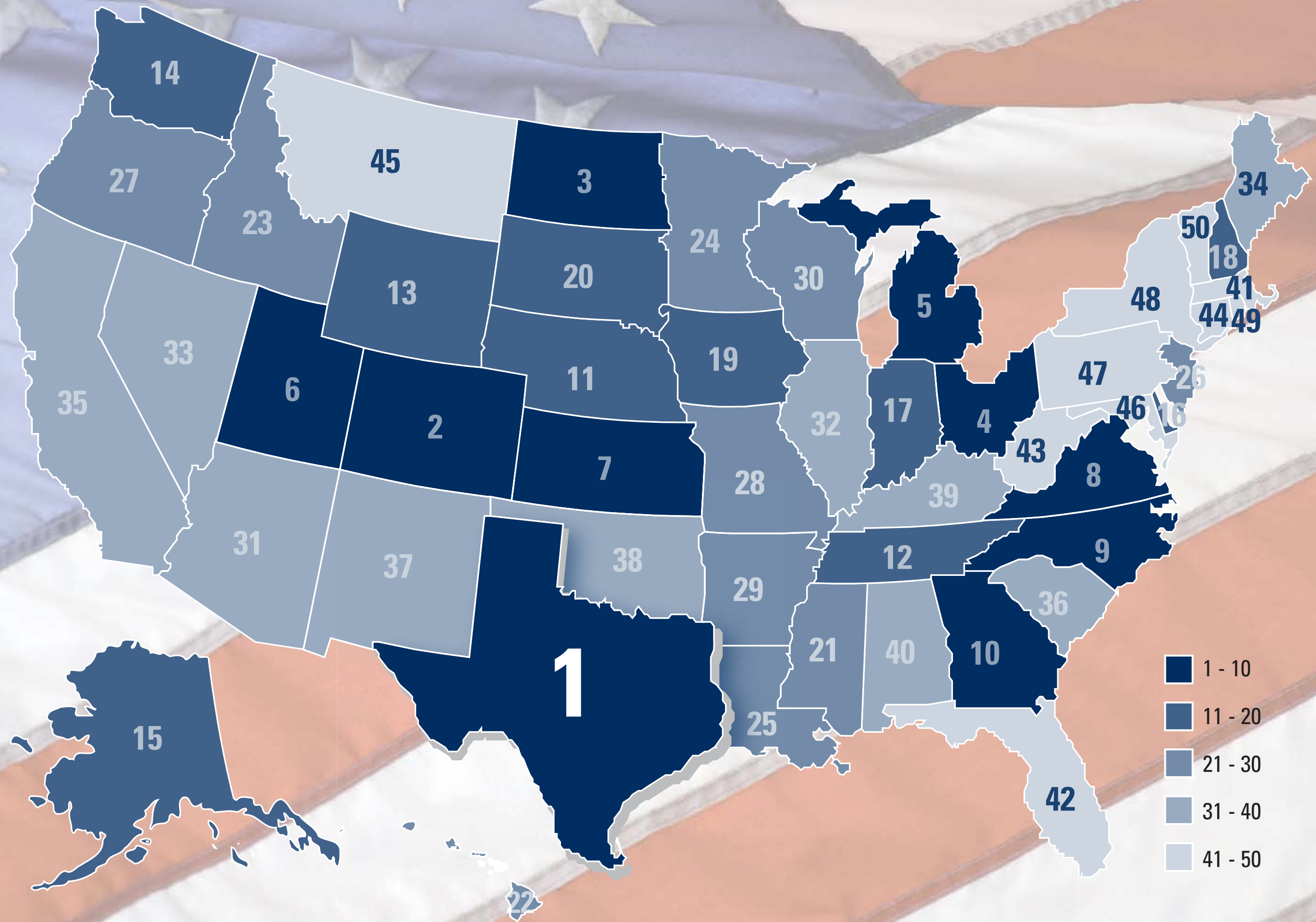
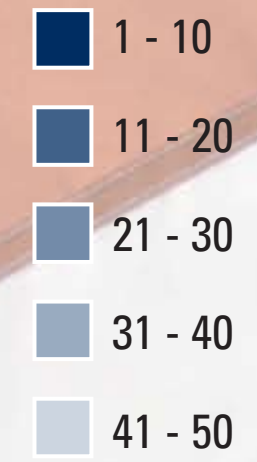


# U.S. Tort Liability Index: 2006 Report



U.S. Tort Liability Index 2006 Ranking		
Rank	State	Score
1	Texas	21.64822459
2	Colorado	22.76681258
3	North Dakota	23.52513275
4	Ohio	23.68956858
5	Michigan	24.48650941
6	Utah	24.90256129
7	Kansas	25.05163740
8	Virginia	26.40753242
9	North Carolina	26.81734522
10	Georgia	27.29997946
11	Nebraska	27.72129723
12	Tennessee	27.74772829
13	Wyoming	28.21789530
14	Washington	28.25090812
15	Alaska	28.37528567
16	Delaware	29.25801282
17	Indiana	29.26714964
18	New Hampshire	29.37601496
19	Iowa	29.76437153
20	South Dakota	30.22707209
21	Mississippi	30.42286370
22	Hawaii	30.50967443
23	Idaho	30.56474832
24	Minnesota	30.63541854
25	Louisiana	30.63760928
26	New Jersey	30.87494022
27	Oregon	31.46138383
28	Missouri	31.49245475
29	Arkansas	31.54434959
30	Wisconsin	31.63751968
31	Arizona	31.68589744
32	Illinois	31.89893162
33	Nevada	31.91848828
34	Maine	31.94577991
35	California	32.28184323
36	South Carolina	32.29602171
37	New Mexico	32.34471154
38	Oklahoma	32.34938843
39	Kentucky	32.88639789
40	Alabama	33.19406819
41	Massachusetts	33.20069444
42	Florida	33.36879792
43	West Virginia	33.49941520
44	Connecticut	33.59179441
45	Montana	33.84841137
46	Maryland	35.18974359
47	Pennsylvania	36.04814623
48	New York	36.11858974
49	Rhode Island	36.17019231
50	Vermont	37.12446581



## What is tort law and why was the study done?

A tort, French for “wrong,” is best defined as wrongful conduct by one individual that results in injury to another. A tort has been committed when someone has suffered injury caused by the failure of another person to exercise a required duty of care. The actor is to blame and the injured party is entitled to recover damages. The function of torts is to provide the injured party with a remedy, not to punish the actor. Because of changes in tort law over time, the United States now has the most expensive tort system in the world.

Individual states generally govern their tort law. Some states have a heavier tort burden than others, and some have done more than others to reform their tort systems to reduce excesses and create a favorable business climate to fuel job opportunities. The *U.S. Tort Liability Index: 2006 Report* measures which states have relatively high tort costs and which states have enacted more reforms to better position themselves for future economic prosperity.

## How does the issue impact Americans?

The U.S. tort system is undermining America’s economy. Using the President’s Council of Economic Advisers’ methodology, we determined excessive tort costs exceed \$198 billion. That is equal to an additional yearly tax of \$2,654 on a family of four. Some states have done more than others to reign in excessive costs through tort reform. Econometric studies reviewed in the study show that tort reform increases productivity and employment, boosts state economic performance and innovation, increases national output and personal incomes, and saves lives.

A state’s legal system influences business decisions such as where to open a new store, or whether to hire more employees, introduce a new product, or build a new plant. States that ranked worse in this study are less likely to benefit in these areas.

A poor tort system lowers the standard of living for ordinary citizens through higher prices, higher taxes, lower wages, and less product innovation. Businesses that spend more each year on liability insurance have less money available for research and development or health benefits for employees.

The health-care industry is particularly hard-hit by tort lawsuits, which have driven the cost of health care higher as providers spend more on medical-malpractice insurance and “defensive medicine” procedures. Consumers lose as a result. Tort law directly affects the daily lives of all Americans. Some effects are obvious, and others are hidden.

## What is the goal of the study?

The goal of the *U.S. Tort Liability Index* is to use comprehensive, objective data on all 50 states to assess the outputs and inputs of each state’s tort system and rank them accordingly. The *Index* measures today’s realities (outputs) and predicts tomorrow’s outcomes by looking at tort reforms (inputs). The study describes the methodology and variables.

The results are useful in public forums to make more educated decisions about the condition of each state’s tort system and what types of reforms are necessary, if any. The study also highlights the economic consequences of a poor liability system. A number of states have enacted meaningful legal reform, but many have not, making them less competitive in the U.S. and global markets of the 21st century.

## What was the general outcome of the study?

States in the Rocky Mountains and Great Plains tend to have better tort systems, meaning they have lower relative monetary tort losses and threats, and have more substantive and procedural reforms. Texas leads the overall rankings, followed by Colorado, North Dakota, Ohio, and Michigan. Texas has relatively low monetary tort losses and has enacted meaningful reforms in asbestos, junk food, government-standards defense, and rules of evidence.

At the bottom of the list are states primarily in the Northeast and the Southwest, plus Florida. The bottom five states are Maryland, Pennsylvania, New York, Rhode Island, and finally Vermont. Vermont has relatively high monetary tort losses, no damage caps, and no meaningful reforms in class actions, attorney fees, asbestos, construction, junk food, jury service, or venue.

## Were there any surprises in the overall rankings?

A noticeable pattern is the regional clustering of similar tort systems. States tend to be like their neighbors. But this also suggests that reformers at the margins can put pressure on their neighbors to follow or be left behind. States that pass meaningful tort reform challenge their neighbors to do the same or be at a competitive disadvantage in the marketplace. Competition between states puts pressure on laggards to reform, improving their business climate to attract people and capital to their state.

## What were the factors you looked at?

We included data on 39 variables, which we divided into five subgroups: monetary tort losses, threats, monetary caps, substantive-law rules and reforms, and procedural/structural rules and reforms. We show where each of the 39 variables falls within the lawsuit industry. The overall ranking comes from the average ranking for each state across all 39 variables.

The first two subgroups measure outputs from each state’s tort system. As a rule, lawmakers and voters do not directly control these variables.

The monetary tort losses subgroup is comprised of 11 insurance and self-insurance tort loss variables, expressed as a loss ratio to permit comparisons across states (the subgroup high and low: 1-North Dakota; 50-Florida). The threats subgroup has three variables: judicial hellholes, attorneys per dollar of gross state product (GSP), and total civil cases per 100,000 residents (1-Tennessee; 50-Illinois).

The remaining three subgroups include variables that are inputs to each state’s tort system. Lawmakers or voters can directly control these variables through legal reform. Monetary caps covers four variables: limitations on appeal bonds, non-economic damages, punitive damages, and medical-malpractice damages (1-Colorado; 50-Wyoming).

Substantive law includes 13 variables covering legal rights and responsibilities in such areas as class actions, medical malpractice, products liability, and negligence standards (1-Texas; 50-Rhode Island). The procedural/structural rules and reforms subgroup is comprised of eight variables that deal with how courts are structured, venue is decided, juries operate, and judges are seated (1-Colorado; 50-Pennsylvania).

## How did you decide which variables to use in the index and which to not use?

We consulted dozens of legal experts, university professors, and lawyers, and did an exhaustive search of the academic-journal literature (see Acknowledgements for a list of the people we consulted). But in a real sense, the states themselves selected the reform variables by enacting scores of different reforms. We were also restricted to using variables with available data. For some suggestions, the data were not available, so we found alternative data. The variables we ultimately selected are a comprehensive, if not exhaustive, list of the factors that determine a state’s tort environment.

## How did you determine each state’s ranking for each of the 39 variables?

The index is ordinal driven, meaning each state is compared with the other 49 states across 39 variables. The data used to construct the index are of two types. First, there are continuous variables. Civil cases filed per 100,000 residents and insurance-loss ratios are examples of continuous variables. For each continuous variable, each state was ranked from 1 (“best”) to 50 (“worst”). States that tied with the same number each received the average ranking.

The second type of data are discrete variables. “Does the state provide civil-liability exemptions for junk food or obesity” is an example of a discrete variable. For the qualitative discrete variables, we assigned rankings depending on the number of discernable gradations. If there were three discernable gradations, we assigned rankings of 1, 25.5, or 50. If there were six gradations, we assigned rankings of 1, 10.8, 20.6, 30.4, 40.2, or 50. The most stringent gradation always received a ranking of 1 and the least stringent always received a ranking of 50. The remaining categories received rankings in equal intervals depending on the number of discernable gradations.

## Which states are positioned to stay at the top, stay at the bottom, and are poised to move up in future rankings?

**Saints:** The states that are well positioned to stay at the top in future rankings are states with relatively low monetary tort losses that have also enacted some significant reforms that will lower future losses. These states include Kansas, Michigan, Texas, Utah, and Virginia.

**Sinners:** The states that are poised to fall in future rankings or stay at the bottom are those with relatively high monetary tort losses and significant threats that have enacted few if any comprehensive reforms. These states include Alabama, Florida, Illinois, Pennsylvania, and Vermont.

**Salvageables:** The states that are poised to move up in future rankings are those with medium or high relative monetary tort losses that have recently enacted meaningful reforms that will cut future losses. These states include Arizona, Georgia, Idaho, Louisiana, Mississippi, Missouri, New Hampshire, Rhode Island, and South Carolina. Of course, these states will move up only if they don’t enact subsequent reforms that counteract the beneficial reforms, and if they keep pace with other beneficial reforms enacted by other states. It is a constant ordinal race.

## How much do you believe these results conform to the realities of each state’s legal system?

The results reflect today’s realities and predict tomorrow’s outcomes. Our study’s results reflect a comprehensive assessment of a wide array of objective data for all 50 states. The 39 variables track the most important aspects of the tort environment. Relative monetary tort losses track outputs of the system and threats track the effect of lawyers and the extent of litigiousness.

The input subgroups—monetary caps, substantive law, and procedural/structural rules and reforms—are a comprehensive classification of tort reforms enacted by the states themselves. Passage of a tort reform today will improve tort losses tomorrow—inputs shape outputs in the lawsuit industry.