

<b>Title</b>	<b>Gailing Traction on the Road to Win-Win-Win: Limitations on Liability in State IT Contracting</b>
<b>Sponsoring Organization(s)</b>	National Association of State Chief Information Officers (NASCIO)
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<b>Synopsis</b>	<p>This paper makes the case that while there has been significant progress toward establishing rules, practices and policies for limitations in liability at the state level there is more to do in creating a more flexible environment in allowing more flexible terms in limiting liability.</p> <p>Companies have recognized the risk and vulnerability of placing an entire business in jeopardy for a contract that is minimal in comparison to the total value of its assets. Because of unlimited liability for vendors in several states, some choose not to participate. In a 2009 paper it was in TechAmerica’s view that: “inflexible IT terms and conditions developed without industry participation and support can negatively impact all parties to procurement.” In addition, the National Association of State Procurement Officials (NASPO) has advocated for public sector procurement reforms in an effort to achieve greater savings, more timely processes, and establish best practices for vendor contracts.</p> <p>At present 28 states currently have policies in place that allow either the procurement office, the overseeing agency, the attorney general, or a combination of those authorities to include limits on liability clauses into IT contracts for vendors. Sixteen states still have unlimited liability because of conflicts with the state constitution, legal statues, or a lack of flexibility in waiving the rights of sovereign immunity. Five states, report that they have some degree of limitations of liability clauses in state IT contract</p> <p>NASCIO’s recommendations are as follows: The first would highlight the importance of balancing the true risk involved with state IT procurement contracts and then protect the state against any incurred risk. States that still have contract laws, rules or policies in place with unlimited liability clauses should be reviewed in an effort to broaden competition in the marketplace. The second is to review the state’s legal requirements. While some states already have the legal authority to include limitations of liability clauses into their contracts, others states may have conflicting legal boundaries that may need to be researched.</p> <p>The fiscal climate has put an increased strain on all state budgets and pressure to seek innovative ways to consolidate and control costs is growing. States that still have unlimited liability clauses written into IT contracts should consider advocacy efforts to broaden competition in the marketplace. NASCIO reaffirms prior recommendations from the Procurement Subcommittee<sup>7</sup> and supports efforts to review state procurement policies and modify unlimited liability clauses. We urge</p>

# Procurement Resource Abstract



	the states to look at the successes that other states have had and to build upon those provisions to establish a uniform set of terms and conditions for limitations of liability in state IT contracts.
Topic Areas	Legal and Contracting Issues
Web Reference	<a href="http://www.nascio.org/publications/documents/NASCIO-GainingTraction.pdf">www.nascio.org/publications/documents/NASCIO-GainingTraction.pdf</a>