



U.S. Tort Liability Index: 2008 Report

By Lawrence J. McQuillan and Hovannes Abramyan

with a foreword by

Jeb Bush

Former Governor of Florida

The *U.S. Tort Liability Index: 2008 Report* measures the best and worst tort systems in America. The Pacific Research Institute developed the *Index* as a tool for governors and state legislators to assess their tort systems and to enact laws that will improve the business climates of their states. The study helps predict the winners and losers in the race for jobs and business investment. It is also useful for business leaders who are deciding where to start a new business, build a new plant, expand operations, introduce a new product, or hire more employees. States that rank worse in the study are less likely to lead in these areas.

An efficient tort system is an important part of a thriving free-enterprise economy. It ensures that firms have proper incentives to produce safe products in a safe environment, and that truly injured people are fully compensated. An efficient tort system results in greater trust among market participants, leading to more trading, and eventually a higher standard of living for individuals in the society. An efficient tort system benefits all.

A poor tort system, on the other hand, imposes excessive costs on society, not the least of which is foregone production of goods and services. There is growing evidence that U.S. tort costs are far greater than other countries' costs and that much of the difference is due to excessive litigation and lawsuit abuse. All of us shoulder the burden of an excessively expensive and inefficient tort liability system through higher prices, lower wages, decreased returns on investments in capital and land, restricted access to health care, and less innovation. Businesses that spend more money each year on liability insurance have less money available for research and development or for health benefits for their employees. All of us pay the price, whether we realize it or not.

The *U.S. Tort Liability Index: 2008 Report* measures which states impose the highest, and the lowest, tort liability costs both in absolute and in relative terms. The study also measures relative litigation risks across states. Finally, it examines which states have rules on the books that, if implemented and enforced, reduce lawsuit abuse and tort costs, resulting in a more balanced and predictable civil-justice system.

General Methodology

Every good index is a work in progress. The venerable Consumer Price Index, perhaps the most widely cited and closely watched of all indices, has been refined and improved many times over the years as new data or new theoretical insights have become available. The *U.S. Tort Liability Index* is no exception. The 2008 edition includes many improvements based on helpful comments from people across the country who read the 2006 edition. The improvements, highlighted with bullets throughout this fact sheet, have produced more precise rankings in this edition.

The U.S. tort system is an industry, and, like any industry, it consists of inputs and outputs. Tort-system inputs include such things as courthouses, judges, juries, clerks, copying machines, law libraries, and the rules and procedures on the books that shape tort outputs.

Tort-system outputs consist of cases filed, attorneys practicing to handle the cases, damage awards, and settlement amounts. In brief, the outputs from the U.S. tort liability system consist of monetary tort losses and litigation risks.

- This edition, unlike the first edition, calculates separate rankings for the output side and the input side. There is now a clean split between the two sides.

This report uses comprehensive data on all 50 states to assess separately the outputs and inputs of each state's tort system and rank the states accordingly. We used the most recent data available as of the date we closed the books on the data: October 1, 2007. We chose this cut-off point because all state legislative sessions had ended by then.

All of the underlying data and variable rankings are available in an Excel file posted on PRI's Web site at http://special.pacificresearch.org/pub/sab/2008/tort_reform/. We selected the variables after consulting with dozens of legal experts, university professors, and lawyers, and after an exhaustive search of the scholarly academic literature.

Ranking State Tort-System Outputs (Chapter 2)

The report measures outputs using 13 variables and then ranks the states from best to worst. The index is ordinal driven, meaning each state is compared with the other 49 states across all variables. The 13 output variables are grouped into two categories: monetary tort losses and litigation risks (see chapter 2, table 2). The output rankings are free of any subjective influence by the authors of this report—they are based solely on independent, outside data.

- Improvements to this edition's output variables are: removal of the generally non-tort workers'-compensation variable; addition of a new variable that measures awards dispersion across states; addition of new insurance-line-specific denominators for more precise comparisons among states; and inclusion of a ranking of absolute monetary tort losses.

Table 1 gives a snapshot of how the states currently rank based on relative tort losses and litigation risks.

A Guide to Reform: Ranking State Tort-System Inputs (Chapter 3)

The inputs to the U.S. tort liability system are largely the rules on the books in each state that shape that state's tort-system outputs. These rules are controlled by voters, legislators, and/or judges, either directly or indirectly in each state. It is helpful to think of these rules as the dials that can be turned to influence the final outputs of the tort system—the monetary tort losses and litigation risks.

This report uses 28 variables to rank each state based on tort-system inputs (see chapter 3, table 6). The 28 input variables are grouped into three categories: monetary caps, substantive-law rules, and procedural and structural institutions. We judged how effective, stringent, rigid, or binding each variable was in each state based on current statutory law or court decisions/common law.

**Table 1. U.S. Tort Liability Index,
2008 Output Rankings**

Rank	State	Score
1	North Dakota	11.23076923
2	Alaska	12.30769231
3	North Carolina	12.84615385
4	Iowa	13.61538462
5	Virginia	14.00000000
6	New Mexico	14.61538462
7	Utah	15.60769231
8	Wyoming	16.76923077
9	Mississippi	17.06923077
10	Maine	17.46153846
11	Ohio	17.91538462
12	Tennessee	18.00000000
13	South Dakota	18.23076923
14	South Carolina	18.83076923
15	Hawaii	18.92307692
16	New Hampshire	19.53846154
17	Wisconsin	20.15384615
18	Texas	20.38461538
19	Nebraska	20.73076923
20	Oklahoma	20.92307692
21	Minnesota	21.06923077
22	Indiana	21.60769231
23	Vermont	22.07692308
24	Delaware	22.24615385
25	Idaho	22.38461538
26	Kansas	22.46153846
27	Georgia	22.69230769
28	Michigan	23.00000000
29	Louisiana	23.03076923
30	Arkansas	24.34615385
31	Kentucky	24.45384615
32	Oregon	24.53076923
33	Arizona	25.37692308
34	California	25.81538462
35	Maryland	25.99230769
36	Nevada	26.07692308
37	Washington	26.30000000
38	Connecticut	26.76153846
39	Alabama	27.76153846
40	West Virginia	27.76923077
41	Massachusetts	27.94615385
42	Colorado	28.30000000
43	Missouri	29.75384615
44	Rhode Island	30.03846154
45	Pennsylvania	30.07692308
46	Montana	31.61538462
47	Illinois	33.72307692
48	New York	34.63846154
49	New Jersey	36.54615385
50	Florida	38.16923077

Source: PRI

- Improvements to this edition’s input variables include: adding new variables to track the nation’s most harmful attorneys general, noting whether a state has an “*Illinois Brick* repealer” statute, tracking rules governing early offers of settlement, and noting whether a state has complex-litigation courts. Additional improvements include using a better data source for the “*Daubert* or *Frye*” variable concerning expert witnesses, citing the newest research studies to justify inclusion of each variable, re-sorting the input variables among the three categories, and using a panel to rank the input variables.

Table 7 of the report shows where each state ranks overall in terms of inputs, as well as where it ranks for each individual variable. The states that have the best overall tort rules on the books, and that will be heading in the right direction if the rules are fully implemented, are Colorado, Texas, Ohio, Georgia, Indiana, Florida, and Michigan. At the bottom of the barrel are Pennsylvania, Illinois, Maryland, New York, Vermont, and, dead last, Rhode Island. California has the 11th-worst overall tort rules. Figure 3 of the report shows the geographical distribution of the overall input rankings.

Table 7 also makes it easy to spot where tort reformers in each state might want to focus their efforts. For example, in California, reformers might want to target class-action rules and asbestos liability. In New York, which ranked 50th on an astounding 18 of 28 input variables, reformers might want to target attorney-retention sunshine rules and monetary caps. In New Jersey, adopting *Daubert* as the standard for scientific review of evidence by expert witnesses might be a high priority. And Texans might want to focus on abandoning partisan district elections to seat judges. States that pass meaningful tort reforms challenge their neighbors to do the same or suffer a competitive disadvantage in the battle to attract people and capital to their state.

Saints, Sinners, Salvageables, and Suckers (Chapter 3)

By merging the output and input results, we can divide the states into four groups: saints, sinners, salvageables, and suckers.

- “Suckers” is a new category in the 2008 edition that allows for more precise classification.

Briefly, the saints are states that have relatively low monetary tort losses and/or few litigation risks and relatively strong tort rules on the books. These states are well positioned to contain their tort liability costs in the future if the rules are implemented as written.

The sinners are states that have relatively high monetary tort losses and/or high litigation risks and relatively weak tort rules on the books. The sinners are likely to face high and rising tort liability costs in the future as lawsuit abuse goes unchecked.

The salvageables are states that have moderate to high relative monetary tort losses and/or moderate to high litigation risks, yet have moderate to strong tort rules, probably as a result of recent reforms. If the rules are implemented as written on the books, the salvageables are positioned to do a better job of containing their tort liability costs and move up in future output rankings as the benefits of reform feed back to improve outputs.

The suckers are states that have weak tort rules on the books because they currently have relatively low monetary tort losses and/or few litigation risks and, therefore, foolishly believe that they are not vulnerable and reform is not needed.

Table 8 of the report lists the classification of each state based on an analysis of its outputs and its inputs.

“Tort costs profoundly shape a state’s economic climate, and when the costs spiral out of control, businesses and citizens suffer or they move away. In assessing the state-by-state costs of America’s damaged legal system, the Pacific Research Institute’s *Tort Index* also details the economic dangers—and the value of reform.”

John Engler

President of the National Association of Manufacturers
Former Governor of Michigan

The Benefits of Tort Reform (Chapter 4)

Chapter 4 examines evidence provided by today’s top economists and legal scholars on the benefits of tort reform in people’s lives. The studies document the significant beneficial effects of tort reform on productivity and employment, accidental deaths, innovation, defensive medicine and health-care access, state economic performance, and national output and individual well-being (see table 9 of the report for a summary).

- We review important research findings that have emerged since the previous edition was published in 2006.

Connecting this evidence to the *U.S. Tort Liability Index* leads to one vital conclusion: A better *Index* ranking for a state—created through a commitment to meaningful tort reform—translates, everything else being equal, into a better legal environment in which to invest human, physical, and financial capital, the ingredients for self-sustaining economic growth and personal prosperity.

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