



Medical Malpractice Tort Reform

2005 ENACTED MEDICAL LIABILITY LEGISLATION IN THE STATES

ALASKA

SB 67, signed by Governor, June 7

- Noneconomic damages limited to \$250,000
- Noneconomic damages for wrongful death or injury over 70% disabling in severe permanent impairment limited to \$400,000
- Damages limits not applicable to intentional misconduct or reckless acts or omissions

ARIZONA

SB 1036, signed by Governor, April 25

- Expert witness qualifications specific to malpractice actions
- Apologies and similar gestures by health care providers not admissible in court as admission of liability

SB 1251, signed by Governor, April 18

- Adds vulnerable adult abuse cases against nursing care institutions to existing malpractice reporting requirements
- Punitive damages allowed in vulnerable adult abuse cases
- Attorney fees limited but additional fees may be awarded by court
- Department of Health Services to be notified of medical liability action and/or settlement

ARKANSAS

SB 233, signed by Governor, April 7

- Insurance policy holder's bill of rights
- Standards and criteria for medical liability insurance rates, rate administration, rate criteria
- Medical liability insurers to file specific information with Insurance Commissioner, available to public

CONNECTICUT

SB 1052, sent to Governor for signature, June 8

- Certificate of good faith required with medical malpractice lawsuit filing
- "Offer of compromise" guidelines, associated interest rates reduced
- Medical liability insurers to file specified reports to Insurance Commissioner, available to public
- Medical liability insurers required to file rate increase request with Insurance Commissioner if over 5%, insureds

may request public hearing

- Public-access physician profiles created, to include adverse licensure actions in other states
- Medical liability insurers to report any claims paid to Insurance Commissioner, available to public through malpractice database
- Expressions of sympathy by health care providers not admissible in court as admission of liability

FLORIDA

S 938, signed by Governor, June 20

- Implements "Patients' Right to Know" constitutional amendment (General Election 2004)
- Right of access to records relating to adverse medical incidents
- Disclosure of identity of patients prohibited, other privacy restrictions

S 940, signed by Governor, June 20

- Implements constitutional amendment requiring that doctors lose medical license in state if found guilty of medical malpractice 3 or more times in 5 years (General Election 2004)
- Defines terms and guidelines, establishes licensure requirements
- Department of Health to carry out disciplinary action against physicians found guilty of medical malpractice

GEORGIA

SB 3, signed by Governor, February 17

- Required affidavits in medical malpractice complaints
- Defendant access to applicable patient health information
- Doctor apologies not admitted in court as admission of liability
- Expert witness qualifications
- Malpractice insurers to report to state any judgment or settlement over \$10,000
- 2 guilty verdicts, report any further judgments to Medical Board; 3 guilty verdicts in 10 years can have license revoked or required additional education
- Limited liability in emergency room situations unless proven gross negligence
- Vicarious liability for hospitals
- Revision of joint/several liability
- \$350,000 noneconomic damage limit; aggregate limit of \$1.05 million

ILLINOIS

SB 475, sent to signatures, May 30

- Noneconomic damage limit of \$500,000 against individual, \$1 million against hospital
- Expert witness standards, certificates of merit to meet same standards
- Apologies by doctors and hospitals not permissible in court as admission of liability
- Public hearings required for insurance rate change of more than 6% or at request of insureds
- Medical liability insurance data disclosure to public via internet
- Medical Disciplinary Board changes including increase of disciplinary fines and extension of statute of limitations for complaints
- creation of Patients' Right to Know

SJR 3, adopted May 31

- Requests Supreme Court to provide for specific medical malpractice recordkeeping, case designation, and

reporting

INDIANA

SB 54, signed by Governor, May 4

- Licensed medical practitioner immune from civil liability when voluntarily providing health care services without compensation at free medical clinics or health care facilities

IOWA

HR 50, adopted April 26

- Legislative Council to establish interim committee to provide regulatory agencies and legislature with alternatives for alleviating problems with availability and affordability of medical liability insurance

KANSAS

SB 100, signed by Governor, April 13

- Risk management programs may be established in nursing and assisted living facilities, specified requirements including reporting incidents
- Reports within programs referred for investigation not admissible in civil lawsuit action without court determination that reports are relevant to allegations

LOUISIANA

HB 485, signed by Governor, June 16

- Specified information gathered by medical liability insurers or state risk management program for the purpose of reducing medical liability claims to remain confidential
- Health care provider expressions of apology not admissible in court, statement of fault is admissible

MAINE

LD 385, signed by Governor, June 17

- Limited liability for ambulance services

LD 1378, signed by Governor, June 10

- Comparative negligence defined and damages reduced to reflect level of claimant's fault in action
- Multiple defendants severally liable only for damages unless action in concert
- Medical review panel to designate level of fault of multiple defendants and recommend damages
- Noneconomic damages limited to \$250,000; punitive damages limited to \$75,000
- Expression of apology or sympathy by medical practitioner not admissible as admission of liability

LD 1472, signed by Governor, May 18

- Physician or hospital without liability insurance considered self-insured for Rural Medical Access Program
- Maximum assistance level raised to \$15,000

MARYLAND

SB 836, became law without Governor's signature, March 31

- Technical changes to Rate Stabilization Account and Medical Assistance Program Account
- Specified requirements for insurers reporting medical liability claims, penalties for failing to report
- Streamlined cancellation process for liability insurers, subject to review by Insurance Commissioner
- Reporting and regulatory requirements for Medical Mutual Liability Insurance Society of Maryland

MISSISSIPPI**HB 369, signed by Governor, April 20**

- Creation of Medical Malpractice Insurance Availability Plan to provide market of last resort
- Creation of advisory committee for Tort Claims Board on medical liability issues

MISSOURI**HB 393, signed by Governor, March 29**

- Venue rules for medical malpractice action including wrongful death
- Discovery of defendant's assets only after court finds in favor of awarding punitive damages
- Punitive damages limited to greater of \$500,000 or 5 times net amount of total judgment
- Liability of defendants several unless more than 51% at fault
- Noneconomic damages limited to \$350,000, repeal of current annual inflation adjustment
- Court required to dismiss any case filed without affidavit of written opinion of negligence
- Physicians providing free health care service in clinics not civilly liable unless willful act or omission;
- Doctor expressions of sympathy not admitted in court as admission of liability
- Appointment of peer review committee and associated procedures
- Statute of limitations for minors 2 years from 18th birthday

SCR 19, adopted May 13

- Joint Interim Committee on Missouri Health Care Stabilization Fund created to investigate establishment and implementation of fund, feasibility of paying damages to claimants, primary objective to assure reasonable medical liability coverage

MONTANA**SB 21, signed by Governor, April 15**

- Damages awarded based on "reduced chance of recovery"

SB 316, signed by Governor, April 8

- Specifications of reports from medical liability insurers, to be sent annually to Insurance Commissioner

HB 24, signed by Governor, March 24

- Medical personnel's statement expressing apology or sympathy not admissible in court as admission of liability

HB 25, signed by Governor, March 24

- Health care provider not liable for employee's act or omission that occurred when employee was not under

jurisdiction of health care provider

HB 26, signed by Governor, March 24

- Health care provider not liable for any act or omission committed by someone who purports to be a member of that organization

HB 64, signed by Governor, March 24

- Qualifications for expert witnesses in medical malpractice cases

HB 138, signed by Governor, March 24

- Board of Medical Examiners to establish disciplinary screening panels to oversee rehabilitation programs for medical personnel

HB 254, signed by Governor, March 28

- Medical practitioners guilty of civil offense and fined up to \$500 per offense for writing illegible prescriptions
- complaints to be filed with licensure board

HB 331, signed by Governor, March 28

- Insurance Commissioner to conduct market review of malpractice insurers in state; based on findings to create market assistance plan or joint underwriting association
- Specifications for potential market assistance plan and joint underwriting association
- Subject to specified limits for claimants under policies, underwriting, and reinsurance

NEVADA

AB 208, signed by Governor, June 17

- Applicants for medical licenses required to submit to criminal background check, as well as physicians against whom disciplinary action is initiated
- Expanded grounds for initiating disciplinary proceedings against medical personnel
- Criminal justice agencies to provide criminal histories to Board of Medical Examiners

NEW HAMPSHIRE

SB 57, signed by Governor, June 8

- Commission establishes to study ways to alleviate medical malpractice premiums for high risk specialties, not to examine civil justice system specific to malpractice claims

SB 214, enrolled, June 15

- Creation of panels for medical injury claims, including conditions for confidentiality and release of information to public
- Creation of panel and insurance oversight committee to study medical liability insurance rates and effectiveness of mandatory panel process
- Annual reports required from courts on screening panel to Insurance Commissioner
- Repeals current hearing panels for medical malpractice complaints

HB 514, signed by Governor, June 21

- Creation of 5-year health care quality assurance commission to provide information sharing among health care providers about adverse outcomes and prevention strategies
- Information submitted, proceedings and deliberation results held confidential

HB 584, signed by Governor, June 17

- Statement or action from medical personnel expressing sympathy relating to personal injury not admissible as admission of liability, does not apply to statement of fault.

NEW JERSEY**S 1804, signed by Governor, May 3**

- Medical facilities required to report disciplinary action taken by facility against health care professional relating to incompetence or professional misconduct
- All health care professionals to undergo criminal history background check when renewing medical license
- Reporting of health care professional to state and employer when specified as necessary
- Employers of health care professionals to disclose job performance upon inquiry of another employer

NEW MEXICO**SM 7, adopted March 10**

- New Mexico Health Policy Commission and Insurance Division of Public Regulation Commission to convene task force on medical liability insurance; review relevant state statutes, make recommendations to legislature and governor

NORTH DAKOTA**SB 2199, signed by Governor, March 14**

- Plaintiff must submit expert opinion affidavit to individual medical personnel or facility named as defendant within 3 months of commencement of malpractice action

OREGON**SB 443, sent to Governor for signature, June 20**

- Allows Board of Medical Examiners to require health care providers to take national licensing exam under circumstances of volunteering in charitable health clinics

SOUTH CAROLINA**S 83, signed by Governor, April 4**

- Noneconomic damages limited to \$350,000 with exceptions specified
- Standards for expert witnesses
- Mandatory mediation for malpractice actions, binding arbitration permitted
- Provisions relating to Joint Underwriting Association and Patients Compensation Fund
- Malpractice insurance providers required to maintain coverage for licensed health care providers
- Notice to all locations where health care provider has license to practice when South Carolina medical license is

suspended or revoked

- Inclusion of any percentage of plaintiff fault will not cause reduction of recoverable damages

H 3108, became law without Governor's signature, June 9

- Provisions relating to investigations of complaints against physicians by Medical Disciplinary Commission

SOUTH DAKOTA

HB 1104, signed by Governor, February 22

- Damages limited that may be awarded in malpractice action against a podiatrist

HB 1148, signed by Governor, February 22

- Statements and actions expressing apology or sympathy made by health care providers not admissible as admission of liability

TENNESSEE

SB 212, signed by Governor, May 24

- Medical practitioners voluntarily and without compensation providing health care services within scope of state license at health clinics receive civil immunity for rendered services unless act or omission was gross negligence or willful misconduct

UTAH

SB 83, signed by Governor, March 11

- Medical malpractice action may not be brought against health care provider due to consequences resulting from refusal of child's parent or guardian to consent to recommended treatment

VIRGINIA

SB 1173, HB 2659, identical bills, both signed by Governor, March 23

- Expert witness certification of deviation from care standard required before malpractice lawsuit can be filed
- Doctor expression of sympathy not admissible in court as admission of liability
- observations, evaluations and histories in treatment applicable to lawsuit may be disclosed;
- definition of "malpractice" limited to tort or breach of contract;
- malpractice liability insurers required to submit annual reports to State Corporation Commission regarding claims made against medical personnel;
- Board of Medicine to assess competency of medical personnel with three malpractice claim payments within ten years.

SB 1323, HB 1505, identical bills, both signed by Governor, March 20

- Birth-Related Neurological Injury Compensation Fund definition that when infant weighs less than 1800 grams at birth or is at less than 32 weeks of gestation, rebuttable presumption that alleged injury is result of premature birth

HB 1556, signed by Governor, March 20

- Board of Medicine required to inform licensees about immunity for services to patients of free clinics

HB 2410, signed by Governor, March 4

- Liability insurers required to provide 90-day notice of policy cancellation or non-renewal, or premium increase of more than 25% for malpractice insurance

WEST VIRGINIA**HB 2011, signed by Governor, May 4**

- Health care providers not liable for personal injury caused by prescription drug or medical device used in accordance with FDA regulations

HB 3174, signed by Governor, May 4

- Expression made by health care provider of apology or sympathy not admissible as admission of liability

WYOMING**SF 0078, signed by Governor, February 25**

- Additional advance notice of medical liability insurance policy cancellation or premium increase
- Public hearing required if insurer requests to raise premium rate by 30% or more

SF 0088, signed by Governor, March 3

- Requires additional specified information on medical malpractice claims to be reported

HB 0083, signed by Governor, March 15

- Repeal of current Medical Review Panel, recreates panel according to constitutional amendment (General Election 2004)

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