

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3056

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Salvatore Rickford  
Operator's Signature

10/6/03  
Date

2003 HOUSE HUMAN SERVICES

HCR 3056

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Richard Costa  
Operator's Signature

10/6/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3056

House Human Services Committee

☐ Conference Committee

Hearing Date February 26, 2003

Tape Number	Side A	Side B	Meter #
2		X	16.1 - 25.4
Committee Clerk Signature <i>Sharon Rengrow</i>			

Minutes:

Rep. Boucher appeared as prime sponsor of the bill stating his concerns of rising costs of liability and malpractice insurance for our facilities. It appears that North Dakota providers are actually paying the price of what is going on throughout the rest of the nation. In other words, premiums are based upon activities that happened in the various industries and they are being passed on to our North Dakota facilities. What we are looking at here is the possibility of expanding, or studying the possibility of expanding the operations of this particular insurance source to include non-profits in the medical provider long term care community and so forth. I think we are finding out that the service providers that we are talking about, long term facilities, basic care facilities, our hospitals across the State of North Dakota are struggling to survive financial and I think that anything that we can do to alleviate some of their financial costs and make that fiscal environment for their operation better, is worthy of our study and our consideration.

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*La Costa Rickford*  
Operator's Signature

*10/6/03*  
Date

Page 2

House Human Services Committee

Bill/Resolution Number HCR 3056

Hearing Date February 26, 2003

Sen. Mathern appeared as cosponsor stating he would make 2 points in follow-up to Rep.

Boucher's comments. One is that I found it interesting that during the President's State of the Union message to Congress he had somebody from Fargo there and the reason for that was to highlight the problems in terms of medical providers receiving adequate liability insurance.

That's an indicator there are some issues going on, but the primary reason I decided to cosponsor this bill was, I believe our medical providers who used Medicaid may come due in terms of form of reimbursement are essentially offering that service pretty close to cost or many times below cost. We need those providers in our State to offer that program to our citizens and maybe offering them the possibility of some sort of insurance product within our ND Insurance Reserve Fund is a way of supporting their work too as they support our work in the Medicaid Program. I understand that it's a complicated area, it's an area of considerable dollar risk that's a little bit different than some of our other risks and so I think a study is important and a study would give us the data that is necessary to see if such an option is workable.

Steve Spilde, CEO of the North Dakota Insurance Fund appeared neutral on the bill stating the reason he's here is they are willing and able to provide information, be a resource and participate in discussion should the resolution pass and be selected for an interim study. I don't believe we would be interested or our members would be interested in simply stepping up and bringing in private parties for medical liability coverage, that doesn't mean that there may not be a number of other ways that could be looked at in terms of addressing these issues.

Rep. Price: What would be your feelings about as it pertains from the long term care facilities as opposed to providers and medical malpractice?

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Ja Costa Richardson  
Operator's Signature

10/16/03  
Date

Page 3

House Human Services Committee

Bill/Resolution Number HCR 3056

Hearing Date February 26, 2003

Answer: concerns with writing private parties, private entities is that we don't believe that our members would want to put at risk the funds that you've spent now 17 years building up, provide solid stable coverage for their liability risk. As far as the medical liability with the long term care by itself, certainly there are methods under which coverage could be provided for under business plans than what we are currently operating and so we would certainly be interested in discussing various other methods by which we might participate in that kind of coverage or in which other entities may do so as well.

Closed hearing.

Rep. Price: Question on child birth services and realize that that's a number of the services are being diminished throughout the State but many times its because of efficiency, because they only have 2-3 births in a hospital for a whole year. They choose not to because they don't believe they are going to maintain enough efficiency. They don't do enough to stay in business for that reason.

Rep. Wieland: Concerns with North Dakota Insurance Reserve Fund, when the study is done, will other options be considered.

Rep. Porter: Technically they couldn't handle the medical facilities under their tax status that they are right now per Mr. Spilde. He said it would be more of a study topic and more of a separate fund that would be managed by the management of the Insurance Reserve Fund. He didn't think because of the IRS rules that they would be allowed to be included in the same pool of money that's currently used for political subdivisions because of the different tax status's that would be out there.

Rep. Price: I think we need to amend it to look at other pools.

Page 4  
House Human Services Committee  
Bill/Resolution Number HCR 3056  
Hearing Date February 26, 2003

Concerns of the committee regarding possibly looking at another entity and look at it as a small community seeing it as being intrusive.

Rep. Porter: motioned to adopt an amendment on line 23, after the word in, strike the language and insert an insurance reserve fund managed by and after Fund insert or other like entity, second by Rep. Wieland. 13 - 0 - 1 Amendment Passed.

Rep. Kreidt moved a DO PASS as Amended and placed on the Consent Calendar, second by Rep. Pollert. 13 - 0 - 0 Rep. Devlin will carry the bill

33094.0101  
Title.0200

Adopted by the Human Services Committee  
February 26, 2003

VR  
2/27/03

HOUSE AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3056 HS 2-27-03

Page 1, line 5, after "In" insert "an insurance fund managed by" and after "Fund" insert "or other like entity"

Page 1, line 23, after "In" insert "an insurance reserve fund managed by" and after "Fund" insert "or other like entity"

Renumber accordingly

Page No. 1

33094.0101

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Yolanda Rickford  
Operator's Signature

10/16/03  
Date

26  
Date: February , 2003  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3056

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

DP as Amended on Consent

Motion Made By

Rep

Seconded By

Rep

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair	✓		Rep. Bill Amerman	✓	
Rep. Robin Weisz	✓		Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment

Rep. Devlin

If the vote is on an amendment, briefly indicate intent:

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10/16/03  
Date



**REPORT OF STANDING COMMITTEE (410)**  
February 27, 2003 3:11 p.m.

Module No: HR-35-3627  
Carrier: Devlin  
Insert LC: 33094.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HCR 3056: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3056 was placed on the Sixth order on the calendar.**

Page 1, line 5, after "In" insert "an insurance fund managed by" and after "Fund" insert "or other like entity"

Page 1, line 23, after "In" insert "an insurance reserve fund managed by" and after "Fund" insert "or other like entity"

Renumber accordingly

2003 SENATE HUMAN SERVICES  
HCR 3056

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Yolanda Rickford  
Operator's Signature

10/6/03  
Date

# 2003 SENATE STANDING COMMITTEE MINUTES

## BILL/RESOLUTION NO. HCR 3056

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 19, 2003

Tape Number	Side A	Side B	Meter #
1	X		2708-end
1		X	1-620
1		X	1080-1215
Committee Clerk Signature <i>Mary Boughner</i>			

### Minutes:

Senator J. Lee (mtr #2708) - Opened the hearing on HCR3056. All committee members are present. This resolution directs the Legislative Council to study whether this state is experiencing a medical insurance crisis that impacts the availability and affordability of liability insurance for medical providers and medical facilities.

Representative Merle Boucher (mtr #2835) - Introduced the resolution and explained its intent. In discussions with medical people, brought forward insurance coverage issues. Referenced the situation in the state of West Virginia where they had a number of doctors and medical people go on strike due to the high cost of liability insurance/malpractice insurance. Is a growing concern that malpractice insurance is becoming quite high and indications are that they will continue to increase significantly. Question that I put to these people, why can't we look at the possibility of accessing the ND Insurance Reserve Fund. Our medical people paying added premiums because of what is happening in other parts of the country. In ND we are less inclined to use liability

Page 2

Senate Human Services Committee

Bill/Resolution Number HCR3056

Hearing Date March 19, 2003

suits, but we are still paying the price of premium costs because it is spread out over the entire medical community. In ND incidents of liability suits are minimal compared to the rest of the country.

Senator J. Lee (mtr #3277) - Question regarding Torte reform fitting into this picture.

Representative Boucher (mtr #3285) - Amiable to any thing that is going to make the situation better. Torte Reform is a controversial issue.

Senator J. Lee (mtr #3330) - Comment, as legislatures we can not get professional liability insurance at a reasonable price. Is an issue that legislatures are confronted with.

Representative Boucher (mtr #3515) - What is going on in the whole insurance arena is a big deal. ND is a small market state and we are seeing a shrinking competition.

Jim Poolman, ND Insurance Commissioner (mtr #3695) - Here to give information and let you know what our department is doing. Met with folks from all elements of health care community.

Created a task force, after session, that task force will get going and look all elements of the problem that deals with medical liability insurance. Feels we are one step ahead of the game.

Want to make sure that all elements are represented, attorneys, consumers, to all parts of the medical profession.

Senator Polovitz (mtr #3979) - Question regarding the task force, what pressure will the task force have, who would you report to, and what action could be taken.

Mr. Poolman (mtr #4049) - As an elected official, I need to do something about it, it is incumbent upon me to make sure something happens.

Senator Fairfield (mtr #4188) - Your official position is neutral?

Page 3

Senate Human Services Committee  
Bill/Resolution Number HCR3056  
Hearing Date March 19, 2003

Mr. Poolman (mtr #4205) - Not a big deal that the resolution is out there because we are working on the issue anyway. When the Legislative Council decides to take up these studies the agency affiliated with that issue does the work.

Senator Polovitz (mtr #4243) - Are you doing the work that is reflected in this resolution?  
Which involves the ND Insurance Reserve Fund.

Mr. Poolman (mtr #4259) - Feels they are doing more than what is in the resolution. All issues are on the table to be debated. Feels it is even broader than what is written into the resolution. Since starting with the department in 2001, have not had an analysis of the market. Have a started an analysis of the market place in different lines of insurance. Nursing home insurance is one thing we will be looking at specifically. Have looked at the competitiveness of malpractice insurance. One of the problems with medical malpractice, two of the largest writers have gotten out of the market completely or have gone under.

Senator J. Lee (mtr #4510) - How do companies determine the pool from which the data is gathered and how is applies to rates.

Mr. Poolman (mtr #4640) - There are general factors within a jurisdiction when looking at claims history in regards to setting the price of homeowners insurance. Gave examples of how the rates are affected with local storms. Also have to look at the general marketplace when determining reserve levels and solvency of companies. Rates vary from company to company.

Senator Polovitz (mtr #5016) - Clarification on the rate of a home owner policy, monthly rate or annual rate?

Mr. Poolman (mtr #5045) - Clarified that he was speaking about annual premiums

Page 4

Senate Human Services Committee

Bill/Resolution Number HCR3056

Hearing Date March 19, 2003

Steve Spilde, CEO of ND Insurance Reserve Fund (mtr #5110) - Provided information to the committee, is neutral on the resolution. Did not participate in drafting of the resolution but if studied by the Legislative Council will be happy to participate and provide whatever expertise they have. NDIR currently does not write medical liability insurance. Have done some in the past. Do not write for private entities.

Senator J. Lee (mtr #5268) - Testified in Political Subdivisions on a different bill but concerned in that case about entities over which you would not have any control being insured. Would you have some of the same concerns expanding the mission.

Mr. Poolman (mtr #5354) - Agrees it would be a different ball game, would be moving from the public arena to the private arena. Completely different from what we are currently doing.

Talked about the differences in writing medical liability for public vs. private entities and the fact that last time ND wrote medical liability insurance the state had sovereign immunity.

Bruce Levi, ND Medical Association (mtr #5491) - Echoed comments of the Insurance Commissioner. Feels ND is one step ahead of the game. Written testimony from ND Medical Associations is attached along with a chart showing America's Medical Liability Crisis: A National View. Referenced both.

Senator J. Lee (mtr #5990) - Is there any benefit to the resolution? If already doing, do we need it?

Mr. Levi (mtr #6002) - Feels it is something that can be looked at in the prioritization process.

Senator J. Lee (mtr #6065) - Why are states that are currently OK, currently OK?

Mr. Levi (mtr #6074) - Referenced states in white on the chart handout, from AMA standpoint, are states that have incorporated California's laws relating to medical liability.

Page 5

Senate Human Services Committee

Bill/Resolution Number HCR3056

Hearing Date March 19, 2003

Arnold Thomas, President, ND Healthcare Association (mtr #6218) - Working with the Insurance Commissioners Office to look at what could be done to make the marketplace more attractive to carriers. Are there obstacles that need to be addressed? In terms of this resolution, looking at one option, in the priority of issues, medical liability is already an issue and have another option available.

Senator Polovitz (mtr #125) - Is it legally possible to look at group insurance, all hospitals? Or all physicians? If we had volume, would it bring down price?

Mr. Thomas (mtr #195) - The risk factor in ND is lower than other jurisdictions. Part of that is because the level of medicine practiced in ND is very conservative. The volume is business we do is not necessarily attractive to a carrier. Currently have under discussion, a regional mechanism to include Montana, Wyoming, and Idaho. Because their practice patterns look like ours.

Mr. Poolman (mtr #308) - Talked about risk protection and pooling the resources of hospitals. Combine their buying power into a pool of their own. Option that task force will discuss, expanding or creating our own risk pool for nursing home facilities to share that risk amongst each other rather than pay that higher premium to a private carrier.

Senator Fairfield (mtr #398) - Clarified that this is largely unnecessary, and we don't need to do because of the task force put in place. Is this new information that just came to light since it was in the House? Has the testimony changed since it was in the House?

Mr. Poolman (mtr #446) - It just was not on our radar screen.

Senator J. Lee (mtr #482) - Fair to say it is an issue that nobody wants to be against.

Page 6

Senate Human Services Committee

Bill/Resolution Number HCR3056

Hearing Date March 19, 2003

Mr. Poolman (mtr #525) - Added that the state has admitted, 2-3 new carriers for medical malpractice insurance within the last year.

Mr. Thomas (mtr #567) - To answer Senator Fairfield's question, when this resolution was heard on the House side I didn't have a proxy to look at.

Senator J. Lee (mtr #610) - Given new further testimony or questions, closed the hearing on HCR3056.

Tape 1, Side B

Senator J. Lee (mtr #1080) - Opened the discussion on HCR3056. Went over the options of the committee. Is a good project, but not sure we need the resolution.

Senator Polovitz moves a Do Pass. Second by Senator Brown.

Roll call vote 4 yea, 2 nay, 0 absent. Carrier is Senator Brown.



Date: 03-19-03  
Roll Call Vote #: ①

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3056  
HCR

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Sen. Polovitz

Seconded By

Sen. Brown  
Sen. Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman		✓			
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele		✓			
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes)

4

No

2

Absent

Floor Assignment

Sen. Brown

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 24, 2003 11:32 a.m.

Module No: SR-52-5498  
Carrier: Brown  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HCR 3056, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)  
recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HCR 3056 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-52-5498

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*LaCeta Rickford*  
Operator's Signature

*10/16/03*  
Date

2003 TESTIMONY  
HCR 3056

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10/16/03  
Date

12

**Testimony on Engrossed HCR 3056**  
**North Dakota Medical Association**  
**March 19, 2003**

In many parts of the country there is a "medical insurance crisis," as described in HCR 3056. The attached chart from the American Medical Association shows that 18 states are considered in crisis. The primary factor in the AMA analysis was the magnitude of patients losing access to medical care. The AMA analysis looked closely at data showing physicians are retiring early, moving out of state or stopping performing certain medical procedures such as delivering babies. Additional factors included a state's legal and judicial climate, the affordability and availability of professional liability insurance, the trend of jury awards and settlements, and other factors.

In North Dakota, the components of the problem are four-fold.

First, the availability of malpractice insurance is a major concern. In many parts of the country, availability of insurance has dropped dramatically and some large carriers are no longer in the market. The St. Paul Companies pulled out of the medical professional liability market worldwide. This impacted many physicians and other health care providers in North Dakota who were forced to find insurance with other carriers. Some companies, like the Pennsylvania-based PHICO, were liquidated by state regulators after devastating business results - PHICO's pullout also impacted North Dakota.

Second, the affordability of insurance is another major component of the problem. Even in states where there is adequate capacity, insurance rates are increasing - dramatically in some places. Information that the Association has obtained to date from surveys shows that many physicians in North Dakota have experienced significant challenges in obtaining affordable liability coverage, including significant premium increases. NDMA believes that significant challenges will become the norm due to capacity limits of those professional liability insurance carriers currently doing business in North Dakota and tougher underwriting standards that companies employ as they reach their capacity limits. Physicians with positive claims histories are being impacted as well as those with negative claims histories. Some physicians are indicating that they plan to limit their practice to lower risk patients and are less willing to perform high-risk procedures. There is also some concern about the future impact of these unsettling trends on patient access to medical care, and impacts on staffing and the ability to recruit and retain physicians.

Most physicians in North Dakota practice in groups. At least three of our larger multispecialty group practices have been forced to essentially "self insure," by raising their deductibles substantially while at the same time experiencing a substantial premium increase. The impacts are felt in both urban and rural areas. For example, a rural multispecialty group saw a significant premium increase from the previous year, and is growing more concerned about their ability to recruit and retain physicians. Physicians and group practices forced to replace their carrier, particularly those previously insured by the St. Paul Companies and PHICO, were hit particularly hard in moving to new carriers, experiencing substantial premium increases and/or forced to accept higher deductibles and more stringent underwriting requirements. Independent physicians have also reported a wide range of premium adjustment this past year as well.

Since 2000, the Medical Association has been closely monitoring professional liability insurance trends, including working closely with the Insurance Department in an effort to stay ahead of the crisis that has emerged in many states. It is expected that hospitals will experience the largest

liability insurance increases in 2003 [Medical Liability Monitor 1/10/03]. Our state insurance commissioner Jim Poolman has also formed a medical liability insurance task force which will bring together experts to stay ahead of these issues in our state.

The third component of the problem is access to health care, which has become one of the most significant concerns nationwide, as the lack of availability and affordability of malpractice insurance has impacted access to health care in many areas of the country. The situations in New Jersey, West Virginia, Nevada, Mississippi, and Pennsylvania are well known. If there's interest, I have an American Medical Association compilation of access issue nationally, including places where obstetricians have stopped delivering babies, where physicians have simply had to leave the state, and where physicians are refusing some high-risk procedures because of skyrocketing premiums.

And fourth, the cost of health care. Physician concerns about malpractice liability lead to increases in defensive medicine – performing procedures that may not be necessary, just to provide a defense in case the patient has an adverse outcome. A study at Stanford University found that tort reforms could lead to reductions in expenditures for defensive medicine in the billions of dollars. Medical liability insurance premiums are the third largest practice expense for physicians.

With medical liability crises in many states, medical liability reform has come in recent weeks to the forefront of public attention. In July, 2002, the Secretary of the US Department of Health and Human Services Tommy Thompson called for fixing our medical liability system, by curbing excessive litigation. Subsequent reports from HHS showed that the current crisis is not merely a reflection of an "insurance cycle," but a broken medical litigation system. HHS also reported that insurance premiums are lower in states that have reformed their litigation system.

North Dakota has undertaken some significant tort reforms since the 1970s (Appendix A).

The medical and hospital communities and their national organizations such as the American Medical Association, American Hospital Association, medical specialty societies and liability insurers have begun a campaign to enact tort reforms at the federal and state level to assure wider availability of medical services to the public. Just last week, the U.S. House of Representatives passed medical liability reform in HR 5. That legislation mirrors California's MICRA [Medical Injury Compensation Reform Act] package, especially caps on noneconomic damages, as well as limits on punitive damages, a collateral source offset, periodic payment of large awards of future damages, and limitations on attorney contingent fees.

California's MICRA was passed in 1975 and its constitutionality was upheld in 1985. That was the first year that its impact could truly be felt. In 1984, insurance rates in California were higher than national averages. By 1995, they were significantly lower. California physician premiums have increased at a lower rate than the rest of the country. Since 1975, U.S. rates have increased 420%. California rates have increased only 168%. What is obvious about MICRA is that it works and works well. Doctors and hospitals in California pay significantly less for liability protection today than their counterparts in states without MICRA-type reforms. MICRA has helped stabilize the liability insurance market. That is why MICRA is seen as a model nationwide.

**APPENDIX A**

**Tort Reform in North Dakota**

The following are statutes enacted in North Dakota relating to tort reform.

**Statute of Limitations**

In action without death, 2 yrs after injury known (reasonable diligence) but cannot be extended more than 6 yrs by nondiscovery unless discovery prevented by fraud of physician or hospital. In action with death, 2 yrs after discovery of malpractice, but not extended more than 6 yrs unless fraud; in cases involving minors, limitation can be extended up to 12 yrs for infancy (28-01-18; 28-01-25)

**Economic Damages**

Economic damages in excess of \$250,000 subject to "reasonableness" review if requested (1987) (32-03.2-08)

**Non-Economic Damages**

In medical liability cases only, \$500,000 limitation on noneconomic damages, regardless of number of people sued or actions brought for that injury (1995) (32-42-02)

**Fair Share**

No joint liability, unless joint tortious act (1987) (32-03.2-02)

**Attorney Contingency Fee Caps**

No contingency fee limits other than reasonableness (Prof. Conduct Rule 1.5)

**Collateral Sources of Payments**

Defendant may apply to court for reduction of economic damages to extent covered by collateral sources. Collateral source defined not to include insurance benefits (1987) (32-03.2-06)

**Punitive Damages**

"Clear and convincing standard," no claim in initial filing / must amend into pleadings; cap of greater of \$250,000 or twice the amount of economic damages (32-03.2-11)

**Permit Periodic Payments**

Periodic payments permitted in court's discretion for future damages for continuing institutional or custodial care of over two years in duration (1987) (32-03.2-09)

**Alternative Dispute Resolution** -- "Good faith effort" to consider alternative dispute resolution (1995) (32-42-03)

**Expert Opinion Screen** -- Claimant must produce expert opinion supporting claim allegations within 3 months (1981, 97) (28-01-46)

**Privilege Waiver** -- Claimant waives privilege for medical records, opinions, or other information / informal discussion allowed (1997) (28-01-46.1)

## APPENDIX A

### Frivolous Lawsuits

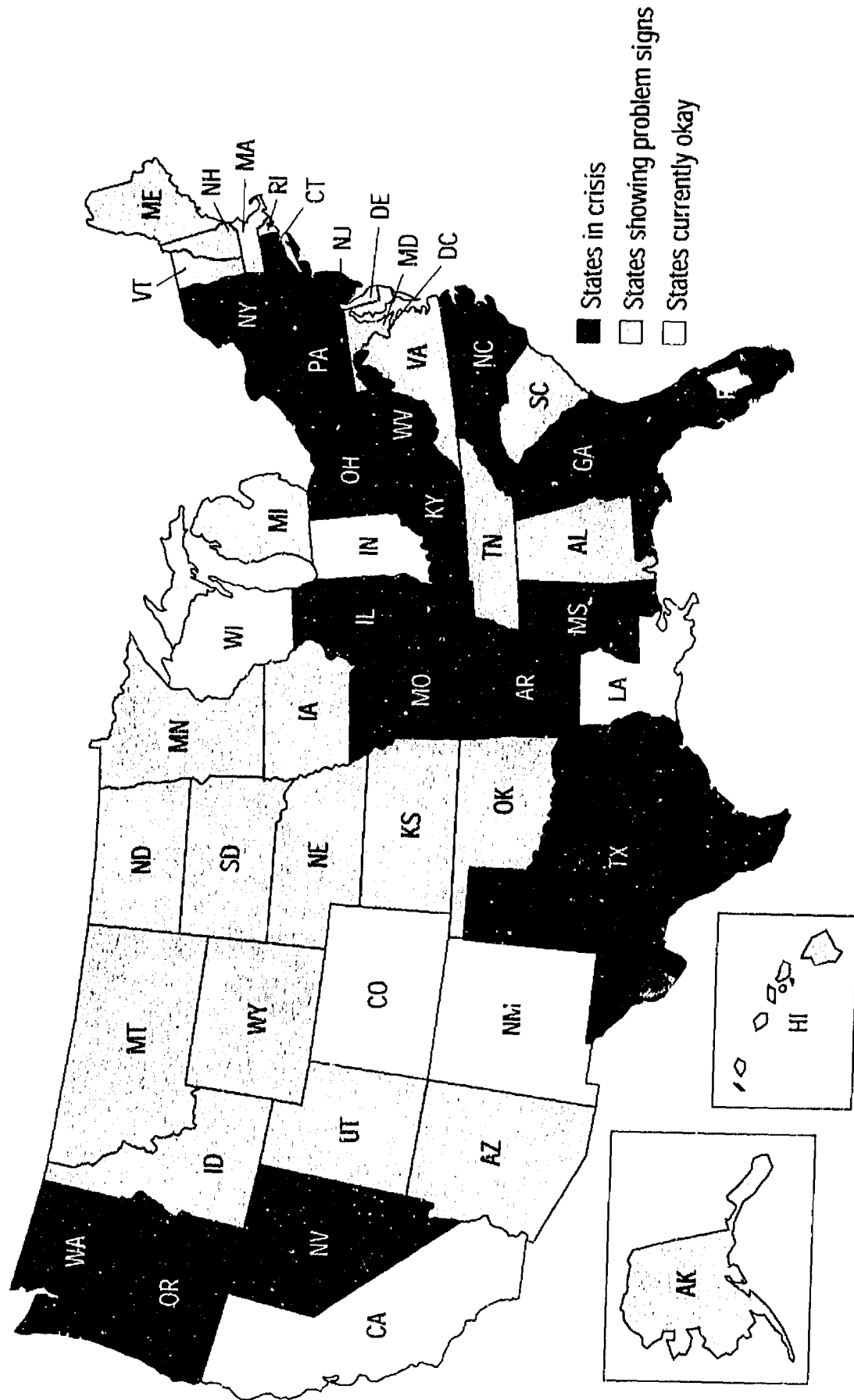
Court may require the plaintiff to pay attorney's fees and other costs of the defense in a "frivolous" claim (28-26-01)

### 1970s Reforms

The 1977 ND Legislative Assembly enacted medical liability reform legislation that included a \$300,000 cap on all claims arising from any one occurrence, a prohibition on joining of causes of actions against health care providers, an elimination of the collateral source rule that required that damages be reduced by "any nonrefundable medical reimbursement insurance benefit, less premiums paid by or for the claimant over the immediate preceding five years," discretion in the court to award damages in regular intervals rather than in a lump sum if the damage award exceeds \$100,000, a requirement that medical expert testimony be presented except under certain circumstances, a requirement that all health providers file proof of financial responsibility in the amount of \$100,000 per occurrence as a condition of licensure, and other provisions. The legislation also provided that if the insurer under the basic policy of insurance pays its policy limit of \$100,000 and the claimant is dissatisfied, the claimant was required to sue, naming a newly-created trust fund as defendant, and have the case tried without a jury.

The ND Supreme Court in Arneson v. Olson, 270 N.W.2d 125 (ND 1978), a suit brought by four physicians challenging the constitutionality of the legislation, declared the joinder of causes of action and expert witness provisions as unconstitutional as violating the Supreme Court's constitutional authority to establish rules of procedure. The Court also determined that the \$300,000 cap on damages arising from any one occurrence violated the equal protection provision of the North Dakota Constitution and that the \$100,000 policy payment provision subject to a further lawsuit without a jury trial violated the state constitution's guarantee of a jury trial. Upon making these declarations, the Court proceeded to declare the entire Act as unconstitutional on grounds all provisions of the legislation were so connected and dependent upon each other that it could not be presumed that the Legislature would have enacted the valid sections without the unconstitutional sections.

# America's Medical Liability Crisis: A National View



**American Medical Association**  
Physicians dedicated to the health of America

March 2003

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*Colista Rickford*  
Operator's Signature

*10/6/03*  
Date