

**Medical Malpractice**

# **A 50-State Perspective**

## **Iowa Legislature**

**Joint Interim Medical Malpractice Study Committee**

**Wednesday, October 5, 2005**

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**Research Analyst, Law & Criminal Justice Committee**

**National Conference of State Legislatures**

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## Medical Malpractice

# Overview

- **Doctors and insurance companies** advocate tort reform - damage limits, strict evidence rules, and other courtroom changes.
- **Victim advocates and trial attorneys** advocate insurance regulatory reform, required medical error reporting, and other medical profession changes.



# Overview con't.

## ■ State tort reform action

- ◆ Damage limits – noneconomic, punitive
- ◆ Pre-trial action – mediation, arbitration, etc.
- ◆ Expert witness affidavits
- ◆ Doctor apologies

## ■ Federal tort reform action

- ◆ U.S. House – has passed multiple bills in last 2 years
- ◆ U.S. Senate – has not gained cloture on debate



## Medical Malpractice

# 2005 State Legislation Introduced

- **48 states introduced legislation**
  - ◆ **Damage caps introduced or revised – 28 states**
  - ◆ **State-run insurance funds – 21 states**
  - ◆ **Insurance company reports to state – 21 states**
  - ◆ **General medical malpractice insurance reform – 20 states**
  - ◆ **Doctor apology evidence admittance – 19 states**
  - ◆ **Expert witness standards – 17 states**



## Medical Malpractice

# 2005 State Legislation Enacted

- **31 states enacted legislation**
  - ◆ **Damage caps**
  - ◆ **Doctor apology evidence admittance**
  - ◆ **Expert witness standards**
  - ◆ **Insurance regulatory changes not addressed**
- **#32: California**
  - ◆ **3 bills pending at Governor's desk**



## Medical Malpractice

# 2005 Legislative Action in Iowa

- **HF 598**
  - ◆ Patient Compensation Fund to assist in paying claims
- **HF 704**
  - ◆ \$250,000 noneconomic damage limit
- **HR 50**
  - ◆ Interim committee to study medical malpractice issue and make recommendations to full legislature

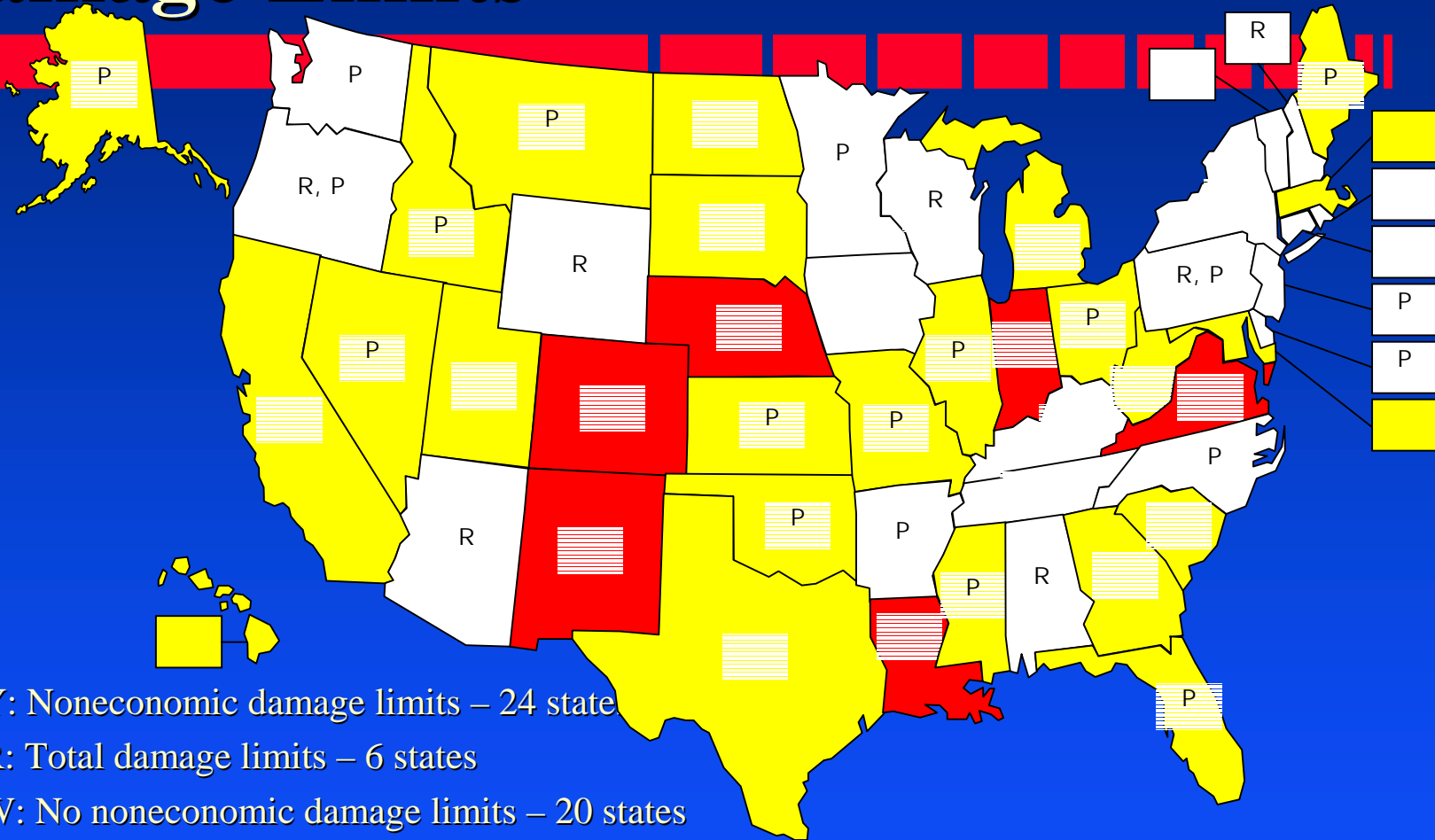


# Damage Limits

- **Economic damages: quantifiable – lost wages, medical expenses, etc.**
- **Noneconomic damages: non-quantifiable pain and suffering.**
- **Punitive damages: punish defendant for wrong-doing.**



# Medical Malpractice Damage Limits



- Y: Noneconomic damage limits – 24 state
- R: Total damage limits – 6 states
- W: No noneconomic damage limits – 20 states
- P: Punitive damage limits or qualifications – 20 states
- R: Rejected noneconomic damage limits – 7 states



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# Damage Limits: Studies

- **“Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988–2002”**
  - ◆ Co-authored by University of Texas, University of Illinois, Columbia University
  - ◆ Found: insurance premiums not related to damage caps
  - ◆ [www.utexas.edu/law/academics/centers/clcj/m/project2.html](http://www.utexas.edu/law/academics/centers/clcj/m/project2.html)



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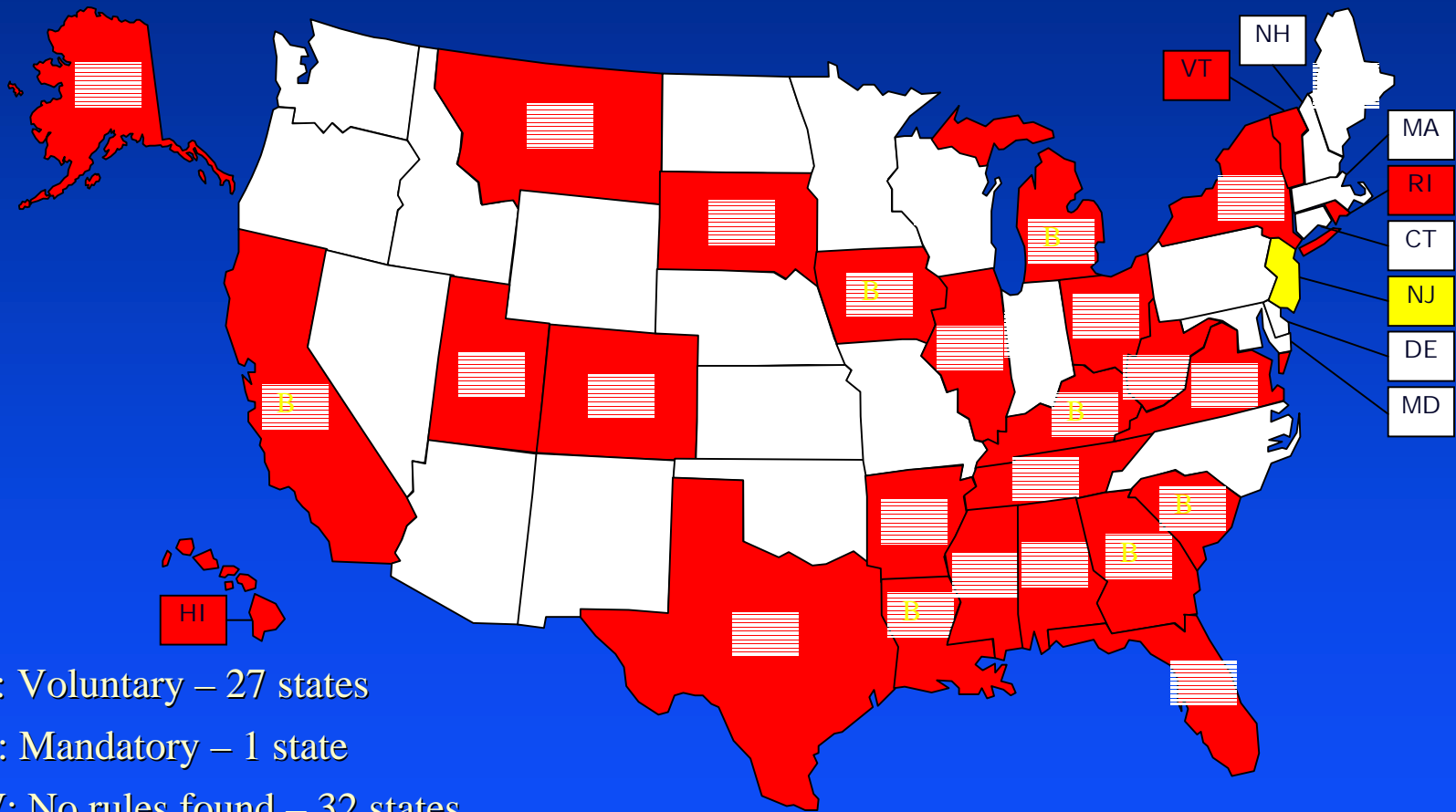
# Pre-trial Resolution

- **Arbitration – 27 states voluntary, 1 state mandatory**
- **Mediation – 5 states voluntary, 8 states mandatory**
- **Pre-trial screening hearings – 17 states**
- **Some form of alternative dispute resolution required – 4 states**
- **No alternative dispute resolution in statute – 2 states**



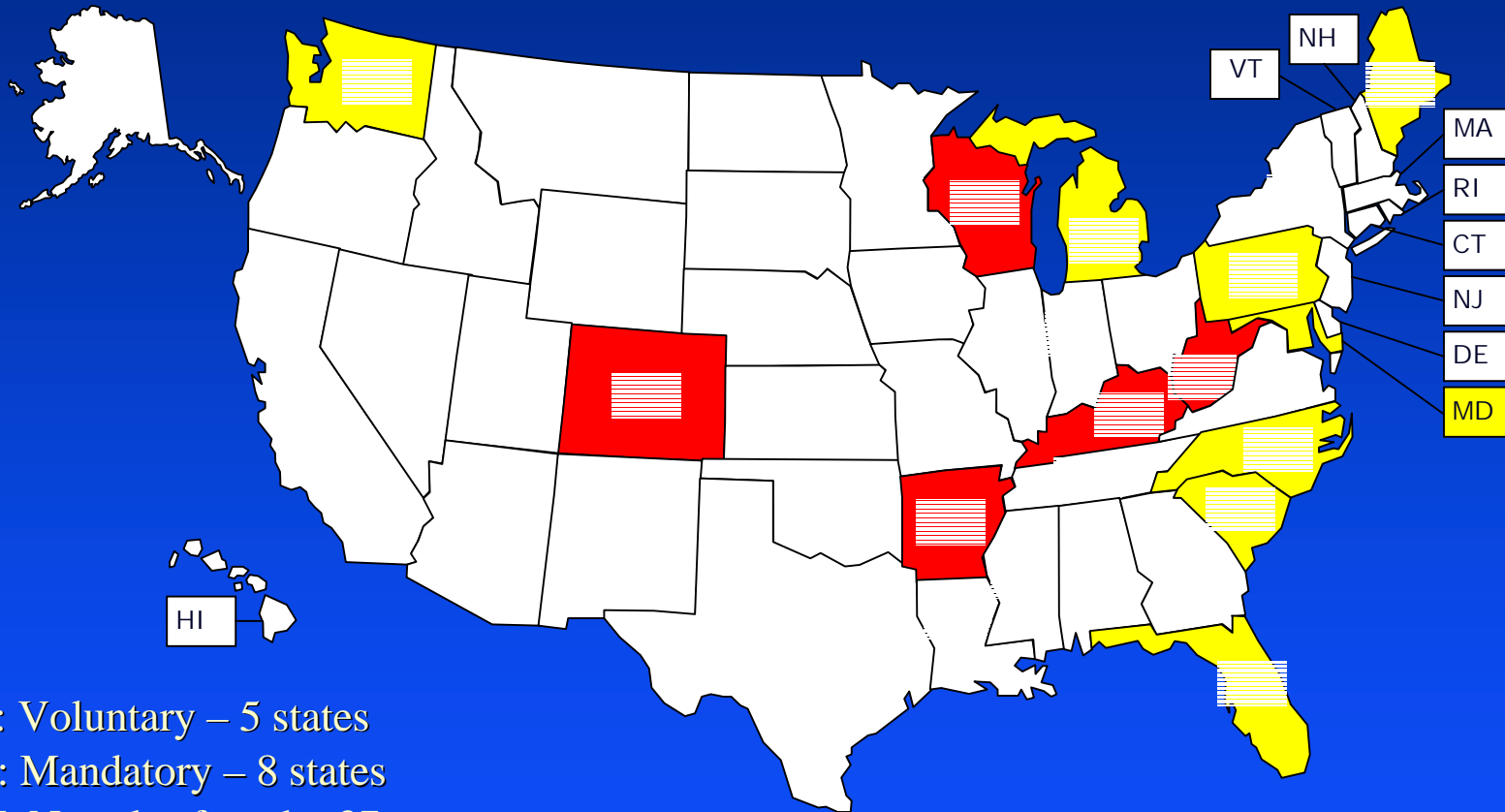
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# Pre-trial Resolution: Arbitration



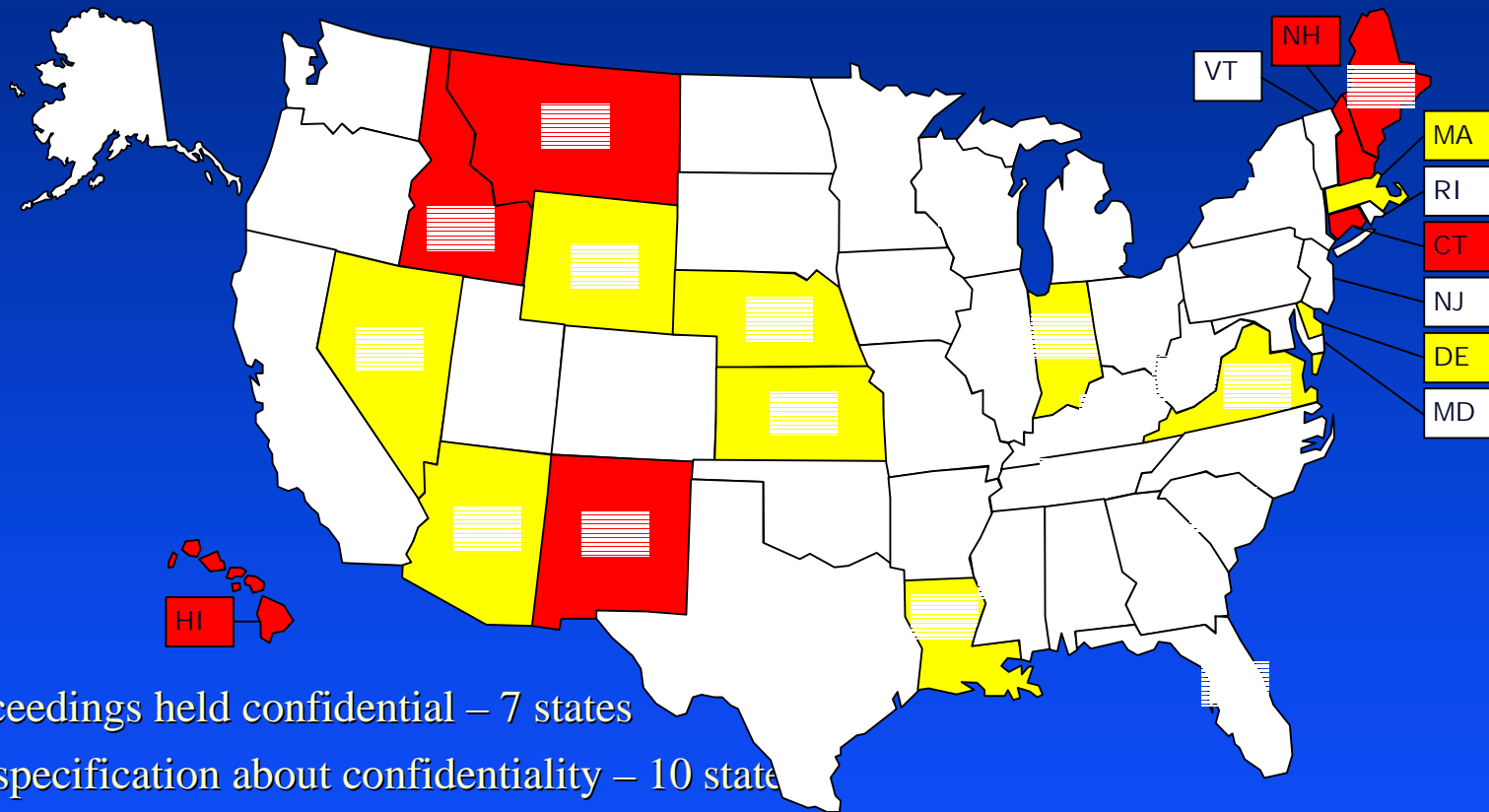
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# Pre-trial Resolution: Mediation



R: Voluntary – 5 states  
Y: Mandatory – 8 states  
W: No rules found – 37 states

# Pre-trial Resolution: Screening Hearings



R: Proceedings held confidential – 7 states

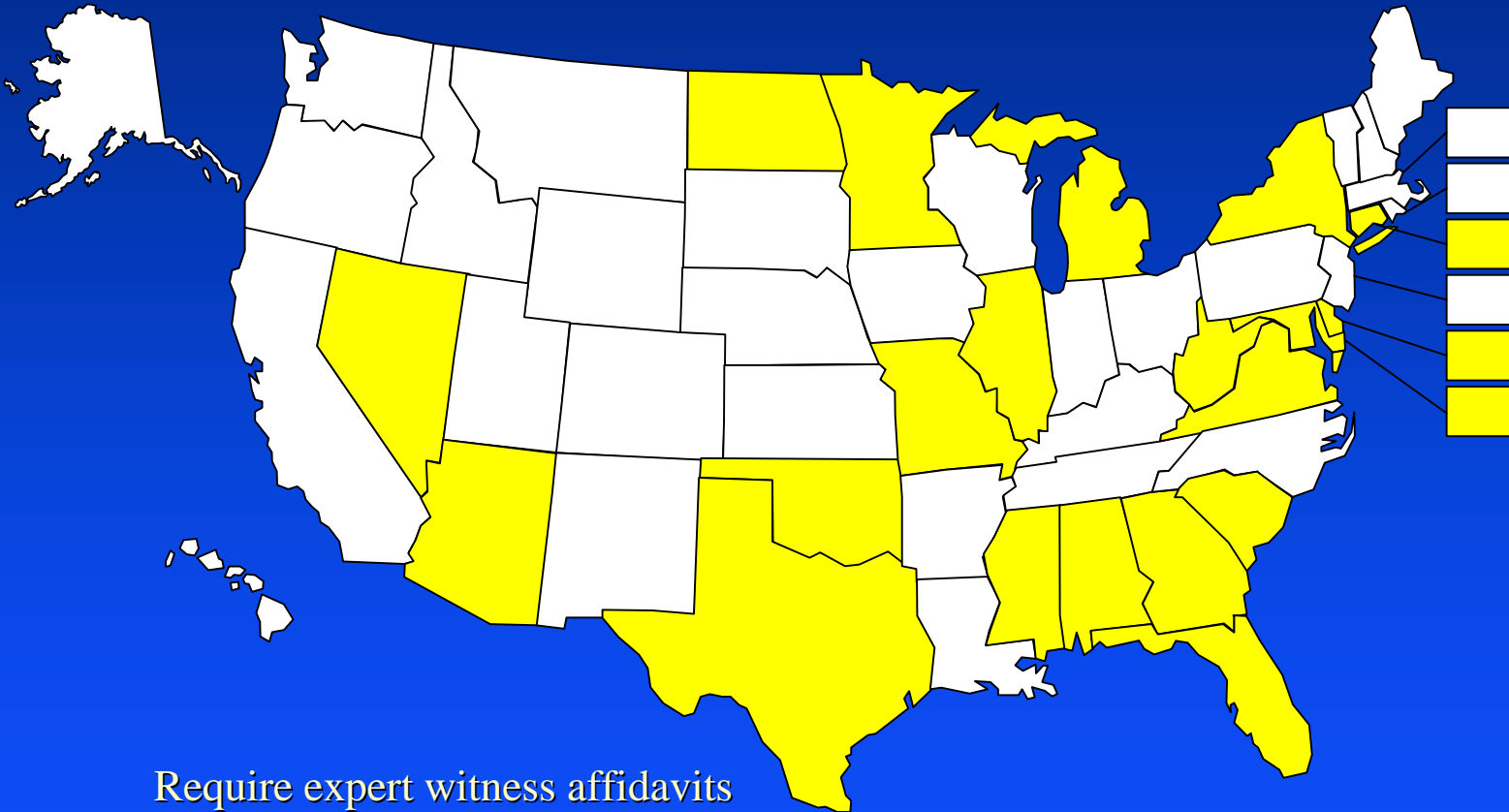
Y: No specification about confidentiality – 10 states

W: No hearing guidelines found – 33 states



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# Expert Witness Affidavits

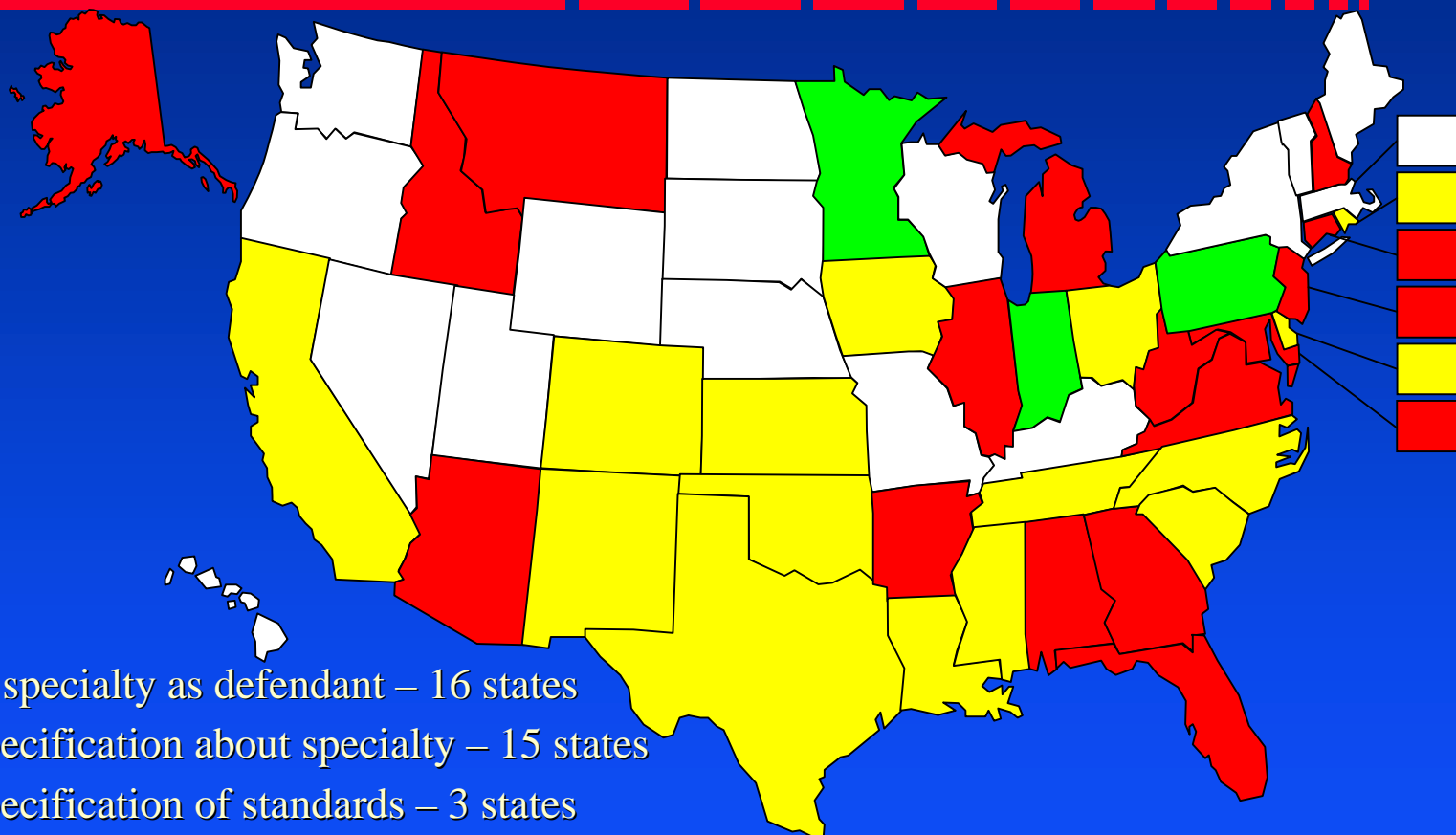


Require expert witness affidavits  
when a lawsuit is filed – 20 states



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# Expert Witness Standards



R: Same specialty as defendant – 16 states

Y: No specification about specialty – 15 states

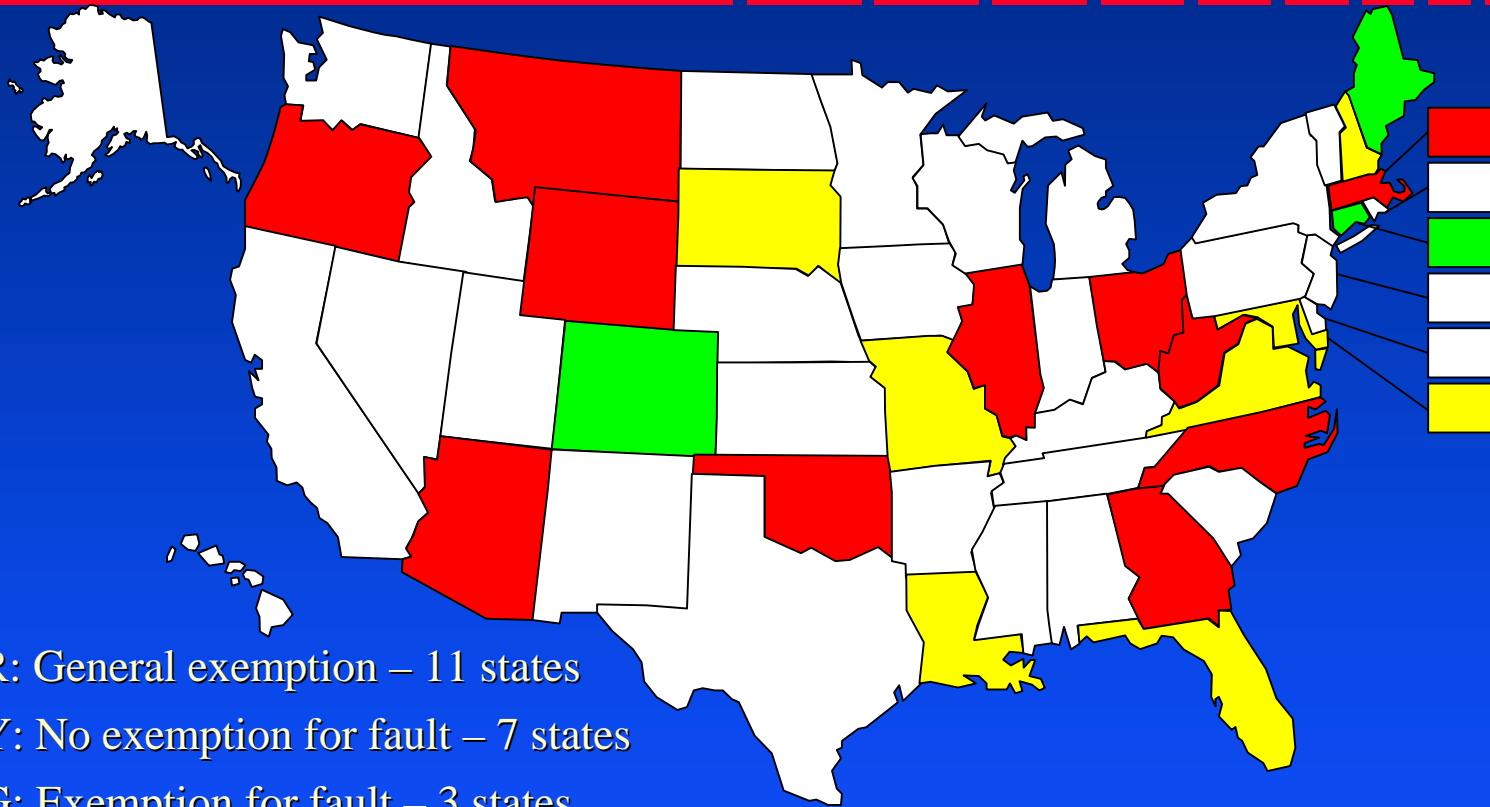
G: No specification of standards – 3 states

W: No standards found – 16 states



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# Doctor Apology Exemptions



R: General exemption – 11 states

Y: No exemption for fault – 7 states

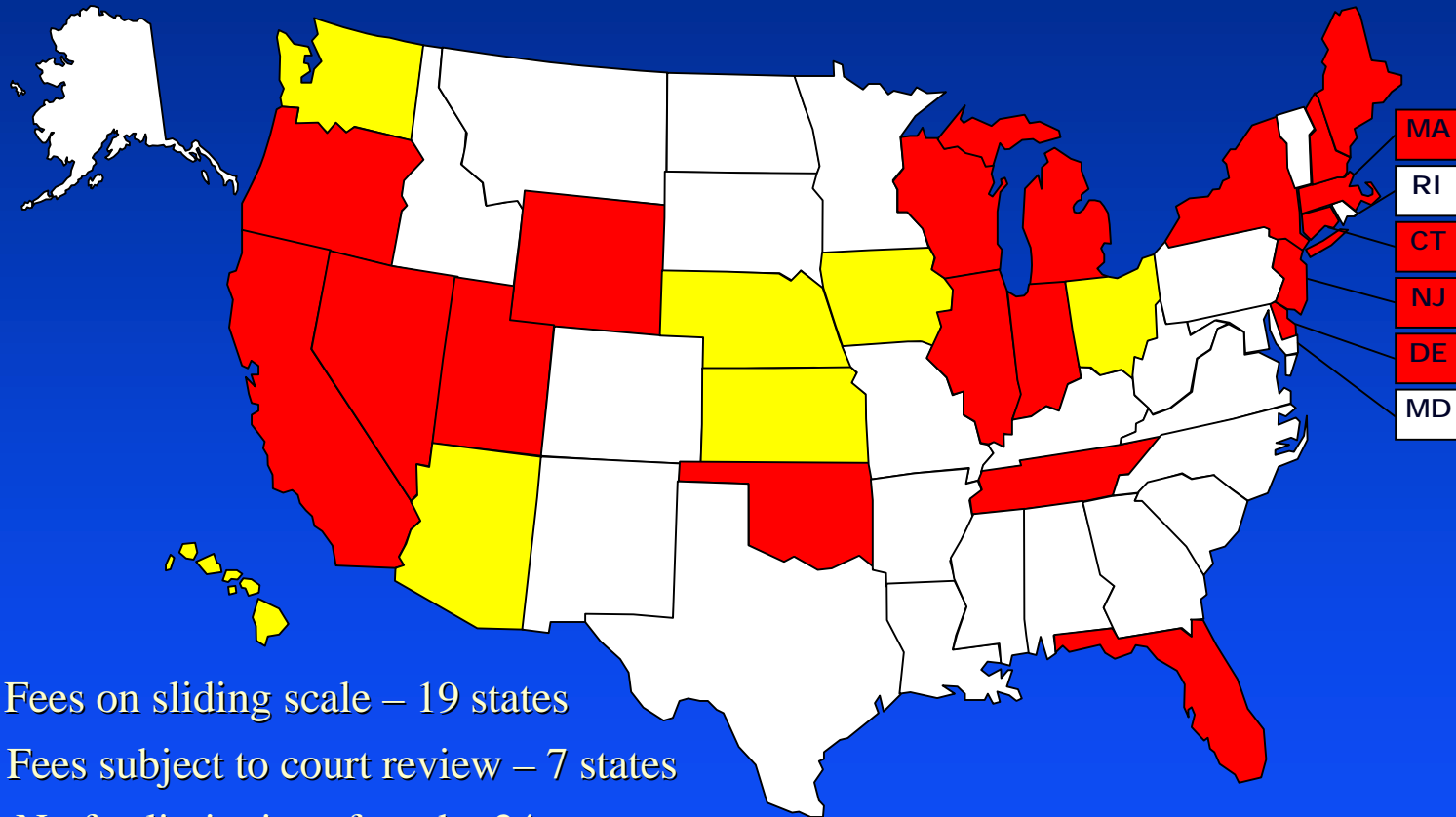
G: Exemption for fault – 3 states

W: No exemption found – 29 states





# Medical Malpractice Attorney Fee Limits



R: Fees on sliding scale – 19 states

Y: Fees subject to court review – 7 states

W: No fee limitations found – 24 states



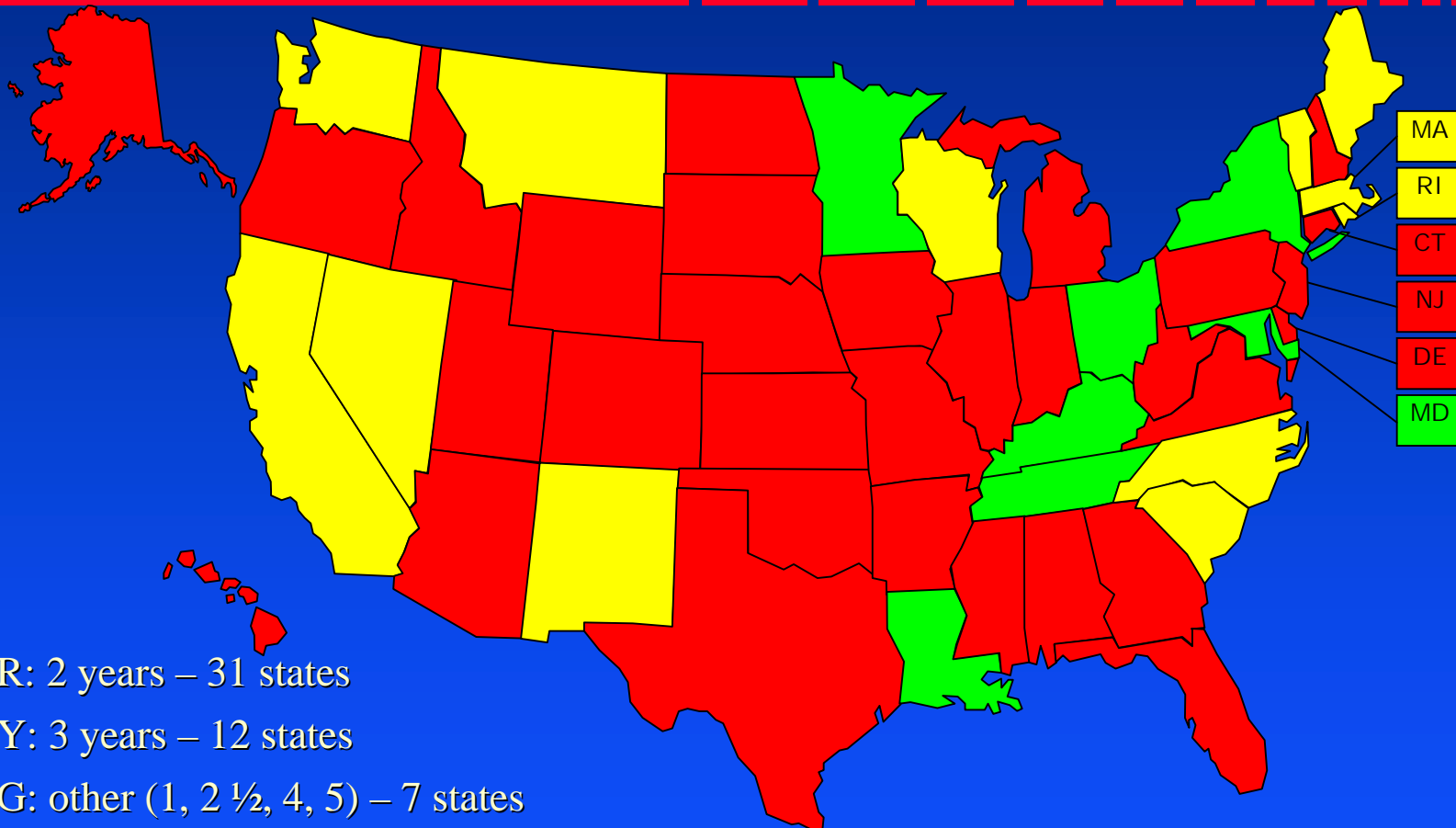
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# “Three Strikes” Rules

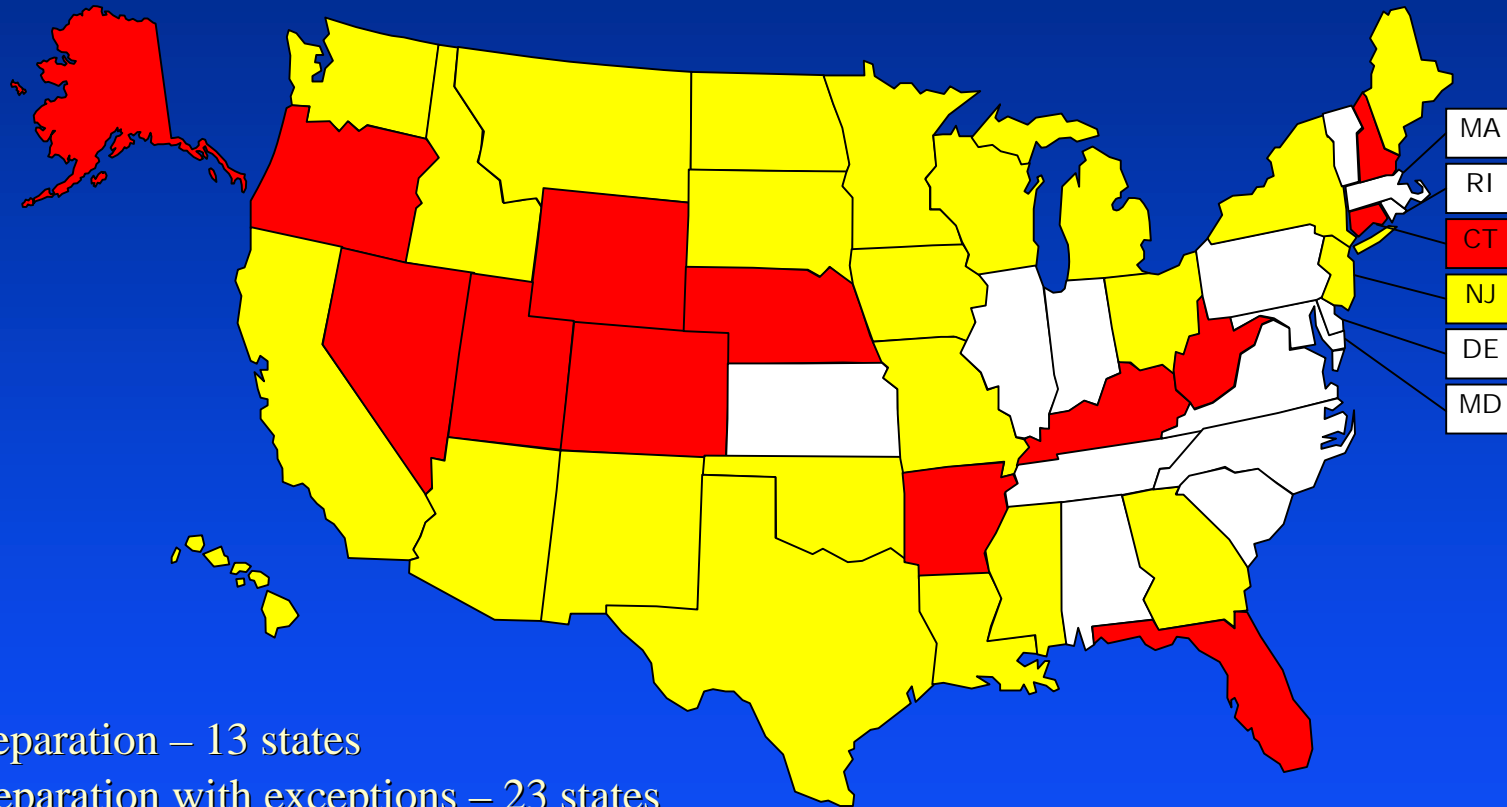
- **Alabama: 4 or more judgments or settlements over \$100,000 within 3 years.**
- **Florida: 3 guilty verdicts within 5 years.**
- **Georgia: disciplinary action 3 times in 10 years and/or 2 or more judgments or settlements over \$100,000.**
- **New Hampshire: 3 claims or actions within 5 years.**
- **Virginia: 3 payments within 10 years.**
- **Washington: 3 awards or settlements in 5 years.**



# Medical Malpractice Statutes of Limitation



# Medical Malpractice Joint and Several Liability



R: separation – 13 states  
Y: separation with exceptions – 23 states  
W: no separation – 14 states



## Medical Malpractice

# Federal Legislation

### ■ U.S. House

- ◆ May 2004 – HR 4280. Passed 229-197.
- ◆ July 2005 – HR 5. Passed 230-194.

### ■ U.S. Senate

- ◆ February 2004 – S 2061. Failed cloture 48-45.
- ◆ April 2004 – S 2207. Failed cloture 49-48.
- ◆ No requests for cloture thus far in 2005.



## Medical Malpractice

# State Innovations

### ■ Maryland

- ◆ Repealed HMO tax exemption to assist in paying malpractice insurance premiums

### ■ New Jersey

- ◆ FBI criminal background check to receive or renew medical license

### ■ Florida

- ◆ 3 guilty malpractice verdicts automatically revokes medical license



# Medical Malpractice Federal Bill Summary

- Statute of limitations of 3 years, 1 year from discovery
- Noneconomic damages limited to \$250,000, no exceptions
- Punitive damages limited to \$250,000 or twice the amount of economic damages, authorized only in specific circumstances
- Joint and several liability split, no exceptions.
- Attorney fees limited to 40 percent of first \$50,000, 33 percent of next \$50,000, 25 percent of next \$500,000, 15 percent exceeding \$600,000.





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# For More Information

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[www.ncsl.org/standcomm/sclaw/medmaloverview.htm](http://www.ncsl.org/standcomm/sclaw/medmaloverview.htm)

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