

The following chart compares the proposed Senate Committee Substitute with the recent tort reform measures passed by states last year and with the MICRA provisions of California.
(When blank, this information was not part of the reform effort and was not easily determined at this time)

Provision	New Jersey Proposal	California MICRA	Nevada	Mississippi	Ohio
Limits on Non-economic damages	\$300,000; limited excess fund pays up to additional \$700,000; no physician liability beyond policy; limited subrogation against carrier	\$250,000 (1975 dollar value, adjusted for inflation would be over \$1 million in 2003 dollars)	\$350,000; does not apply to gross negligence or where judge finds clear and convincing evidence that should be higher; no physician liability beyond policy	\$500,000 until 2001; \$750,000 until 2017; \$1 million thereafter	For most injuries, greater of 3 times economic damages or \$250,000 up to \$350,000 except it can go to \$500,000 if multiple plaintiffs (e.g. spouse). For certain significant injuries, cap is \$500,000 or \$1 million if multiple plaintiffs.
Trauma cases	None	None	\$50,000 limit on all awards	None	None
Statute of Limitations	11 years for birth injuries if action accrued; existing law is two years from injury for non-children and 20 years for childhood injuries; tolled until discovery and knowledge	One year from discovery or within three years from injury; minors get up to eight birthday; tolled for foreign objects	For existing cases, two years from discovery or four years from injury, whichever is first; for new cases, two years from discovery or three years from injury	Two years from act or when discovered. Under age six – within two years of sixth birthday.	One year with four year maximum. Exceptions if plaintiff can show by clear and convincing evidence could not reasonably have discovered injury or if foreign object.
Standards of judges	None	None	Must be trained in malpractice litigation		
Pre-suit process	180-day notice of intent to sue and limited discovery	90 day notice	Prompt trials required	None	
Attorney's Fees	Constitutionally regulated by courts. Existing law provides 33 1/3% first \$500,000; 30% next \$500,000; 25% next \$500,000; 20% next \$500,000/court determines for awards above that amount	40% of first \$50,000/33% of next \$50,000/ 25% of next \$500,000/15% of remainder	None	None	If greater than non-economic damages must be approved by court
Joint and Several Liability	Existing law. Defendant's proportionate liability for own share if less than 60% liable. Above that can be liable for whole amount.	Joint and several liable for economic damages; proportionate liability for non-economic damages	Joint and several for economic damages; proportionate liability for non-economic damages	Proportionate liability for non-economic damages; economic damages – if under 30% liable, proportionate, up above 30% liable can be at least 50% responsible	Proportionate liability for non-economic damages. For economic damages, under 50% liable, proportionate, over is joint and several

Dispute Resolution	Court can require if helpful; existing law allows arbitration	Arbitration allowed, specific provisions govern	Mandatory settlement conference	None	Pre-treatment agreement between physician and patient to arbitrate binding unless patient voids within 30 days
Affidavit of non-involvement	Physician can exit case early upon affidavit	None			
Expert Witness standards	Board certified same specialty or sub-specialty and active clinical practice or medical school. Judge may waive if can't find after diligent effort; penalty and cost for unsupported testimony	No specific criteria for expert; expert witness testimony necessary unless it can be inferred	Expert must have practiced in same or similar area	Expert testimony is required to assist judge and jury in understanding the evidence	Expert testimony necessary
Frivolous lawsuits	Existing law; sanctions by court		Sanctions required		
Affidavit of Merit	Existing law. New expert witness standards would apply	None	Required	Must consult with expert unless can't find one after three tries	Existing law had requirement but found unconstitutional
Basis of Expert Opinions	Must be basis for providing expert opinion in the literature	Nothing specific			
Collateral Offsets	Existing law. Mandatory offsets from awards if plaintiff receives medical payments from other source	Evidence can be brought up in trial and countered by insurance cost information. No mandatory offsets	Yes. Mandatory offsets except where right of subrogation exists.	None	Evidence can be brought up in trial and countered by insurance cost information. No mandatory offsets
Remittitur and Additur	Judges given enhanced standards, clearly excessive or inadequate, to change award				
Good Samaritan	No liability if volunteer in emergency case regardless of location		No liability if care rendered gratuitously and in good faith		
BME Reporting	Certain criminal proceedings must be reported; other reporting required under existing law		Misconduct must be reported		
Quality Improvements	Establishes patient safety plans; confidential reporting to State; privilege for self-critical analysis		Mandatory reporting of sentinel events to state and patient safety officer who reports to patient; state records of events and corrections are confidential; reports not admissible; patient safety plans required and analysis of events		
Dual Memberships	Prohibits dual memberships on medical professional organization and insurer; limits future Board				

	members				
Purchasing Alliances	Allows group purchases				
Insurance Deductibles and Installments	Mandatory allowance of deductibles and installment payments				
Limitations on passing on certain costs	Defense costs of under \$10,000 or for affidavit of non-involvement cannot cause physician rate increase. Costs may need to be passed on to all				
Renewal Notices	Sixty day requirement. Current law is thirty days				
Insurance Certifications	Insurance company CEO and CFO must certify adequacy of rates and reserves				
Rate Regulation	Rate increases above 25% may be voided if illegal. Petitions to review allowed. Savings must be passed on.	Rates increases over 15% must be reviewed and approved			
Notices to State	All awards must be reported to state		Court reports cases to state		
Task Force	Seven member task force created to study issue. Nine month reporting deadline		Insurance Commissioner to issue report		Creates task force to study issues. State to study feasibility of Patient Compensation Fund covering malpractice awards
Periodic payments	Allowed by court rule and used in practice	Physician can elect to pay economic damage award over time if in excess of \$50,000	Allowed but only with plaintiff's approval	Not mandated	If future damages exceed \$50,000 either party may motion to have periodic payment or lump sum. Decision by court. Subject to interest
Effective date	Still in negotiation	Effective immediately but delayed for years in court	Applies only to cases filed after January 1, 2003		
Charitable immunity	Existing law provides hospitals with \$250,000 total cap; expansion to employees still in negotiation		Immunity for other than active negligence for care at school or as volunteer		