

## **CAPS ON COMPENSATORY DAMAGES: A STATE LAW SUMMARY**

It is difficult to compare state laws that cap compensation to victims in civil lawsuits. Most “cap” laws focus on non-economic damages,<sup>1</sup> although some state medical malpractice laws cap total damages (both economic<sup>2</sup> and non-economic). “Caps” also vary in size.

Many states exempt certain factual scenarios or specific types of claims from application of a state’s cap. Some state high courts have examined the constitutionality of caps, while others have not. And some states have re-passed caps after their courts found them unconstitutional, often making the constitutionality of such caps unclear.

With that in mind, the following is a general rundown of current state laws that cap compensatory damages.<sup>3</sup>

### **GENERAL TORT OR PERSONAL INJURY CASES<sup>4</sup>**

#### **Non-economic damages caps (9 states)**

AK, CO, HI,<sup>5</sup> ID, MD, MS, OH,<sup>6</sup> OR,<sup>7</sup> TN

#### **Caps found unconstitutional; legislatures haven’t re-passed them (6 states)**

FL, IL, KS, NH, OK, WA

#### **No caps (41 states plus DC)**

AL, AZ, AR, CA, CT, DC, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MA, MI, MN, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OK, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY

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<sup>1</sup> Non-economic injuries include permanent disability, mutilation, trauma, loss of a limb, blindness, sexual or reproductive harm and other types of suffering and pain.

<sup>2</sup> Economic loss is primarily lost earnings and medical expenses.

<sup>3</sup> Caps on punitive damages are not included in this analysis.

<sup>4</sup> Some states have separate laws capping damages in products liability or medical malpractice cases.

<sup>5</sup> Cap applies to “pain and suffering” only. Other kinds of non-economic damages are not capped.

<sup>6</sup> Re-passed after being found unconstitutional.

<sup>7</sup> Found unconstitutional but court reversed itself much later.

## PRODUCTS LIABILITY CASES

### **Non-economic damages caps (9 states)**

AK, CO, ID, MI, MD, MS, OH,<sup>8</sup> OR,<sup>9</sup> TN

### **Caps found unconstitutional; legislatures haven't re-passed them (6 states)**

FL, IL, KS, NH, OK, WA

### **No caps (41 states plus DC)**

AL, AZ, AR, CA, CT, DC, DE, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MA, MN, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OK, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY

## MEDICAL MALPRACTICE CASES

### **Total caps (i.e., caps encompassing economic and non-economic damages, although some exempt future medical care)(6 states)**

CO,<sup>10</sup> IN, LA, NE, NM, VA

### **Non-economic damages caps (24 states)**

AK, CA, CO,<sup>11</sup> HI,<sup>12</sup> IA, ID, MA, MD, MI, MO,<sup>13</sup> MS, MT, NC, ND,<sup>14</sup> NV, OH,<sup>15</sup> OR,<sup>16</sup> SC, SD,<sup>17</sup> TN, TX, UT, WV, WI<sup>18</sup>

### **Caps found unconstitutional; legislatures haven't re-passed them (8 states)**

AL, FL, GA, IL, KS, NH, OK, WA

### **No caps (21 states plus DC)**

AL, AZ, AR, CT, DC, DE, FL, GA, IL, KS, KY, ME, MN, NH, NJ, NY, OK, PA, RI, VT, WA, WY

## STATES WITH CONSTITUTIONAL PROVISIONS PROHIBITING CAPS

### **General torts (5 states)**

AZ, AR, KY, PA, WY

### **Wrongful death only (4 states)**

NY, OH, OK, UT

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<sup>8</sup> Re-passed after being found unconstitutional.

<sup>9</sup> Found unconstitutional but court reversed itself much later.

<sup>10</sup> CO also has a separate non-economic damages cap.

<sup>11</sup> CO also has a separate "total" cap.

<sup>12</sup> Cap applies to "pain and suffering" only. Other kinds of non-economic damages are not capped.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Found unconstitutional but court reversed itself much later.

<sup>17</sup> One cap found unconstitutional but another cap is still law.

<sup>18</sup> Re-passed after being found unconstitutional and then upheld as constitutional.

