



# Wisconsin Medical Society

Your Doctor. Your Health.

## *How Wisconsin compares to other Midwest states*

**The Wisconsin Medical Society needs your help in educating our elected officials on the negative impacts of an item in the 2009-2011 State Biennial Budget.** The bill has an item that would allow someone only 20 percent at fault to be held 100 percent liable for all damages. This is a dramatic change from current law, where one has to be responsible for at minimum 51 percent of fault to be 100 percent liable.

This item—changing the state’s “joint and several liability” threshold—does not belong in a fiscal budget bill, and is bad public policy. The change would immediately harm Wisconsin’s medical liability environment, especially compared to other states in our region:

**No Joint and Several Liability** (Pay percentage of fault)

- Michigan
- Indiana
- Kansas
- North Dakota

**Limited Joint and Several Liability** (Requiring more than 50 percent fault)

- Iowa
- Minnesota
- Ohio (only if intentional)
- Missouri
- Nebraska
- South Dakota

**Expanded Joint and Several Liability** (Pay 100 percent even if less than 50 percent at fault)

- Illinois—25 percent Fault Threshold
- Wisconsin—20 percent Fault Threshold

**Joint Committee on Finance Motion No. 700**

**Contributory Negligence**

4. Joint and Several Liability Threshold [LFB Paper #390]. Maintain a threshold for the application of joint and several liability, but reduce the threshold percentage from 51% of causal negligence to 20% causal negligence. Specify that the court compare the negligence of the plaintiff with the negligence of any party against whom recovery is sought, the negligence of third party defendants who are liable in tort to the plaintiff, and the negligence of any person with whom the claimant has settled. Except for persons who have settled with the plaintiff, there is no comparison of negligence with any person who is not a party to the action to recover damages. Include the AB 75 provision related to jury instructions on the effect on awards and liabilities of the percentage of negligence found by the jury to be attributable to each party.

Under current law, the liability of each person found to be causally negligent whose percentage of causal negligence is less than 51% is limited to the percentage of the total causal negligence attributed to that person. A person found to be causally negligent whose percentage of causal negligence is 51% or more is jointly and severally liable for allowed damages. Assembly Bill 75 removes this provision.

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**Action Request:** Please call your State Assembly Representative and your State Senator **today**—ask that they vote to remove the joint and several liability change from the biennial budget bill. To find your legislators’ contact information, visit <http://www.legis.wisconsin.gov/w3asp/waml/waml.aspx> or call the legislative hotline at 800.362.9472.