten-year statute of repose for manufacturing equipment

Florida

- Establishes modified comparative fault for all tort actions including strict product liability claims

Iowa

- Establishes a defense of conformity with the state-of-the-art at the time of manufacture
- Eliminates the liability of product sellers unless the manufacturer is not subject to the court's jurisdiction

Kansas

- Prohibits submission of evidence in product liability cases concerning advances in technology or changes in manufacturing process made after the product was designed and sold

Washington

- Prohibits liability if the injured person was under the influence of alcohol or illegal drugs and that condition was 50% responsible for the injury

1987

California

- Provides that a manufacturer or seller is not liable if harm results from an inherent characteristic of a product that is known to the ordinary person and the product is intended for personal consumption

Delaware

- Establishes a defense for product sellers when the seller did not know of the defect and did not manufacture or modify the product

Georgia

- Eliminates the liability of product sellers unless the manufacturer is not subject to the courts's jurisdiction

Mississippi

- Makes unenforceable any attempt by a seller of consumer goods to exclude or modify any implied warranties of merchantability or fitness or to limit or modify a consumer's remedies for breach of the manufacturer's express warranties

Missouri

- Recognizes state-of-the-art as a complete affirmative defense

- Defines "plaintiff fault" to include product misuse, failure to take reasonable precautions, and unreasonable failure to appreciate the danger involved in the use of the product

Montana

- Defines unreasonable product misuse and assumption of the risk under the comparative responsibility statute

New Jersey

- Provides that a manufacturer or seller of a product is liable only if claimant proves by preponderance of evidence that the product was not suitable or safe because it:

  a) deviated from the design specifications or performance standards
  b) failed to contain adequate warnings
  c) was designed in a defective manner

- Provides that a manufacturer or seller is not liable if at the time the product left the manufacturer's control there was not available a practical and feasible alternative design that would have prevented the harm

- Provides that a product is not defective in design if harm results from an inherent characteristic of the product that is known to the ordinary person who uses or consumes it

- Provides that a manufacturer or seller is not liable for a design defect if harm results from an unavoidably unsafe aspect of a product and the product was accompanied by an adequate warning

- Provides that the state of the art provision does not apply if the court makes all of the following determinations:

  a) that the product is egregiously unsafe
  b) that the user could not be expected to have knowledge of the product's risk
  c) that the product has little or no usefulness

- Provides that a manufacturer or seller is not liable in a warning-defect case if an adequate warning is given (An adequate warning is one that a reasonably prudent person in the similar circumstances would have provided.)

- Establishes a rebuttable presumption that a government (FDA) warning is adequate

- Provides that drugs, devices, food and food additives which have received pre-market approval or are licensed or regulated by the FDA shall not be subject to punitive damages unless material information was withheld or misrepresented

New Mexico

- Exempts blood, blood products, and human tissue and organs from strict product liability

North Dakota

- Eliminates the liability of product sellers unless the manufacturer is not subject to the court's jurisdiction

Ohio

- Codifies the consumer-expectation test for design defects
- Establishes a defense for inherent characteristics of a product known to the ordinary person with knowledge common to the community
- Establishes a state-of-the-art defense when no practical and technologically feasible alternative design was available unless the manufacturer acted unreasonably in introducing the product into commerce
- Establishes a defense to warning claims if the risk is open and obvious or a matter of common knowledge
- Establishes a defense to warning claims for drugs and medical devices if the warnings provided comply with regulations of the Food and Drug Administration
- Establishes a defense to punitive damages against a drug manufacturer if the drug was approved by the Food and Drug Administration

Oregon

- Prohibits punitive damages against a drug manufacturer if the drug was manufactured and labeled in accord with government approval or if it was generally recognized as safe and effective in accord with FDA procedures, unless the defendant withheld information concerning the drug from the FDA or failed to conduct a required recall

Texas

- Prohibits recovery against a manufacturer, distributor or retailer of a product if the plaintiff is 60% or more responsible for the injury

1988

Louisiana

- Provides that a product may be unreasonably dangerous only because of one or more of the following characteristics:

  a) defective construction or composition
  b) defective design
  c) failure to warn or inadequate warning
  d) nonconformity with an express warranty

- Provides that a manufacturer of a product shall not be liable for damage proximately

caused by a characteristic of the product's design if the manufacturer proves that at the time the product left his control:

a) he did not know, and in light of then-existing reasonably available scientific and technological knowledge, could not have known of the design characteristic that caused the damage
b) he did not know and in light of then-existing reasonably available scientific and technological knowledge, could not have known of the alternative design identified by the claimant
c) the alternative design identified by the claimant was not feasible, in light of then-existing reasonably available scientific and technological knowledge or then-existing economic practicality

New Hampshire

- Provides affirmative defense that the risks complained of by the plaintiff were not discoverable using prevailing research and scientific techniques under the state of the art and were not discoverable using procedures required by federal or state regulatory authorities charged with supervision or licensing of the product in question

1989

Utah

- Provides a statute of limitation = actions shall not be brought more than six years after the date of initial purchase or ten years after the date of manufacture of a product
- Provides that no dollar amount may be specified in the prayer of a complaint filed in a product liability action
- Provides for an alteration or modification defense
- Provides a rebuttable presumption that a product is free from any defect where the alleged defect in the plans for the product were in conformity with government standards for the industry

1993

Mississippi

- Provides that product liability cases must be based on a design, manufacturing or warning defect, or breach of an express warranty, which caused the product to be unreasonably dangerous
- Provides that a product which contains an inherently dangerous characteristic is not defective unless the dangerous characteristic cannot be eliminated without substantially reducing the product's usefulness or desirability and the inherent characteristic is recognized by the ordinary person with ordinary knowledge common to the community
- Provides that a manufacturer or seller cannot be held liable for failure to warn of a product's dangerous condition if it was unknowable at the time the product left the manufacturer's or seller's control

- Completely bars from recovery a plaintiff who knowingly and voluntarily exposes himself or herself to a dangerous product condition if he or she is injured as a result of that condition
- Relieves a manufacturer or seller from the duty to warn of a product that poses an open and obvious risk
- Provides that a properly functioning product is not defective unless there was a practical and economically feasible design alternative available at the time of manufacture
- Provides for indemnification of innocent retailers and wholesalers

New Hampshire

- Establishes New Hampshire manufacturers' right of indemnification from the original purchaser of a product for damages caused by the product if it is significantly altered after it leaves the New Hampshire manufacturer's control

North Dakota

- Provides for a move from pure comparative fault to modified comparative fault in product liability actions

Texas

- Requires plaintiffs with suits claiming a product was defectively designed to prove that an economically and technologically feasible, safer alternative design was available at the time of manufacture in most product liability actions for defective design
- Provides a defense for manufacturers and sellers of inherently unsafe products that are known to be unsafe
- Establishes a 15 year statute of repose for product liability actions against manufacturers or sellers of manufacturing equipment
- Provides protection for innocent retailers and wholesalers

APPENDIX B

Limits on Damages,
The American Tort Reform Association,
February 1994

LIMITS ON DAMAGES

as of February 9, 1994

STATE	LIMIT	APPLICATION AND DESCRIPTION
ALABAMA	$1 million	Medical liability actions against health care providers for wrongful death.
ALASKA	$500,000	Non-economic damages, excluding cases of disfigurement or severe physical impairment.
ARIZONA	NONE	
ARKANSAS	NONE	
CALIFORNIA	$250,000	Non-economic damages in medical liability actions.
COLORADO	$250,000 --- punitives may not exceed compensatory awards	Non-economic damages in medical liability actions, unless court finds clear justification to exceed, but in no event more than $500,000; total recovery not to exceed $1 million. Held constitutional in Scholz v. Metropolitian Patholigists, P.C., No.92-8A277, Co. Sup. Ct., (April 26, 1993.) --- All punitive damage awards.
CONNECTICUT	2 x compensatory damages	Punitive damage awards in product liability actions.
DELAWARE	NONE	

DELAWARE	NONE	
FLORIDA	$250,000/ $350,000 --- 3 x compensatory damages	Non-economic damages in medical liability actions; $250,000 limit applies to binding arbritration and $350,000 limit applies to arbitration cases which proceed to trial. Held unconstitutional in 1991, Univ. of Miami School of Medicine v. Echarte. --- Punitive damages awards, except class actions, some restrictions.
GEORGIA	$250,000	Punitive damages in all cases except product liability.
HAWAII	$375,000	Pain and suffering (does not include mental anguish, disfigurement, loss of enjoyment of life, loss of consortium) SUNSETTED in 1993 but extended to 1994 by HB 928 (enacted in packages with limited joint and several liability and allowed subrogation by liens insurance cos.) Applies to all tort actions.
IDAHO	$400,000	Non-economic damages in personal injury cases, increases/decreases annually according to state's adjustment of average annual wage.
ILLINOIS	NONE	

INDIANA	$750,000	Total damages in medical liability actions. Held constitutional in Johnson v. St. Vincent Hospital Inc., 374,404 N.E. 2nd 585 (Ind. 1980)., St. Anthony Medical v. Smith, No. 37A04-9010-CV-460, Ind. App. Ct., May 28, 1992., Tony J. Bova v. J.H. Roig, M.D., No. 56A03-9110-CV-313, Ind. App. Ct., 1st Dist., December 7, 1992.
IOWA	NONE	
KANSAS	$250,000 --- lesser of defendant's annual gross income or $5,000,000	Non-economic damages in all personal injury cases. --- All punitive damages awards.
KENTUCKY	NONE	
LOUISIANA	$500,000	Total damages in medical liability actions excluding future medical care and related benefits. Held constitutional in Butler v. Flint Goodrich Hospital of Dillard University, Supreme Court of Louisiana No. 92 CC 0559 (4th Circuit), October 19, 1992.
MAINE	NONE	
MARYLAND	$350,000	Non-economic damages in all personal injury actions, except wrongful death

MICHIGAN	$225,000	Non-economic damages in medical liability actions (unless death, intentional tort, foreign body wrongfully left in body, injury to reproductive system, fraudulent concealment of injury, limb or organ wrongfully removed and patient has lost vital bodily function); limit increased annually by increase in consumer price index.
MINNESOTA	$400,000	Intangible losses in all civil actions (embarrassment, emotional distress, loss of consortium; intangible loss does not include pain and suffering, disability or disfigurement)
MISSISSIPPI	NONE	
MISSOURI	$350,000	Non-economic damages in medical liability actions increased/decreased annually according to figures determined by the U.S. Department of Commerce.
MONTANA	NONE	
NEBRASKA	$1 million	Total damages in medical liablility actions.
NEVADA	$300,000 if compensatory 100,000 or less than 3 x compensatory otherwise	Punitive damage awards, except in cases of product liability insurance/bad faith, discrimination, toxic torts and defamation cases.
NEW HAMPSHIRE	NONE	
NEW JERSEY	NONE	

NEW MEXICO	$500,000	Total damages in medical liability actions, except medical care, related costs and punitive damages; $200,000 cap for health care providers.
NEW YORK	NONE	
NORTH CAROLINA	NONE	
NORTH DAKOTA	the greater of $250,000.00 or 2 x compensatory damages	All punitive damage awards.
OHIO	NONE	
OKLAHOMA	3 x compensatory damages	All punitive damage awards
OREGON	$500,000	Non-economic damages in all personal injury cases.
PENNSYLVANIA	NONE	
RHODE ISLAND	NONE	
SOUTH CAROLINA	NONE	
SOUTH DAKOTA	$1 million	Total damages in medical liability actions.
TENNESSEE	NONE	
TEXAS	4 x actual damages or $200,000	All punitive damage awards

LIMITS ON DAMAGES

as of January 6, 1994

UTAH	$250,000	Non-economic damages in medical liability actions.
VERMONT	NONE	
VIRGINIA	$1 million --- $350,000	Total damages in medical liability actions. --- All punitive damage awards
WASHINGTON	NONE	
WEST VIRGINIA	$1 million	Non-economic damages in medical liability actions.
WISCONSIN	Sunsetted	Prior to sunset in 1991, there was a $1 million non-economic damages limit in medical liability actions; cap was adjusted annually to reflect changes in consumer price index.
WYOMING	NONE	