

# MEDICAL MUTUAL

*Liability Insurance Society of Maryland*

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**Bill:** Senate Bill 871 – Civil Actions – Punitive Damage Awards – Surcharge

**Date:** March 11, 2026

**Position:** Oppose

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Medical Mutual opposes Senate Bill 871. Senate Bill 871 would allow punitive damages to be awarded in a civil action if the plaintiff proves by clear and convincing evidence that the defendant acted with “gross negligence.” Gross negligence as defined in the Bill includes, among other things, a “failure to exercise even slight care,” a “pattern of repeated misconduct,” and “acts or omissions that create a high degree of risk or harm to others.” This drastic relaxation of the standard for an award of punitive damages could transform practically every medical liability action into one in which punitive damages are sought, increasing the complexity of medical liability litigation and the cost of defending claims, likely leading to higher medical professional liability (MPL) insurance rates.

Unlike compensatory damages, which are intended to compensate injured parties for their injuries or losses to make the injured person whole, punitive damages are aimed at the different purposes of deterrence and retribution.<sup>1</sup> Senate Bill 871 would overturn the current standard of liability for an award of punitive damages as established in *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992). In *Zenobia*, the Supreme Court of Maryland held that punitive damages may be awarded if the defendant’s conduct rose to the level of actual malice (evil motive or intent to do harm, or knowing that its actions would be harmful) as opposed to implied malice (gross negligence, recklessness, or should have known of the harm). As a result of the *Zenobia* decision, Maryland citizens and businesses have had a very clear standard of liability that has been consistently applied by the courts over the past 34 years.

As the largest provider of MPL insurance to private practice physicians in Maryland,<sup>2</sup> Medical Mutual is concerned that substantially weakening the high bar required for an award of punitive damages will put pressure on a precarious balance in the civil liability system that allows plaintiffs to recover damages for an injury while maintaining continued access to quality health care across the State. Making it much easier for plaintiffs to obtain punitive damages, in addition to the economic and non-economic damages that may be awarded, could tip the balance and upend the current stability in the MPL insurance market.

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<sup>1</sup> *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003).

<sup>2</sup> Medical Mutual was created in 1975 by an act of the General Assembly at a time when other MPL insurers withdrew from the State, leaving most physicians without insurance protection. Thanks to the wisdom of the General Assembly, the Governor, and others who were involved in Medical Mutual’s creation, we celebrated our 50th year as a physician-owned and directed mutual insurer last year and continue to provide comprehensive MPL insurance to Maryland Physicians.

The purpose of punitive damages is not to compensate a person for an injury, but to punish a defendant for misconduct and to deter others contemplating similar conduct. Medical Mutual believes that the *Zenobia* standard continues to adequately meet the purpose of punitive damages while providing appropriate and predictable relief to injured plaintiffs.

Most states require actual malice or other intentional, outrageous, or fraudulent conduct as the predicate for an award of punitive damages and some cap the amount of punitive damages that may be awarded. Senate Bill 871 would make Maryland the only state where virtually unlimited punitive damages may be awarded for gross negligence.<sup>3</sup>

As shown in the attached chart, some states prohibit punitive damages in medical liability actions. Although Medical Mutual opposes any relaxation of the actual malice standard, if the Bill moves forward, Medical Mutual respectfully asks that this Committee exclude medical liability actions. Allowing an award of punitive damages against a Physician or other health care provider for conduct falling well below actual malice would make demands for punitive damages in medical liability actions the rule rather than the exception. Creating such additional exposure for health care providers is bad public policy as it may worsen Physician shortages and other access to care issues in the State.

For these reasons, Medical Mutual respectfully requests an UNFAVORABLE report on Senate Bill 871.

For more information contact:  
Alexis Braun / [abraun@weinsuredocs.com](mailto:abraun@weinsuredocs.com)  
(443) 689-0208

Attachment: State Punitive Damage Laws, Medical Professional Liability Association (updated January 5, 2026).

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<sup>3</sup> States take varied approaches to punitive damages, including differing standards of conduct and burdens of proof. Some states prohibit punitive damages altogether in certain categories of cases, while others permit such damages but impose statutory caps. Senate Bill 871 would make Maryland an outlier by lowering the standard of conduct required to impose punitive damages – from actual malice to gross negligence – without imposing any corresponding cap on the amount of those damages. The attached chart, prepared by the Medical Professional Liability Association, compares each state’s approach to punitive damages.

# State Punitive Damage Laws

## Medical Professional Liability

(as of 1/5/2026)

ST	Conduct	Proof	Other
		10 Preponderance; 39 Clear and convincing	27 cap damages; 4 prohibit in MPL cases
<b>AL</b>	Malice, willfulness, wanton or reckless disregard	Clear and convincing	Must prove breach of SOC for each act of wantonness
<b>AK</b>	Outrageous or reckless indifference	Clear and convincing	Capped at greater of \$500k or 3X compensatory
<b>AZ</b>	More than conduct necessary to establish a tort	Clear and convincing	Must have compensatory damages to award
<b>AR</b>	Intentional or knew of injury and malice/reckless	Clear and convincing	Must have compensatory damages to award
<b>CA</b>	Guilty of oppression, fraud or malice	Clear and convincing	No MPL punitives unless prior court order for proof of win
<b>CO</b>	Fraud, malice, or wanton and reckless	Beyond a reasonable doubt	May not allege until discovery completed/limited to compensatory amount (with limited exceptions)
<b>CT</b>	Reckless indifference, intentional, wanton	Preponderance of evidence	Capped at cost of litigation, less taxable costs
<b>DE</b>	Outrageous due to evil motive or reckless indifference	Clear and convincing	MPL must be maliciously intended, willful or wanton; must be proportionate to harm
<b>DC</b>	Fraud, ill will, recklessness, wantonness, oppressiveness, willful disregard	Clear and convincing	Must have compensatory damages to award
<b>FL</b>	Intentional misconduct or gross negligence	Clear and convincing	Capped at greater of \$500k or 3X compensatory; compensatory not needed
<b>GA</b>	Willful misconduct, malice, fraud, wantonness, oppression or conscious indifference	Clear and convincing	Capped at \$250k unless intent proven
<b>HI</b>	Wantonly or oppressively with such malice to imply mischief or criminal indifference	Clear and convincing	
<b>ID</b>	Oppressive, fraudulent, malicious, or outrageous	Clear and convincing	Capped at \$250k or 3X compensatory; must bear relationship to compensatory



# State Punitive Damage Laws

## Medical Professional Liability

(as of 1/5/2026)

<b>ST</b>	<b>Conduct</b>	<b>Proof</b>	<b>Other</b>
<b>IL</b>	Fraud, actual malice, deliberate violence or oppression or wanton disregard for rights of others	Preponderance of evidence	Not allowed in MPL
<b>IN</b>	Malice, fraud, gross negligence or oppressiveness not resulting from mere negligence	Clear and convincing	Capped at greater of 3X compensatory or \$50,000
<b>IA</b>	Willful and wanton disregard for rights or safety of others	Preponderance of clear, convincing and satisfactory evidence of disregard	Persistent course of actions with no care or disregard for consequences
<b>KS</b>	Willful or wanton conduct, fraud or malice	Clear and convincing	Lesser of annual gross income of D or \$5M. Court may adjust to 50% of net worth or \$5M
<b>KY</b>	Malice, willfulness, wanton or reckless disregard	Clear and convincing	
<b>LA</b>	Determined by separate statutes	Preponderance of evidence	Not authorized for MPL claims
<b>ME</b>	Malice	Clear and convincing	No compensatory damages required; Capped for wrongful death
<b>MD</b>	Actual malice (evil motive or intent to injure)	Clear and convincing	Must be nominal compensatory damages; D's financial means not admissible unless punitives are supported
<b>MA</b>	Only if specifically allowed in statute	Preponderance (although not clear in statute)	Only if specifically authorized . No compensatory damages required; Capped for wrongful death. Capped at \$500k in MPL cases.
<b>MI</b>	Exemplary damages as compensation for humiliation, outrage or indignity	Preponderance of the evidence	Punitive damages specifically not allowed
<b>MN</b>	Deliberate disregard for rights/safety of others	Clear and convincing	Must have compensatory damages



# State Punitive Damage Laws

## Medical Professional Liability

(as of 1/5/2026)

ST	Conduct	Proof	Other
MO	Deliberate harm or deliberate and flagrant disregard for safety of others	Clear and convincing	Greater of \$500k or 5 times net award. Bifurcated trial.
MT	Actual fraud or actual malice	Clear and convincing	Compensatory damages required; Capped at \$10M or 3% of D net worth
NE	Prohibited by constitution	N/A	N/A
NV	Oppression, fraud or malice. Beyond recklessness or gross negligence.	Clear and convincing	3X compensatory damages (if over \$100k) or \$300k
NH	Liberal compensatory damages; hatred, hostility or evil motive	No specific standard	No MPL punitives, LCD for wanton, malicious or oppressive
NJ	Actual malice or wanton disregard for those foreseeably harmed	Clear and convincing	Bifurcated, must first have compensatory award; Greater of 5X compensatory or \$350k
NM	Maliciously intentional, fraudulent, oppressive or reckless or wanton disregard for P rights	Preponderance of evidence	Mere negligence insufficient (allegedly); reckless indifference required for MPL. Actual damages required
NY	Criminal indifference; malice, fraud, oppression, wanton/reckless disregard for rights	Mixed (1993 preponderance), 2003 (clear and convincing)	In MPL must be aggravated beyond mere negligence
NC	Fraud, malice, willful or wanton conduct	Clear and convincing	Aggravating circumstances necessary for MPL; compensatory required; Greater of 3X compensatory or \$250k
ND	Oppression, fraud or actual malice	Clear and convincing	Compensatory required; Greater of 2X compensatory or \$250k
OH	Actual malice or aggravated or egregious fraud.	Clear and convincing	Compensatory required; capped at 2X compensatory
OK	Wanton/reckless disregard for rights, malice, fraud or oppression	Clear and convincing	Breach of fiduciary duty allowed for MPL; compensatory required; two tiers of caps, one tier uncapped



# State Punitive Damage Laws

## Medical Professional Liability

(as of 1/5/2026)

<b>ST</b>	<b>Conduct</b>	<b>Proof</b>	<b>Other</b>
<b>PA</b>	Outrageous, evil motive, reckless indifference	Clear and convincing	Preponderance of evidence awards have been upheld; no compensatory but must be dismissed if compensatory damages are dismissed
<b>RI</b>	Willful, reckless or wicked conduct amounting to criminality	Preponderance of evidence	Compensatory not required;
<b>SC</b>	Willful, wanton or in reckless disregard	Clear and convincing	Compensatory damages required
<b>SD</b>	Oppression, fraud, malice	Clear and convincing	Compensatory damages required
<b>TN</b>	Maliciously intentional, fraudulent, oppressive or reckless	Clear and convincing	Actual damages (but not necessarily monetary) required; capped at 2X compensatory or \$500k
<b>TX</b>	Fraud, malice or gross negligence	Clear and convincing	Reasonable relationship to compensatory damages; capped at 2X econs + nonecons up to \$750k, or \$200k
<b>UT</b>	Willful and malicious or intentionally fraudulent or knowing and reckless indifference	Clear and convincing	Compensatory or general damages required; may not exceed 3X actual damages
<b>VT</b>	Malice, reckless disregard or ill will, insult or oppression	Preponderance of evidence	
<b>VA</b>	Actual malice	Preponderance of evidence	Total cap includes punitives; compensatory damages required; punitives capped at \$350,000
<b>WA</b>	Not unless authorized in statute	N/A	N/A
<b>WV</b>	wanton or oppressive, of if with such malice to imply mischief or criminal indifference	Clear and convincing	Compensatory damages required; capped at greater of 4X compensatory or \$500k
<b>WI</b>	Malice or intentional disregard for P's rights	Clear and convincing	No punitives in MPL cases; otherwise greater of 2X compensatory or \$200,000
<b>WY</b>	Outrageous conduct, malice, willful and wanton misconduct	Preponderance of evidence	Actual damages must be proven

