



Medical Malpractice Tort Reform

STATE MEDICAL MALPRACTICE REFORM ACTION 2005

** Any bill with no "Final Action" designated has received no action past initial introduction and committee referral; if Legislature has adjourned sine die, bills died in committee unless otherwise noted.

| States | Bill Number and Summary | Final Action |
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| Alabama Adjourned sine die May 16, 2005. | SB 77, HB 176. State Board of Medical Examiners required to review physician's record with 2 or more malpractice judgments or settlements within preceding 3-year period, or total of 3 or more judgments or settlements; Board may order up to 50 credit hours of continuing education within calendar year, failure to comply constitutes grounds for license suspension. | Both passed originating chamber, sent to opposite chamber. |
| Alaska Adjourned sine die May 10, 2005. | SB 67. Limits noneconomic damages at \$250,000 in medical malpractice lawsuits; 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. | Passed. Signed by Governor, June 7, 2005. |
| Arizona Adjourned sine die May 13, 2005. | SB 1036. Expert witness qualifications specific to malpractice actions; apologies and similar gestures by health care providers inadmissible in court as evidence of liability. SB 1251. Adds vulnerable adult abuse cases against nursing care institutions to existing reporting medical malpractice requirements, court or jury may order punitive damages in such cases, limits attorney fees but additional fees may be awarded by court, Department of Health Services to be notified of action and/or settlement. SCR 1035. Amends Constitution to allow Legislature to enact damage award limits, attorney fee limits, and mandatory dispute resolution in medical malpractice lawsuits. | Passed. Signed by Governor, April 25, 2005. Passed. Signed by Governor, April 18, 2005. Held by motion in committee. |
| Arkansas Adjourned sine die May 13, 2005. | SB 228. Annual reports to be filed with state by malpractice insurers expanded to include specified statistics about policies; Insurance Commissioner to file subsequent report with state legislature and governor. SB 233. General insurance reform including malpractice liability insurance; insurance policy holder's bill of rights; standards and criteria for malpractice insurance rates outlined; liability insurance rate administration and rate criteria outlined; malpractice insurers to file classifications, rates, and rules with Insurance Commissioner for the purpose of public review. HB 2075. Insurance policy holder's bill of rights; standards for malpractice insurance rates outlined; excessive, inadequate, unfairly discriminatory defined; rate administration and rate criteria outlined; malpractice insurers to file classifications, rates, and rules with Insurance Commissioner for the | Passed. Signed by Governor, April 7, 2005. |

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| | purpose of public review; Insurance Commissioner to establish internet site to enable physicians to obtain premium quotes from all malpractice insurers licensed in state, details provided. | |
| California | <p>AB 28. State to provide liability protection for health care providers offering free medical services to underserved populations in state.</p> <p>AB 446. When creating settlement agreement, defendant may not include provision that would prohibit plaintiff from contacting, filing complaint with, or cooperating disciplinary agency or board overseeing professional; no provision may require plaintiff to withdraw board complaint; violation would be subject to disciplinary action.</p> <p>AB 592. Medical professional not subject to discipline for specified aspects of unprofessional conduct solely on basis that treatment or advice rendered to patient is alternative or emerging medical care.</p> | <p>Passed Assembly, sent to Senate.</p> <p>Passed Assembly, sent to Senate.</p> |
| Colorado Adjourned sine die May 9, 2005. | SJM 10, SJM 11. Requests Colorado's Congressional delegation to support President Bush's call for legal and medical malpractice reform. | |
| Connecticut Adjourned sine die June 8, 2005. | <p>SB 131. Mandatory mediation in malpractice complaints; required good faith certificates when filing lawsuits; notice of complaint filed by plaintiff with Departments of Public Health and Insurance for review; Departments to each collect and store such information and make available to public; members of medical hearing panel, regulations and reports of panel designated; identification information required by hospitals prior to anesthetizing any patient; reduction of interest rates on offers of judgment; any medical professional to have personal information checked with National Practitioner Database prior to issuance of medical license in state; Insurance Commissioner to approve rates for medical liability insurance with designated procedures; attorney fees for malpractice actions limited on sliding scale; Insurance Commissioner to acquire reports from liability insurers to be reported to state legislature and to be made public; required court review of evidence if noneconomic damages awarded exceed \$1 million; patient safety program coordinated within Department of Public Health; Medical Examining Board and other agencies to create physician profiles for public use including malpractice judgments and settlements.</p> <p>SB 265. Prohibit waiver of attorney fee limits in malpractice actions, establish limits for noneconomic damages.</p> <p>SB 267. Attorney fees in malpractice actions limited to noneconomic damages portion of judgment or settlement.</p> <p>SB 270. Underlying medical opinion to be filed with good faith certificate in malpractice cases.</p> <p>SB 272, HB 5074, HB 5149, HB 6291. Noneconomic damages in medical malpractice actions limited to \$250,000.</p> <p>SB 273, HB 5384, HB 6285. Patient and physician may contract for arbitration to resolve malpractice complaint.</p> <p>SB 304, SB 686. Mandatory pre-trial screening to make initial determination of malpractice.</p> | <p>Recommitted to Committee.</p> |

SB 306. Mandatory continuing education for physicians.

SB 513. Qualifications for expert witnesses, expert testimony limited to one health care provider in similar specialty as defendant, witness selected by court.

SB 514. Separate hearings for economic and noneconomic damages; conditions and structures of periodic payments for judgment or settlement over \$250,000.

SB 515. Malpractice trial bifurcated on motion of either party; first proceeding limited to issue of alleged negligence; if negligence found, second proceeding limited to issue of amount of damages to be recovered by plaintiff.

SB 523. Failure for plaintiff to file good faith certificate will result in dismissal of case.

SB 682. Creation of no-fault compensation system or patient injury compensation similar to workers compensation for victims of medical error in cases with large damages but no finding of negligence.

SB 684. All malpractice complaints submitted to prescreening panel; specifications for creation of panel by Insurance Commissioner; panel may recommend dismissal if case determined to be frivolous; all recommendations and documentation of panel to become part of court file.

SB 685. Malpractice cases may be referred to alternative dispute resolution program prior to trial on request of either party.

SB 763. Malpractice settlements and related information to be reported to Insurance Commissioner; Department of Public Health to report to Governor and state legislature malpractice case statistics; information collection from physicians when becoming licensed to practice in state; Insurance Department to collect information on all malpractice claims; all insurers in state to register with Insurance Department.

SB 806. All potentially liable persons in malpractice cases to be made parties to action, court to reduce amount of damages for each defendant based on proportion of fault.

SB 807, HB 6283. Required pretrial screening prior to filing malpractice claim; reduction of interest rates on offer of judgment; required disclosure in court of collateral source payments; required periodic payments for settlements and awards over \$250,000; required certificate of good faith from health care provider in same specialty as defendant; attorney fee structure applied to malpractice cases; balance noneconomic damages against degree to which medical care provided deviated to standard of care; independent medical examining board established; extend whistleblower protection to physicians; immunity to hospitals and professional societies that conduct formal peer review; mandatory continuing education for physicians; promotion of use of electronic records systems and state-wide prescription monitoring system; defines scope of practice parameters.

Passed both chambers, sent to Governor.

SB 1052. Certificate of good faith required to be filed with lawsuit; introduction into court evidence of any damages awarded in separate lawsuit for same injury; offer of judgment defined as "offer of compromise,"

guidelines, associated interest rates reduced; expressions of sympathy by health care providers not admissible in court evidence; malpractice insurers must submit rate increase request to Insurance Commissioner if over 5%; Insurance Commissioner to review insurance rates in 3 years to determine any rate changes and causes; liability insurers to report any claims paid to Insurance Commissioner for release to public; Department of Public Health and Medical Examining Board to adopt guidelines for investigating complaints and disciplining physicians; health care facilities to develop surgery protocols and report to Public Health; physician profiles expanded to include adverse licensure actions in other states, other mandatory reporting; continuing education requirement for any physician seeking to renew medical license in state.

HB 5075. Interest on offers of judgment in limited to 4%; noneconomic damages limited to \$250,000; periodic payments for awards over \$250,000; collateral source to be presented as evidence.

HB 5237. Noneconomic damages in medical malpractice actions limited to \$500,000.

HB 5307, HB 6547. Malpractice lawsuit filing must be accompanied by signed opinion from similar health care provider stating good faith belief that negligence has occurred.

HB 5308. When filing malpractice claim, plaintiff must submit copies to Department of Public Health and Department of Insurance.

HB 5310. Mandatory mediation in malpractice lawsuits, unless parties agree to refer action to alternative dispute resolution program.

HB 5386. When filing malpractice lawsuit, plaintiff must have previously had the complaint reviewed by someone who can and is willing to testify as expert witness, must provide such information to defendant, or case will be dismissed.

HB 5389, HB 5724. Attorney fee structure in state statute applied to malpractice cases, applied to net proceeds after deduction for out-of-pocket costs of action.

HB 5390. Revisions to filing of good faith certificates, offers of judgment, waivers of limitations on attorney fees, conduct of trial, and pretrial review by screening panels.

HB 5730. Expert witness for malpractice trial must be physician licensed in Connecticut.

HB 5797. Patient injury compensation system established, entitle injured person to receive up to 200% of the value of already existing workers compensation benefits provided to similarly injured employee.

HB 6150. Interest rates outlines for damages awarded, if amount is equal to or greater than plaintiff's official offer of judgment, to be decided by court.

HB 6180. Noneconomic damages in medical malpractice actions limited to \$350,000; Department of Public Health to incorporate peer review into disciplinary process; abolish Medical Examining Board and establish

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| | <p>independent oversight board for physician regulation.</p> <p>HB 6624. Commissioner of Public Health to establish ad hoc committee to evaluate feasibility of written evidence-based standards of practice for licensed physicians; standards to be used by Department of Public Health in review of complaints filed against physicians.</p> | |
| <p>Delaware</p> | <p>SB 123. Creates Medical Negligence Insurance Premium Relief Fund; state will award moneys to eligible individual medical care providers to provide relief from costs of medical malpractice insurance premiums; funds will come from assessment on excess net worth of health service corporations.</p> <p>HB 75. Board of Medical Practice responsibilities and guidelines outlined, including receiving reports from physicians and liability insurance providers of any malpractice judgments, settlements or awards.</p> <p>HB 133. All medical negligence claims settled or awarded against health care provider shall be reported to Commissioner by defendant and associated insurance provider within 60 days of final disposition of claim.</p> | <p>Passed House, sent to Senate.</p> |
| <p>Florida</p> <p>Adjourned sine die May 6, 2005.</p> | <p>S 82. Creates Florida Medical Malpractice Insurance Fund, plan of operation to be submitted to Insurance Regulation Office, investment requirements, to issue medical malpractice policies to any physician regardless of specialty.</p> <p>S 684. Repeals constitutional amendment that prohibits licensing a physician who has been found to have committed three or more incidents of medical malpractice.</p> <p>S 938, HB 1797. Implements Constitutional Amendment adopted in 2004 General Election called "Patients' Right to Know;" specifies right of access to records relating to adverse medical incidents; disclosure of identity of patients prohibited, other privacy restrictions; restrictions on use of records; defines terms and applicable fees charged.</p> <p>S 940, HB 1739. Implements Constitutional Amendment adopted in 2004 General Election, requiring that doctors lose medical license in state if found guilty of medical malpractice 3 or more times in 5 years; defines terms and guidelines, establishes licensure requirements, gives authority to Department of Health to carry out disciplinary action against physicians found guilty of medical malpractice.</p> <p>S 972, HB 665. State already requires medical professionals to maintain letter of credit or escrow account for the purpose of settling claims if not carrying liability insurance; proposal raises minimum amount required for accounts and/or medical liability insurance.</p> <p>S 1692, HB 1275. Provides for out-of-state physicians to obtain expert witness certificate upon approval by Board of Medicine; false, deceptive, or misleading expert testimony constitutes grounds for disciplinary action or denial of medical license.</p> <p>S 2218. Implements Constitutional Amendment adopted in 2004 General Election, called "Patients' Right to Know;" certain records not subject to discovery or evidence in civil or administrative action; other certain records not immune from discovery; record preparer not to be compelled to testify about information or findings.</p> | <p>S 938 passed. Signed by Governor, June 20, 2005.</p> <p>S 940 passed. Signed by Governor, June 20, 2005.</p> <p>Passed House, sent to Senate.</p> |

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| | <p>HB 863. Medical malpractice claimants required to provide defendants with release forms granting defendant access to claimant's medical records; permits limited interviews of claimant's health care provider.</p> <p>HB 1621. Medical malpractice insurance provisions specific to hospitals, particularly when such hospital assumes liability for medical practitioners; notice to patients specified; minimum insurance coverage set and associated requirements; noneconomic damages limited to \$500,000 for hospitals with patient safety measures certified by Agency for Health Care Administration and requirements for patient safety certification including reports of adverse incidents to Department of Health and peer review functions; sovereign immunity allowances with notice to patient requirements; Agency authority for inspection of facilities and revocation of patient safety certification; liability requirements and specified exemptions for teaching hospitals.</p> | |
| <p>Georgia</p> <p>Adjourned sine die March 31, 2005.</p> | <p>SB 3. Revised venue in lawsuit actions with joint defendants; affidavits to accompany charges of professional malpractice; removal of extension for filing affidavits; defendant access to plaintiff health information in malpractice cases; either party may recover costs and fees if offer of judgment not accepted and judgment is 25% more favorable than original offer; statement of apology or fault by health care providers not admitted as evidence in malpractice lawsuits; qualifications for expert witnesses; malpractice insurers must report to Medical Examiners board judgments or settlements over \$10,000; if physician has two or more judgments, all judgments after must be reported to Board; Medical Examiners board to assess medical licensee fitness if disciplined 3 times in 10 years, may revoke or limit license or require additional education; limited liability for hospitals and health care providers in emergency room situations unless proven gross negligence, conditions outlined; hospitals released from vicarious liability for independently contracted physicians, patients to be made aware of contract parameters; revision of joint and several liability; noneconomic damages limited to \$350,000 against health care provider, \$350,000 against medical facility, aggregate limit of \$1.05 million; periodic payments required if judgment over \$350,000.</p> <p>SB 22. Medical malpractice insurance rate filings; rate increases for medical malpractice insurance; approval or rejection of such rate increases; certain hearings in connection with rate increase approvals; certain notices and reports.</p> <p>SB 36. Qualifications of health care providers and establishment of financial responsibility, annual surcharge, creation of patient's compensation fund.</p> <p>SB 75. Reporting of awards under medical malpractice insurance policies, what types, amends authority to refuse licensing of physicians, other discipline and investigation under specified circumstances.</p> <p>SB 76. Medical malpractice insurance rate filings, approval or rejection of malpractice insurance rate increases, notices and reports.</p> <p>HB 56. Venue in actions with joint defendants; affidavits accompanying charges of professional malpractice required to be filed in certain actions; signing of pleadings and other documents, representations to the court, and sanctions; expert witness standards.</p> | <p>Passed. Signed by Governor, Feb. 17, 2005.</p> |

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| | <p>HB 72. Authorizes group self-insurance by hospitals and health care professionals, creates excess loss funding program.</p> <p>HB 234. When expert opinions are admissible in judicial proceedings, qualifications for expert witnesses to execute affidavits in malpractice lawsuits, elimination of provisions excusing noncompliance with deadlines.</p> <p>HB 239. A party rejecting settlement offer may be liable for litigation costs when judgment is significantly less favorable to the rejecting party than was the settlement offer.</p> <p>HB 274. Change in duties, functions, and powers of Department of Human Resources, confidentiality of certain information, fees on medical malpractice insurance premiums, limits damages liability in specified circumstances, changes in amount and method of computing tax on insurance premiums generally.</p> <p>HB 339. Limits medical damages in malpractice actions where defendant maintains medical liability insurance, provisions relating to agency liability of medical facilities, apportionment of award according to degree of fault and in certain malpractice actions, penalty for bad faith failure to settle claim.</p> | |
| <p>Hawaii Adjourned sine die May 5, 2005.</p> | <p>SB 131, HB 1059. Authorizes and funds creation of captive insurance company by state health systems corporation to provide medical malpractice and other liability insurance to state medical schools and their physicians in 5-year pilot project.</p> <p>SB 466. Income tax credit to physicians practicing neurosurgery, orthopedics, obstetrics-gynecology, or emergency room services in medically underserved areas and who receive more than 20% of income from Medicare and other programs for a portion of the amount of medical or dental malpractice premiums.</p> <p>SB 468, HB 181. Noneconomic damages limited to \$250,000; defendants liable for only proportion of fault, separate judgments to be rendered against each party individually based on the proportion of fault; attorney fees limited; collateral source benefits admitted in evidence; punitive damages allowed only on proof of malicious intent and limited to greater of \$250,000 or twice value of economic damages awarded; periodic payments allowed on future damages over \$50,000; statute of limitations lowered to one year after injury or discovery and no longer than 3 years, statute of limitation for injury to minor within 3 years or until 8th birthday.</p> <p>SB 517. Limit on noneconomic damages reduced from \$375,000 to \$250,000.</p> <p>SB 518. Defendant is liable for no more than percentage of share of damages attributable to that individual or entity, repeal of exceptions abolishing joint and several liability.</p> <p>SB 707, HB 598. Limits special damages claims when such arise out of medical or other health care services paid for by a government program, such as Medicare or Medicaid.</p> <p>SB 757. Noneconomic damages limited in malpractice actions; premium rates limited for insurers providing professional liability insurance; repeals limits on noneconomic damages if an insurer does not comply with the premium rate</p> | <p>SB 131 passed Senate, sent to House.</p> |

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| | <p>caps.</p> <p>SB 771, HB 662. Good Samaritan clause expanded to exempt physicians from liability when they are in good faith rendering emergency medical care.</p> <p>HB 230. Income tax credit to physicians and dentists practicing in specified fields, in medically underserved areas, and receiving more than 10% of income from Medicare and other programs for percentage medical or dental malpractice premiums.</p> <p>HB 237. Establishes commission within Insurance Commission to develop legislation for medical malpractice reform, a state-sponsored insurance company, and the use of captive insurance plan.</p> <p>HB 648. Limits noneconomic damages to \$250,000; punitive damages limited to \$250,000 or three times amount of compensatory damages; attorney's fees limited on sliding scale; damages allocated to defendants in proportion to degree of negligence; joint and several liability allowed if negligence 25% or more; allows periodic payment of future damages in malpractice actions; 3-year statute of limitation.</p> <p>HB 854. Noneconomic damages limited to \$250,000 when recovered from a physician or surgeon specifically for emergency care services provided in emergency room of a hospital.</p> <p>HCR 45, HCR 46, HR 38, HR 39. Requests Hawaii's Congressional delegation to support President Bush's call for legal reform.</p> | <p>Passed House, sent to Senate.</p> |
| <p>Idaho</p> <p>Adjourned sine die April 6, 2005.</p> | <p>No 2005 legislation found.</p> | |
| <p>Illinois</p> <p>Adjourned sine die June 1, 2005.</p> | <p>SB 7. Health Care Enterprise Zone Act - Department of Public Health may certify certain areas in state as suffering from shortage of medical services as health care enterprise zones or specialty shortage zones; beginning after Dec. 31, 2006, health care professionals practicing at least 50% of year in shortage zone may request specified income tax credit or abating of property tax as part of practice; total amount of abated taxes for an entire county limited to \$5 million per year.</p> <p>SB 50. Creates risk retention trusts within certain counties to provide liability insurance for participating physicians and health care professionals; county boards may incur debt to make available and improve medical services; amends medical liability insurance regulation of rates; liability insurance resource center to be established on Internet; reports on liability insurance claims to be submitted to Secretary of Financial and Professional Regulation; Secretary to hold hearings relating to liability insurance rate increases; appointing of medical coordinators and investigators; regulation of medical discipline and proceedings, disclosure of information; amends regulation of health care arbitration agreements concerning validity and cancellation; amends civil procedures relating to expert witness standards and submitted affidavits, liability of hospital in case of non-employee member of staff; doctor apology is not admissible as evidence in court; Good Samaritan clause revised to expand immunity for services performed without compensation at or upon referral from free medical clinics; creates "Sorry Works" pilot program to acknowledge mistakes and promptly offer fair settlements; creates working</p> | <p>Passed Senate, sent to House.</p> |

study committee to research other states' efforts regarding damage limits and annuities.

SB 150, HB 705. Creates risk retention trusts to provide liability insurance for participating physicians and health care professionals; county boards may incur debt to make available and improve medical services; amends medical liability insurance regulation of rates; liability insurance resource center to be established on Internet and court clerks to provide relevant information; amends regulation of medical discipline and proceedings, disclosure of information; amends regulation of health care arbitration agreements concerning validity and cancellation; amends civil procedures relating to expert witness standards and submitted affidavits; noneconomic damages limited to \$250,000; liability of hospital in case of non-employee member of staff, limits on attorney fees; Good Samaritan clause revised to expand immunity for services performed without compensation at free medical clinics and to retired physicians when responding to emergency department; doctor apology is not admissible as evidence in court; creates "Sorry Works" pilot program to acknowledge mistakes and promptly offer fair settlements, funded through state treasury.

SB 151. Creates separate circuit court within each appellate district solely for medical malpractice actions, Supreme Court to appoint a selection panel to recommend judges from among circuit judges possessing specified qualifications, recommended judges to be assigned to malpractice court, jury pools to be drawn from the entire appellate district.

SB 154. Expands Good Samaritan Act to include retired physicians as exempt from liability; expands immunity to include services performed without compensation at or upon referral from free medical clinics; free medical clinics may receive reimbursement from Department of Public Aid within specified guidelines.

SB 243. Any award of noneconomic damages in malpractice cases in excess of 100% of economic damages shall be presumed punitive and in violation of public policy.

SB 276. Counties with specified population demographics authorized to establish administration of medical care risk retention trust program, including costs, eligibility, and fees; trust standards, administration and investment authority specified; liability resource center to be established as online database by Secretary of Financial and Professional Regulation, information to be released specified; Secretary to collect from courts reports on medical liability actions submitted, including judgments and settlements; fines for incomplete or inaccurate reports; malpractice insurance rate increases to be submitted to Secretary and public hearings held; Medical Disciplinary Board to maintain specified number of investigators per physicians licensed in state; physician acting in good faith immune from criminal charges or civil damages if medical incidents reported to Disciplinary Board and/or peer review; doctor's expression of sympathy or apology not admitted as evidence in court; expert witness standards.

SB 280. Physician's personal assets may not be used to satisfy judgment in malpractice action within certain parameters; physician may make motion to exempt personal assets from judgment.

Third reading
deadline extended
to December 31,
2005.

Passed both
chambers, sent to
Governor.

SB 447. If medical care provider found to have committed 3 or more incidents of medical malpractice, Department required to refuse medical license and revoke any license issued.

SB 475. Noneconomic damage limit of \$500,000 against individual, \$1 million against hospital; expert witness standards, doctors providing certificate of merit review to meet same standards; annuity for future medical expenses and cost of life care; apologies by doctors and hospitals not permissible as admission of liability; implementation of Sorry Works pilot program; public hearings required for insurance rate change of more than 6% or at request of insureds; other medical liability insurance reforms; medical liability insurance data disclosure via internet, Secretary of Insurance to collect specified information; changes to Medical Disciplinary Board including increase of disciplinary fine and extension of statute of limitations for complaints; creation of Patients' Right to Know.

SB 1979 (Amendment 3). Noneconomic damages awarded against medical facility limited to \$500,000 or \$750,000 in case of severe injury as specified; noneconomic damages awarded against individual physician limited to \$250,000 or \$500,000 in case of severe injury as specified.

SJR 3. Requests that Supreme Court modify administrative orders to provide for specific medical malpractice recordkeeping, case designation, and reporting.

HB 252. Health care facilities to develop patient safety plan; report to Department of Public Health preventable adverse incidents occurring and patient informed; reporting mechanism created for health care professionals; criminal penalties for false reports; Department of Public Health, Medical Licensing Board and Podiatric Medical Licensing Board to maintain information on all physicians and podiatrists licensed in state and create profiles to be made available to the public; specifications and reporting of said profiles; disciplinary action time limitations expanded with exceptions.

HB 366. Defines types of loss in malpractice situations, distinguishes between economic and noneconomic damages.

HB 370. Requires that reports from reviewing health professional in malpractices cases contain identifying information; reviewer providing frivolous or improper review liable to both parties for costs and attorney fees; specifications to find review frivolous.

HB 646. If medical professional has committed 3 or more violations of gross negligence, grounds for discipline; any similar provision of another jurisdiction or other specified actions or omissions, Department to refuse to issue medical license or revoke Illinois medical license already issued.

HB 1580. Expanded time period to commence specified disciplinary actions against medical professionals, with exceptions; public release of individual profiles of licensed physicians including information on disciplinary actions, privilege revocations, and malpractice awards; specified methods of collecting and releasing information.

HB 1599. Selection of medical coordinators and investigators; expanded time for medical oversight to begin investigation of any civil action ruled in favor of

**Adopted in both chambers, May 31, 2005.
Failed on House Third Reading.**

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| | <p>plaintiff; investigative records expunged after specified time; health care arbitration agreements valid for 10 years; reports from reviewing health professional in malpractices cases to contain identifying information; standards to qualify as expert witness in court; limit of noneconomic damages awarded against hospital or physician's business, protection of physician's personal assets.</p> <p>HB 4074. Creation of risk retention trusts for pooling of risks to provide medical liability coverage for participating health care professionals; county board may incur debt to ensure availability of and improvements to health and medical facilities and services; changes to Insurance code relating to medical liability rates and regulation; Secretary of Financial and Professional Regulation to establish Professional Liability Insurance Resource Center on internet, court clerks to provide specified information; provisions relating to disciplinary proceedings and related information, disclosure and immunity; time lines for naming defendants in complaints, affidavits and reports from reviewing health professional; noneconomic damages limited to \$500,000 against medical facility, limited to \$250,000 against individual physician; hospital liability limited when care provided by non-employee member of medical staff; attorney fees limited; health care provider statement of apology not admissible in court evidence under specified circumstances; expert witness standards and qualifications; immunity expanded for services performed without compensation in free medical clinics and by retired physicians; Sorry Works Pilot Program created, with associated committee to oversee and implement program; Sorry Works Fund created in state treasury.</p> | |
| <p>Indiana Adjourned sine die April 29, 2005.</p> | <p>SB 54. Licensed medical practitioner immune from civil liability when voluntarily providing health care services without compensation at free medical clinics or health care facilities; other non-medical civil liabilities included.</p> <p>SB 586. Standard of review for assessing the awarding of noneconomic damages; post-judgment motion may be filed by either party for review of noneconomic damages award.</p> <p>SB 616. Civil immunity for specified individuals providing health care services to inmates of county jails or state correctional facilities under certain circumstances; state and local governmental units to disburse funds to medical office or hospital providing health care services to inmates; requires funds to be used for purchase of professional liability insurance.</p> <p>HB 1119. Licensed medical practitioner immune from civil liability when providing health care services without compensation at certain entities.</p> <p>HB 1285. Volunteers in hospitals not liable for civil damages when acting in good faith and within scope of responsibility; facility not exempt from liability otherwise incurred for negligence of volunteers.</p> | <p>Passed. Signed by Governor, May 4, 2005.</p> |
| <p>Iowa Adjourned sine die May 20, 2005.</p> | <p>HF 598. Patient Compensation fund and board established to pay portion of medical malpractice claims in excess of \$1 million per occurrence or \$3 million for all occurrences in one year; claims not paid if defendant found guilty of intentional crime; physicians to pay fee to participate in fund; fund started with appropriation from state; claims procedure established.</p> <p>HF 704. Noneconomic damages in medical malpractice tort action limited to \$250,000 unless defendant found guilty of actual malice.</p> | |

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| | <p>HR 50. Legislative Council requested to establish medical liability insurance interim committee to provide regulatory agencies and legislature with alternatives for alleviating problems with availability and affordability of medical liability insurance in state; construct for committee and responsibilities specified; report to legislature specified.</p> | <p>Adopted April 6, 2005.</p> |
| <p>Kansas Adjourned sine die May 1, 2005.</p> | <p>SB 100. Nursing and assisted living facilities may establish risk management programs under specified requirements including reporting incidents; reports under such program referred for investigation not admissible in civil lawsuit action unless court determines that said reports are relevant and substantially related to allegations; not to be construed to limit discovery or authority of Department on Aging to investigate.</p> <p>HB 2110. Medical review panel created to hear claims against adult care facilities prior to litigation; membership of board and process established; panel decision not binding but admissible into evidence at trial; liability for cost and attorney fees attached to offer of settlement.</p> | <p>Passed. Governor signed, April 13, 2005.</p> |
| <p>Kentucky Adjourned sine die March 22, 2005.</p> | <p>SB 1, HB 146. Amend state constitution to permit General Assembly to limit noneconomic damages and punitive damages in medical malpractice lawsuits; require alternative dispute resolution prior to filing a civil action; set statutes of limitations; provisions to submit proposed amendment to voters.</p> <p>SB 224. Malpractice insurance reform including required annual filing of a medical malpractice insurance premium and market statement by malpractice insurers to Department of Insurance, creation of Kentucky Health Care Providers' Mutual Insurance Authority, required mediation, required submission of expert affidavit prior to filing lawsuit.</p> <p>SR 30, SR 138. Requests the Kentucky Congressional Delegation to support meaningful medical malpractice liability reform.</p> <p>HB 458. Prohibit discrimination in malpractice insurance rates against Kentucky applicants or insureds unless justified by higher claims payments.</p> <p>HB 480. Require malpractice insurers to develop and establish experience rating plan providing for surcharges and discounts for insureds who implement risk management techniques, subject to disapproval by Insurance Commissioner.</p> <p>HB 481. Insurance Commissioner to create internet database to permit medical personnel to compare all malpractice insurance rate quotes offered in state relating to type of practice.</p> <p>HB 482. Authorize Insurance Commissioner to hold hearings and determine if surplus of a medical malpractice insurer is excessive, deny rate increase until surplus is determined no longer excessive.</p> <p>HB 484. Malpractice insurance reform, including premium rates restricted for obstetricians, insurer intending to cancel policies in essential specialty to provide 120 days notice which can be further delayed by Insurance Commissioner in certain instances.</p> <p>HB 490. Malpractice insurance reform including required annual filing of a medical malpractice insurance premium and market statement by malpractice insurers to Department of Insurance, creation of Kentucky Health Care Providers' Mutual Insurance Authority, required mediation, required</p> | <p>SB 1 failed on Senate Third Reading.</p> |

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| | <p>submission of expert affidavit prior to filing lawsuit.</p> <p>HB 491. Amend state constitution to permit General Assembly to require documentation and data collection by health care providers for the purpose of patient safety; permit General Assembly to require alternative dispute resolution in medical malpractice actions; provisions to submit proposed amendment to voters.</p> <p>HB 504. Require Insurance Commissioner to establish standards to calculate rates for malpractice insurance.</p> | |
| <p>Louisiana</p> | <p>SB 184. Medical review panel rules amended to shorten time in which panel must render decision and other regulations; medical information gathered by medical or insurance facility for identifying cause of adverse outcome not admissible as evidence in court; medical personnel's communication of sympathy or commiseration not admission of liability or permitted as evidence in court.</p> <p>HB 257. Expands definition of "medical malpractice" to include personal care, custodial care, and transportation of patients.</p> <p>HB 353. Amends medical review panel decision time frame from 180 days to no designation.</p> <p>HB 425. Expands statutory civil liability immunity for commitment in mental health or substance abuse cases to include hospitals and hospital personnel.</p> <p>HB 485. Information gathered by specified medical malpractice insurers or state risk management program confidential for the purpose of improving health care quality and reduction of professional liability claims; health care provider expressions of apology, sympathy, or compassion inadmissible into evidence; statement of fault is admissible.</p> <p>HB 813. Income tax credit provided to rural physicians for medical malpractice insurance premiums for premiums during taxable year, up to \$25,000.</p> | <p>Passed both chambers, sent to Governor.</p> <p>In Conference Committee.</p> <p>Passed. Signed by Governor, June 16, 2005.</p> |
| <p>Maine</p> <p>Adjourned sine die March 30, 2005.</p> | <p>LD 385. Limited liability for ambulance services.</p> <p>LD 590. Superintendent of Insurance required to make medical malpractice filings open to public and to hold public hearings for any filing requesting rate increase over 5%.</p> <p>LD 1378. 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 when making report of findings; noneconomic damages limited to \$250,000; punitive damages limited to \$75,000; expression of apology or sympathy by medical practitioner not admissible as evidence in malpractice action.</p> <p>LD 1415. Professional competence review records identifying patient to be kept confidential; defendant in malpractice action may not contact claimant's physician unless authorized by claimant's attorney.</p> <p>LD 1472. Physician or hospital not purchasing liability insurance is considered self-insured for Rural Medical Access Program; rates and reports of</p> | <p>Passed. Signed by Governor, June 17, 2005.</p> <p>Passed. Signed by Governor, June 10, 2005.</p> <p>Passed. Signed by Governor, May 18, 2005.</p> |

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| | <p>assessments through Superintendent of Insurance; maximum assistance level raised to \$15,000.</p> <p>LD 1582. Modifies statute of limitation to 3 years from discovery of injury; requires health care facility to notify patient when report is submitted to Department of Health and Human Services; alters standards for awarding punitive damages, may be awarded against employer of negligent health care practitioner in certain circumstances for failure to protect; Board of Licensure in Medicine to revoke medical license when physician has at least 3 adverse judgments for professional negligence.</p> | |
| <p>Maryland</p> <p>Adjourned sine die April 11, 2005.</p> | <p>Enacted reforms in HB 2, Special Session, December 2004. Vetoed by Governor, Veto override by Legislature, January 2005.</p> <p>SB 221, HB 301. Medical malpractice awards to be itemized in specified manner; defense may introduce into evidence any specified payments or reimbursements under specified circumstances received by claimant, verdict may be modified accordingly; court to provide neutral witness in malpractice actions, regulations for other expert witnesses; noneconomic damages limited to \$500,000; provides rules for periodic payments of awards; rules for adjustment of economic damages according to costs and inflation.</p> <p>SB 836. Technical changes to Rate Stabilization Account and Medical Assistance Program Account, administered by Insurance Commissioner; regulations, allocations, funding, distribution specified; authorizations for People's Insurance Counsel; specified requirements for insurers reporting medical liability claims, penalties assessed for failing to report; streamlined cancellation process for liability insurers, cancellations subject to review by Insurance Commissioner; reporting and regulatory requirements for Medical Mutual Liability Insurance Society of Maryland.</p> <p>HB 114. Physician statements and conduct expressing regret or apology may not be used as evidence of admission of liability; medical malpractice awards or verdicts to be modified to reflect certain payments or reimbursements under certain circumstances; neutral witness in malpractice actions to be provided by court; venue rules in actions against malpractice insurance provider; Maryland Insurance Commissioner authorized to assess surplus to Medical Mutual Insurance Society and prohibited from approving rate increases under certain circumstances; Joint Executive-Legislative Task Force on Health Care Malpractice established and provisions providing for membership, studies, and reports.</p> <p>HB 194. Medical malpractice awards to be itemized in specified manner, modified to extent of specified payments or reimbursements under specified circumstances; recovery and claims prohibited relating to specified sums included in modification of award.</p> <p>HB 274. Alteration of statute of limitation for minors in medical malpractice actions.</p> <p>HB 1200. Court required to employ neutral expert witness in medical malpractice actions and other expert testimony regulations; venue regulations for medical injury proceedings; admission of liability or fault that is part of communication of regret or apology is inadmissible as evidence; medical practice may include engaging in expert testimony or opinion under specified</p> | <p>Passed. Became law without Governor's signature, March 31, 2005.</p> <p>Passed House, died in Senate.</p> |

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| | <p>circumstances.</p> <p>HB 1215. Regulation of attorney fees in medical malpractice actions, including limit of fees charged, division of fees between multiple attorneys in certain circumstances; disciplinary action to include possible disbarment for failure to comply.</p> <p>HB 1230. Limited liability for hospitals and health care providers in emergency room situations unless proven gross negligence, standard of proof conditions outlined.</p> | |
| <p>Massachusetts</p> | <p>SB 640. Insurers to file with Insurance Commissioner any changes in premium rates or coverage for approval; Commissioner may hold hearings prior to approval or rejection; specific information required in filing including malpractice awards and settlements; standards for Insurance Commissioner in finding rate increases excessive or discriminatory; Medical Malpractice Insurance Committee established by Commissioner with reports to be submitted every 4 months, information in report specified.</p> <p>SB 1009. Multiple defendants in medical malpractice action to be liable severally only; standards of qualification for expert witnesses brought before medical tribunal, statements before tribunal admissible as evidence in trial; tribunal may also recommend mediation or arbitration; communications of any form expressing of regret or apology made by medical personnel do not constitute admissions of liability; establishment of Medical Professional Liability Reinsurance Program with purpose, funding, and regulations.</p> <p>SB 1230. Physicians convicted of malpractice will have medical license revoked.</p> <p>HB 3928, HB 3929. Lowers current limit on noneconomic damages in medical liability cases from \$500,000 to \$250,000.</p> | |
| <p>Michigan</p> | <p>HB 4259. Statement or action expressing sympathy made to individual or family member not admissible as evidence of admission of liability in malpractice action.</p> <p>HB 4773, HB 4811. Repeals product liability immunity for drug manufacturers in relation to pharmaceuticals approved by the U.S. Food and Drug Administration.</p> | |
| <p>Minnesota</p> <p>Adjourned sine die May 23, 2005.</p> | <p>SF 1107. Requests Minnesota's Congressional delegation to support President Bush's call for legal reform.</p> <p>SF 2131, HF 1464. Best practice guideline is standard of proof in malpractice cases; noneconomic damages limited to \$250,000; punitive damages limited to \$250,000 to be paid to Minnesota Comprehensive Health Association; attorney fees limited on sliding scale.</p> <p>HF 2. Best practice guidelines for medical malpractice actions; noneconomic and punitive damages each limited to \$250,000; attorney fees limited on sliding scale; other health care cost reforms not connected with medical malpractice actions.</p> <p>HF 653. Statute of limitations for medical malpractice cases set at 4 years, no exceptions.</p> <p>HF 1465. Noneconomic damages awarded against long-term care provider</p> | |

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| | <p>limited to amount equal to total damages provided against municipality or amount of liability insurance carried by provider; Commissioner of Commerce to present annual report to legislature on status of market for medical malpractice insurance, requirements in report specified.</p> | |
| <p>Mississippi Adjourned sine die April 6, 2005.</p> | <p>SB 2334. <i>Creation of Medical Malpractice Insurance Availability Plan to provide market of last resort for necessary malpractice insurance for medical professionals and medical facilities; conditions and regulations prescribed.</i></p> <p>HB 125. Creation of Medical Practice Disclosure, collection of specified information by State Board of Medical Licensure, required report of criminal convictions and disciplinary actions of medical professionals, insurers required to report malpractice claims and actions, physicians required to report settlements and arbitration, public access to reported information.</p> <p>HB 369. Creation of Medical Malpractice Insurance Availability Plan to provide market of last resort for necessary malpractice insurance for medical professionals and medical facilities; funding allocated; participation requirements; Tort Claims Board authorities designated; advisory committee for Tort Claims Board created for matters pertaining to medical malpractice; other conditions and regulations prescribed.</p> <p>HB 528. All malpractice claims reviewed by medical review panel unless all parties agree to opt out, establish panel, evidence to be considered, losing party to pay attorney fees for prevailing party in certain circumstances.</p> <p>HB 709. Liability insurance companies to report annually to Insurance Commissioner total amount paid in liability claims, judgments and settlements; Insurance Commissioner to compile reports and make available to public.</p> <p>HB 1508. Licensed physicians moving to critical needs areas reimbursed for relocation expenses, provides for payment of malpractice insurance premiums, other tax credit and reimbursement provisions.</p> <p>HC 49, HC 59. Requests Mississippi's Congressional delegation to support President Bush's call for legal reform.</p> | <p>Passed. Signed by Governor, April 20, 2005.</p> |
| <p>Missouri Adjourned sine die May 13, 2005.</p> | <p>SB 83. Provisions relating to medical malpractice insurance oversight and rates; tax credit for health care providers to offset malpractice premiums; required mediation in malpractice lawsuits; change of venue rule; expert witness standards; doctor sympathy not permitted as evidence in court, however, statements of fault admissible.</p> <p>SB 271. Collateral source payments admitted evidence; venue only in county where cause of action occurred; punitive damages limited to \$250,000 or 3 times net amount of judgment; statute of limitations for minor no more than 10 years after 18th birthday; peer review committee to be appointed, records of nursing home quality assessment confidential and inadmissible; joint and several liability eliminated; noneconomic damages limit lowered from \$565,000 to \$250,000 per defendant; limited to no more than \$400,000 regardless of number of defendants; periodic payments specified; court required to dismiss any claim when affidavit is not filed containing health care provider opinion and identification; doctor expression of sympathy not admitted into court evidence.</p> <p>SB 433, HB 733. Missouri Health Care Stabilization Fund established for</p> | |

medical malpractice insurance coverage beyond primary policy; minimum liability, membership fees, surcharges set; to be administered by board within Department of Insurance, board established; procedures set for claimant recovery from fund; maximum recoverable \$800,000 per judgment or settlement, \$2.4 million aggregate; fund not responsible for punitive damages.

SB 552. Directors of Medical Malpractice Joint Underwriting Association given authority for setting basis of claims coverage in medical malpractice insurance, surcharges and refunds, methods of payment.

SCR 19. Establishes Joint Interim Committee on Missouri Health Care Stabilization Fund for the purpose of exploring establishment and implementation of fund, regulations and guidelines, feasibility of paying damages to claimants, investigation of primary objective of assuring reasonable medical malpractice liability coverage.

HB 393. Venue rules for malpractice action including wrongful death; calculation of prejudgment and post-judgment interest; monetary value of medical treatment rendered may be introduced into evidence; 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 with repeal of current inflation adjustment; future payments schedule specified; court required to dismiss any case filed without affidavit of written opinion of negligence; physicians providing free health care service in clinics not liable for civil damages unless willful act or omission; doctor expressions of sympathy not admitted into evidence; appointment of peer review committee and associated rules and procedures; statute of limitations for minors 2 years from 18th birthday.

HB 394. Medical malpractice insurance policies included in "commercial casualty insurance"; malpractice insurers subject to commercial regulations regarding rate filing and notice under Department of Insurance; procedure for rate changes of malpractice insurance; insurers not to raise rates by more than \$1000, refuse to renew, or cease issuing policies without notice to state department; other insurance rate and risk reporting mechanisms.

HB 529. Tax credit up to \$15,000 for malpractice insurance premiums; Department of Insurance to create method of providing malpractice insurance when voluntary market is unstable; standards for rate setting; insurers to receive approval from Department for increases or charges, submit certain information annually to Department; creation of Internet site for health care providers to compare insurance rates within state; required mediation in malpractices cases with report submitted to court; expert witness qualifications; doctor expressions of sympathy not admissible in court, however, statements of fault admissible.

HB 622. All insurers providing medical malpractice insurance to health care providers in specified counties to establish premium rates based on claims history specific to county.

HB 910. Establishes Missouri Medical Malpractice Insurance Company to provide malpractice insurance for rural health care providers; board, administration, risk management program provided; annual audits filed with

Adopted, May 13, 2005.

Passed. Signed by Governor, March 29, 2005.

Passed House, sent to Senate.

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| | <p>Department of Insurance.</p> <p>HB 925. Long-term care facilities to maintain insurance policy minimum of \$500,000; does not apply to nonprofit facilities or those with capacity of less than 30 patients.</p> <p>HCR 12. Resolution requesting that Missouri Congressional Delegation pursue malpractice liability reform.</p> | |
| <p>Montana</p> <p>Adjourned sine die April 21, 2005.</p> | <p>SB 21. Damages awarded based on "reduced chance of recovery" - if chance of recovery prior to negligent act or omission was more likely than not, 100% of damages awarded; if recovery not likely, damages awarded based on difference between chance of recovery prior to negligence and after.</p> <p>SB 316. Specifications of reports from insurers issuing malpractice liability insurance; to be sent annually to state Insurance Commissioner.</p> <p>SB 378. Plaintiff may request and receive information about defendant's liability insurance limits prior to initiating litigation, court may impose sanctions for failure to comply with pre-filing request.</p> <p>SB 403. Good Samaritan clause amended to exempt an employer from liability for acts or omissions of commercial vehicle driver who renders good faith emergency assistance at scene of emergency.</p> <p>HB 24, HB 59, HB 217. Statement expressing apology or sympathy not admissible as evidence in court as an admission of liability.</p> <p>HB 25. Health care provider not liable for employee's act or omission that occurred when employee was not under jurisdiction of health care provider.</p> <p>HB 26. Health care provider not liable for any act or omission committed by someone who purports to be a member of that organization.</p> <p>HB 64. Qualifications for expert witness in medical malpractice cases.</p> <p>HB 138. Board of Medical Examiners to establish disciplinary screening panels to oversee rehabilitation programs for medical personnel.</p> <p>HB 222. Noneconomic damages limited to \$100,000 for hospitals or critical access hospitals when care was administered in traumatic condition, in good faith, when patient entered facility through emergency room department; does not apply to care rendered after stabilization of patient or as follow up.</p> <p>HB 254. Medical practitioners guilty of civil offense and fined up to \$500 per offense for writing illegible prescriptions; complaints to be filed with licensure board; board to create regulations for implementation of rule.</p> <p>HB 331. Insurance Commissioner to conduct market review of malpractice insurers in state; in light of findings, to create market assistance plan or joint underwriting association; specifications for potential market assistance plan; specifications for joint underwriting association consisting of all casualty malpractice insurers in state; subject to specified limits for claimants under policies, underwriting, and reinsurance.</p> | <p>Passed. Signed by Governor, April 15, 2005.</p> <p>Passed. Signed by Governor, April 8, 2005.</p> <p>HB 24, 25, 26, 64, 138 passed. Signed by Governor, March 24, 2005.</p> <p>HB 254, 331 passed. Signed by Governor, March 28, 2005.</p> |
| <p>Nebraska</p> <p>Adjourned sine</p> | <p>No 2005 legislation found.</p> | |

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| die June 3, 2005. | | |
| Nevada | <p>SB 317. Medical malpractice complaints to be filed with screening panel prior to filing civil action; Insurance Commissioner to administer panel; membership, regulations and procedures outlined; panel information to be presented to jury in trial.</p> | |
| Adjourned sine die June 6, 2005. | <p>AB 120. Requiring licensed physician to report annually to appropriate licensing board information concerning specific office-based surgery performed; failure to submit report or knowingly filing false information constitutes grounds for initiating disciplinary action; licensing boards required to compile and report to governor and legislature.</p> | <p>Passed. Signed by Governor, June 17, 2005.</p> |
| | <p>AB 208. Applicant for medical license and licensed physicians required to submit to criminal background check; certain disciplinary action to be taken against applicants and physicians in certain circumstances; expanded grounds for initiating disciplinary proceedings against medical personnel.</p> | |
| | <p>AB 281, AB 324. In action for personal injury or wrongful death, damages to be itemized as specified; noneconomic damages limited to \$250,000; limits do not apply for willful malice or medical malpractice.</p> | |
| New Hampshire | <p>SB 57. Establishes commission to study ways to alleviate medical malpractice premiums for high risk specialties, i.e. neurosurgery and obstetrics; not to examine civil justice system specific to malpractice claims; findings and recommendations reported by November 1, 2005.</p> | <p>Passed. Signed by Governor, June 8, 2005.</p> |
| | <p>SB 196. Insurance commissioner to notify public of any filing for medical malpractice insurance rate change of more than 15% increasing or decreasing; rate adjustment to have hearing, Commissioner to approve or disapprove.</p> | <p>Passed Senate, sent to House.</p> |
| | <p>SB 214. Creation of panels for medical injury claims with membership and procedures designated; set conditions for confidentiality and public release of specified information in proceedings and reports of panel; establishes panel and insurance oversight committee to study malpractice 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.</p> | <p>Passed both chambers, sent to Governor.</p> |
| | <p>HB 192. Establishes committee to study medical malpractice tort reform in other parts of country and Canada.</p> | |
| | <p>HB 423. Requires malpractice insurers to base premium rates for medical malpractice liability insurance on New Hampshire statistics rather than national statistics.</p> | |
| | <p>HB 463. Any statement or conduct by medical care provider during medical injury action or associated proceeding expressing apology, sympathy, or fault relating to injury is inadmissible as evidence of admission of liability or against interest.</p> | |
| | <p>HB 473. Creates screening panels for review of medical injury claims, party found against by panel who chooses to continue with court action must post \$10,000 bond to cover certain potential expenses; panel not required in cases in which both parties acknowledge that evidence exists to support claim.</p> | <p>Passed. Signed by Governor, June</p> |
| | <p>HB 496. Noneconomic damages in medical liability actions limited to</p> | |

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| | <p>\$250,000.</p> <p>HB 514. 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; under authority of Commissioner of Health and Human Services.</p> <p>HB 583. Establishes joint oversight committee to study malpractice insurance rates; interim report of findings and recommendations by December 1, 2007; final report by December 1, 2009; insurance commissioner to gather information from malpractice insurance providers and make available to state legislature.</p> <p>HB 584. Statement or action from medical personnel expressing sympathy or benevolence relating to personal injury is inadmissible as evidence of admission of liability in medical injury action; does not apply to statement of fault.</p> <p>HB 648. Mandatory mediation in malpractice cases; requires that plaintiff's attorney in medical injury action investigate and certify good faith grounds for action; good faith written opinion not subject to discovery; if certificate found to be not in good faith, fees and costs awarded against attorney and matter submitted to state Bar Association for disciplinary review of attorney.</p> <p>HB 702. Establishes 3-member panel consisting of superior court judge, doctor, and attorney to review medical malpractice claims; actions to be heard by tribunal and proof offered; testimony and decision of panel not admissible at trial.</p> | <p>21, 2004.</p> <p>In Conference Committee.</p> <p>Passed. Signed by Governor, June 17, 2005.</p> <p>Passed House, laid on Table in Senate.</p> |
| <p>New Jersey</p> | <p>All bills introduced in 2004 for the 2004-2005 session.</p> <p>S 1198. Establishes mandatory minimum amounts for medical liability insurance coverage at \$1 million per occurrence and \$3 million per policy, or \$500,000 letter of credit if insurance unavailable.</p> <p>S 1285. Physicians liable only for professional negligence to extent of malpractice insurance required to carry under current law.</p> <p>S 1361, A 721. Statute of limitations 2 years for minors, or until age 10 in case of birth injury, or 2 years after discovery; noneconomic damages limited to \$250,000; guidelines for medical professional acting as expert witness.</p> <p>S 1804, A 3533. Reporting requirements of medical facilities regarding disciplinary action taken by facility against health care professional relating to incompetence or professional misconduct; all licensed health care professionals to undergo criminal history background check when renewing medical license; reporting of another health care professional to state and employer when necessary; employers of health care professionals to disclose job performance upon inquiry of another employer.</p> <p>A 549. Noneconomic damages limited to \$250,000.</p> <p>A 607. Qualifications and standards for expert witnesses in malpractice lawsuits.</p> <p>A 659. Parameters as to burden of proof and liability in medical malpractice</p> | <p>S 1804 passed. Signed by Governor, May 3, 2005.</p> |

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| | <p>actions; claimant required to give prospective defendant 180 days notice, content of notice specified; affidavit of merit to be filed; expert witness qualifications; required mediation prior to filing lawsuit; noneconomic damages limited to \$250,000; any settled action to be reported to Division of Consumer Affairs.</p> <p>A 1316. Establishes Medical Malpractice Liability Insurance Premium Assistance Fund to provide relief towards payment of malpractice insurance premiums; specified health care providers qualify to participate.</p> <p>A 1513. Expert witness qualifications; affidavits filed in malpractice actions to be filed with State Board of Medical Examiners; noneconomic damages limited to \$250,000; establishment of and regulations for pre-litigation screening and mediation panels; statute of limitations for minors revised to within 2 years or age 6; multiple defendants liable by proportion of fault unless more than 60% at fault; insurance premiums cannot be raised against physician unless malpractice action has resulted in payment.</p> <p>A 1701. Optional mediation provided; parameters of burden of proof on plaintiff; affidavit of merit to be filed by both parties; qualifications for expert witnesses; noneconomic damages for non-serious and non-permanent injuries limited to \$250,000; noneconomic damages for serious and permanent injuries limited to \$500,000; limits adjusted annually according to Consumer Price Index; nonprofit hospitals granted limited liability under charity; Good Samaritan provisions expanded for medical professionals extending emergency care outside normal responsibility; medical reporting for health care facilities; permits health care professionals to enter into alliances or risk retention agreements as alternative to other insurance policies.</p> <p>A 1742. Limits discovery rule in statute of limitations, medical liability actions must be filed within 4 years of occurrence; in case of minor, until age 20.</p> <p>A 1747. Time frames for notices of malpractice complaint being filed to be given to health care provider named as defendant; contents of notices specified; affidavits for expert witnesses filed by prosecution and defense; mandatory mediation procedures and reports specified; noneconomic damages limited to \$250,000 unless specified extreme circumstance, which noneconomic limit is \$500,000; limits to be adjusted according to inflation; structured settlement procedures specified; statute of limitations 3 years from injury or discovery, 7 years for minor under age 2.</p> <p>A 1972. Special Medical Malpractice Part created in Law Division of Superior Court; retains jurisdiction of any action for medical malpractice, or any dispute relating to medical malpractice insurance.</p> <p>A 2299. Statute of limitations 3 years from injury or discovery, 2 years for minors under age 4 or until age 6.</p> | |
| <p>New Mexico Adjourned sine die March 19, 2005.</p> | <p>SM 7. Requests New Mexico Health Policy Commission and Insurance Division of Public Regulation Commission to convene task force on health care practitioner liability insurance to review relevant state statutes, make recommendations to be made to legislature and governor by November 2005.</p> <p>SM 20, SM 24, HM 7, HM 13. Requests New Mexico's Congressional delegation to support President Bush's call for medical malpractice liability reform.</p> | <p>Adopted, March 10, 2005.</p> |

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| | <p>HJM 67. Health Policy Commission requested to appoint task force to address malpractice insurance issues; composition; to review relevant state statutes as well as other states' laws and programs; recommendations to be made to legislature and governor by November 2005.</p> | |
| <p>New York</p> | <p>S 36. Repeals restriction prohibiting contingent fees and requiring a sliding scale fee for attorneys in claims or actions for medical, dental or podiatric malpractice.</p> <p>S 610. Commissioner to receive reports of malpractice claims and refer to State Board for Professional Medical Conduct for expedited review and investigation.</p> <p>S 962, A 5946. Amends statute of limitations in malpractice allegations, provides for one year revival of previously dismissed actions.</p> <p>S 1237. Damage awards limited to total amount of malpractice policy held by defendant or sum of total amount of malpractice policies held by joint defendants; excess liability fund created, Insurance Superintendent to administer, calculate average profit, excess profit paid into fund, Superintendent's authority to create rules relating to distribution of fund.</p> <p>S 1441. Malpractice insurance requirements of \$1 million to \$3 million per year to acquire medical license in state.</p> <p>S 2757, A 5168. Tax credit allowed for up to 25% of medical malpractice premiums which exceed 10% of qualified income for current year; permitted after all other tax credits are allowed for.</p> <p>S 3035, A 5674. Affidavit must be signed by consulting physician when filing medical malpractice lawsuit; repeals statute relating to consulting physician confidentiality, other consulting physician and expert witness rules; noneconomic damages limited to \$250,000.</p> <p>S 4045, A 4202. Any individual who intentionally destroys or alters medical records at time of medical malpractice action is subject to civil penalty; any individual injured physically or incapable of proving claim because of record destruction may receive attorney fees.</p> <p>S 4191. Medical professional from same field as named defendant must sign affidavit to be filed with malpractice action; periodic payments for awards over \$50,000; interest on periodic payments set; noneconomic damages limited to \$250,000; limits on attorney fees in malpractice actions adjusted.</p> <p>S 4906. Office of Professional Medical Conduct to receive reports from insurance providers or facilities and medical professionals who self-insure within 30 days of settlement or judgment; report notice of complaint within 10 days of receipt; procedures for felony and misdemeanor complaints against physician; if Office or Board of Professional Medical Conduct receive 3 reports against one physician or facility in 5 years, or 5 reports in 2 years, to hold professional misconduct proceedings; reports suspended if physician or facility file with court formal admission of error with corrective measures to prevent recurrence; attorneys filing frivolous lawsuits on 3 occasions in 10 years will have law license suspended 1 year.</p> <p>A 778. Statute of limitations expanded - action need not be commenced</p> | <p>As amended by committee.</p> <p>A 4202 advanced from committee.</p> |

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| | <p>within 2 years and 6 months if defendant failed to file incident report; action may commence within 1 year of incident report being filed.</p> <p>A 5073. Venue provisions relating to medical malpractice.</p> <p>A 7829. If Office of Professional Medical Conduct receives 3 malpractice reports against physician or facility in 5 years, or 5 reports in 2 years, Office is required to hold professional misconduct proceedings; insurance companies or self-insured facilities and individuals required to report to Office any disposition of any medical liability claim; insurance companies to file with Office any notice of any legal action against an insured; courts to notify Office of any misdemeanor complaint against a physician.</p> | <p>Advanced as amended from Committee to Third Reading.</p> |
| <p>North Carolina</p> | <p>S 44. Claimant must give written notice at least 60 days prior to filing malpractice lawsuit, notice must be accompanied by release of medical information; creation of Medical Disclosure Panel to determine risks and hazards to be disclosed to patients prior to procedure; patient must sign form acknowledging risks were outlined; limited liability for hospitals and health care providers in emergency room situations unless proven gross negligence, conditions outlined; statute of limitations 2 years from act, minors under age 12 until 14th birthday, full limit no later than 10 years; noneconomic damages limited to \$250,000 regardless of number of defendants; total damages including punitive limited to \$500,000; hospitals providing free services in specified situation not liable for more than \$500,000; guidelines for filing expert report; qualifications for expert witnesses; collateral source allowed into evidence; periodic payment scale; attorney fees limited on sliding scale.</p> <p>S 217. Claimant may acquire information about prospective defendant's malpractice insurance coverage limits.</p> <p>S 989, H 1344. Noneconomic damages limited to \$350,000; noneconomic damages for persistent vegetative state or death limited to \$500,000; rules for accounting and awarding of periodic payments; settlements reported by attorney for plaintiff to Department of Insurance; attorney fees limited on sliding scale; stay of payment rules; statute of limitations 10 years from last act for birth related injuries; specifics of reports by malpractice insurers to Department of Insurance, Commissioner to report annual trends to state legislature; medical disciplinary actions modified; expert witness and affidavit rules.</p> <p>S 1092. Medical Board revisions - provision for Board to publish on public website specified information of malpractice settlements; conduct investigation if 2 or more malpractice reports received in 15 years, publish findings on website; publish on public website all awards against individual physicians in medical malpractice actions if physician has made 3 payouts within 10 years in excess of \$100,000 and any payouts over \$1 million.</p> <p>H 291. Issues of economic and punitive damages, if any, tried in bifurcated hearings; evidence related to punitive damages not admissible until defendant found liable for economic damages.</p> <p>H 346. Commissioner of Insurance to establish comprehensive classification rating plan for malpractice insurance; not to be based on medical specialties; risk pool to be based on pool of all physicians licensed in state.</p> <p>H 1229. Medical Board revisions - provision for Board to make public</p> | <p>Subject content changed by amendment.</p> |

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| | <p>information on all awards against individual physicians in medical malpractice actions if physician has made 5 payouts within 10 years in excess of \$100,000; other specified information to be released.</p> <p>H 1359. Malpractice insurance providers to file rate application with Insurance Commissioner to change rates; if change more than 15%, must have public hearing; annual reporting specifications to Insurance Commissioner, penalties and fines for failing to file; proceedings and records of medical or peer review panels and quality assurance committees confidential and not admissible in court; medical pre-litigation panel report to be considered by jury; rules for expert witness affidavits; bifurcated trial if damages alleged over \$100,000; if noneconomic damages awarded over \$250,000, court to hold post-trial hearing to judge excess of damages; noneconomic damages limited over all to \$500,000; tax credit for physicians for malpractice insurance premiums on varied scale.</p> <p>HB 1498. Noneconomic damages limited to \$350,000; collateral source payments allowed into evidence in malpractice trial; periodic payments allowed if economic damages awarded over \$100,000, associated regulations; settlements in medical malpractice complaints reported by insurance companies to Department of Insurance; attorney fees limited on sliding scale; procedures for stay on award of damages; annual statements to Insurance Commissioner required from any organization providing medical liability insurance, specifics to be reported; affidavit to be attached to malpractice complaint when filed with court; disciplinary actions outlined that may be carried about by Medical Board against physicians for specified misconduct.</p> | |
| <p>North Dakota</p> <p>Adjourned sine die April 23, 2005.</p> | <p>SB 2199. Plaintiff must submit affidavit to individual medical personnel or facility named as defendant within 3 months of commencement of malpractice action, affidavit must contain admissible expert opinion and identification of expert.</p> <p>HB 1386. Mandatory alternative dispute resolution for malpractice cases, Supreme Court to create procedures and jurisdiction, may be waived prior to initiation of action if all parties agree, any failure to make good faith effort in resolution to result in sanctions.</p> | <p>Passed. Signed by Governor, March 14, 2005.</p> <p>Passed House. Failed in Senate.</p> |
| <p>Ohio</p> | <p>Enacted reforms in SB 80, Special Session, December 2004. Signed by Governor January 7, 2005.</p> <p>SB 88. Rules and procedures for 5-year pilot program mandating arbitration for claims of medical negligence prior to filing complaint against individual medical professional or facility, under authority of Superintendent of Insurance.</p> | |
| <p>Oklahoma</p> <p>Adjourned sine die May 27, 2005.</p> | <p>SB 970. Modify noneconomic damage limit to be one-third of amount awarded for economic damages.</p> <p>SB 1014. Creation of Joint Task Force on Patient Safety to study patient safety regulation potentially to include premium discounts for malpractice insurance based on performance, risk management training, other; define structure of independent entity to coordinate patient safety initiatives in state; Board of Nursing authority over disciplinary actions and investigation of misconduct allegations.</p> <p>SR 4. Requests Oklahoma's Congressional delegation to support President Bush's call for medical malpractice liability reform.</p> | <p>Passed Senate, sent to House.</p> |

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| | <p>HB 2032. Punitive damages awarded only if jury is unanimous in finding liability and in amount to be awarded, 50% of punitive damages awarded in malpractice action go to state and deposited in Oklahoma Health Care Authority Revolving Fund.</p> <p>HB 2047. Sliding scale for attorney fees; noneconomic damages limited to \$300,000 except in wrongful death cases; jury award of punitive damages must be unanimous; collateral source admitted into evidence; written disclosure required to explain associated risks and hazards of any procedure; periodic payments allowed for award over \$100,000; liability regarding pharmaceutical products limited for health care providers and other distributors within parameters; required standard of proof in medical liability actions involving emergency care.</p> | <p>Died in Conference Committee.</p> |
| <p>Oregon</p> | <p>SB 443. Allows Board of Medical Examiners to require health care providers to take national licensing exam under circumstances of volunteering in charitable health clinics, application to practice medicine in state is based on another state's license, individual ceased practicing medicine for period of time prior to acquiring Oregon license.</p> <p>SB 884. Establishes professional liability fund under jurisdiction of Medical Board of Examiners for physicians and surgeons; to pay damages any person covered under plan is legally obligated to.</p> <p>HB 2894. Collateral source payments may be deducted from award for damages in medical malpractice actions.</p> <p>HM 2. Requests that Congressional delegation support meaningful medical liability reform.</p> | <p>Passed both chambers, sent to Governor.</p> |
| <p>Pennsylvania</p> | <p>SB 76. Minimum medical malpractice insurance coverage set at \$500,000 per occurrence, \$1.5 million aggregate; other minimum coverage set; Department of Insurance to create experience-rating system for medical providers to adjust insurance premium rates.</p> <p>HB 167. Amends state constitution to allow legislature to enact noneconomic damage limits in malpractice actions.</p> <p>HB 379. Amends state constitution to allow legislature to limit attorney fees in malpractice actions.</p> <p>HB 719. Establishes mandatory pre-litigation screening in medical malpractice actions; department to create panel, regulations and procedures.</p> <p>HB 743. Provides medical malpractice premium discounts to health care providers who institute total quality management systems; sets premium rate discounts and increases based on number of claims paid in specified time frame; total quality systems to be approved by Department of Health.</p> <p>HR 79. Directs Legislative Budget and Finance Committee to conduct audit of Insurance Department performance and report to legislature recommendations of statutory, regulatory or administrative changes.</p> <p>HR 223. Directs Legislative Budget and Finance Committee to conduct investigation of disciplinary practices of State Board of Medicine, report findings to legislature.</p> | |

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| | <p>HR 259. Directs House of Representatives to establish task force to study recruitment and training of physicians in state; membership, tasks, reports specified with focus on rural and underserved areas; make recommendations to legislature.</p> | |
| <p>Rhode Island</p> | <p>S 93, H 5149. Several liability only in personal injury or wrongful death cases, unless defendant's action is more than 25% of cause; damages apportioned by percentage of culpability and separate judgments rendered.</p> <p>S 94, H 5150. Interest on economic damages lowered from 12% to 6%.</p> <p>S 107. Administrator of Board of Medical Licensure and Discipline to file with state legislature annual reports on medical liability insurance on specified areas of information, to include recommendations for legislative action.</p> <p>S 343. Statute of limitations amended for minors to within 3 years of 8th birthday; both parties must disclose expert witness identities and substance within time periods or court can dismiss case or default offending party; prejudgment interest set at 5%, post-judgment interest set at 12%; certificate of merit filed when claim is submitted to court, specifics listed; if certificate found not in good faith, sanctions issued and possibly include plaintiff to pay defense costs.</p> <p>S 447. Good Samaritan clause expanded to include local and volunteer fire departments, rescue squads, and ambulance associations acting within course of duty, unless act or omission constitutes negligence or willful misconduct.</p> <p>S 729, H 5695. Statute of limitations amended for minors to age 8; amended to within 1 year of discovery; plaintiff to make substantive disclosure of expert testimony; prejudgment interest reduced to 5% with exceptions; certificate of merit be filed with each claim for damages in medical liability action.</p> <p>H 5437. Malpractice insurance regulation reform including Director of Department of Business Regulation to set standards for calculation of rates; insurers to file rating plans with state; establishes Internet resource to enable physicians to compare malpractice premium rates of insurers within state; if Commissioner finds insurer has charged excessive or discriminatory rate, refunds issued to policy holders; insurers to provide specified information to Commissioner.</p> <p>H 5567. Department of Human Services to create pilot program providing liability insurance to fund grants for non-profit medical facilities; medical personnel volunteering at least 100 hours annually for no compensation eligible to receive liability insurance for services provided.</p> <p>H 6207. Statute of limitations for minors within 3 years of age 8; plaintiff to disclose identity of consultant expert witness; prejudgment interest adjusted; plaintiff must file certificate of merit with complaint when originally filed in court.</p> | <p>Passed Senate, sent to House.</p> |
| <p>South Carolina</p> <p>Adjourned sine die June 2, 2005.</p> | <p>S 36. Limits noneconomic damages in medical malpractice claims, limit to be based on Consumer Index; require mediation before action brought to trial; provisions relating to Joint Underwriting Association and Patients Compensation Fund; provisions relating to Medical Disciplinary Commission.</p> <p>S 37. Attorney must sign all pleadings and documents in court action to certify action is not frivolous; sanctions if found otherwise; plaintiff must file affidavit</p> | |

containing factual basis for each claim alleged.

S 38. Joint and several liability does not apply to defendant determined to be less than 20% at fault; method for calculating proportional share of damages; exception for deliberate misconduct.

S 39. Method of trial, burden of proof and medical standard of review for awarding punitive damages.

S 83. Noneconomic damages limited to \$350,000 with exceptions specified, procedures for awarding; provisions for offers of judgment; standards for expert witnesses in malpractice cases; mandatory mediation for malpractice actions, with binding arbitration in malpractice actions permitted; provisions relating to Joint Underwriting Association and Patients Compensation Fund; malpractice insurance providers required to maintain coverage for licensed health care providers; modifications to Patients Compensation Fund including change of jurisdiction from state treasurer to board of governors and provisions for release of funding; notice to all locations where health care provider has license to practice when South Carolina medical license is suspended or revoked; changes to Board of Medical Examiners; inclusion of any percentage of plaintiff fault will not cause reduction of recoverable damages.

S 115. Limits on noneconomic damages; procedures for offers of judgment and consequences of non-acceptance; required affidavit of expert witness in malpractice actions; mandatory mediation prior to malpractice trial; amends operation of Patients Compensation Fund.

S 345. Defendants in personal injury or wrongful death actions liable severally based on percentage of fault; criteria for establishing calculation of fault with exceptions for deliberate or reckless misconduct; procedures for establishing proper venue and to provide for venue changes; adoption of reasonable attorney standards for civil filings and reporting violations; post-judgment interest rate set; Department of Insurance to review data reported by liability insurers to determine if savings are realized as a result of decreased litigation or claims paid.

S 577. Malpractice actions against emergency or obstetrical care must prove negligence to recover damages; health care providers or institutions may enter written agreements with patients for mediation or binding arbitration if malpractice dispute arises; public notice requirements relating to physician choosing mediation or arbitration in malpractice cases; health care provider under no obligation to provide care to patient refusing to sign agreement; other provisions relating to mediation and arbitration; statements by health care provider or institution expressing regret, apology, mistake or error inadmissible as evidence as admission of liability.

H 3013. Establishes Medical Claims Review Office and procedures; review of malpractice claims prior to filing lawsuit required; provisions relating to adjustment of malpractice insurance claims; outcome data and information from hospitals and providers to appropriate government entities and to the public with privacy regulations; required mediation; expert witnesses subject to state law; noneconomic damages limited but adjusted; comparative fault and joint/several liability guidelines; sanctions for frivolous lawsuit – attorney responsible; provisions relating to malpractice insurance policy deductibles and

**Passed. Signed by
Governor, April 4,
2005.**

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| | <p>limits; provisions relating to Joint Underwriting Association and Patients Compensation Fund.</p> <p>H 3090. Provides civil protections for health care personnel prescribing FDA approved drugs; limits on amount and type of damage award in personal injury action; collateral source payments introduced in evidence and in consideration of damages awarded; action to be tried in county where alleged act/omission occurred; revision of joint and several liability.</p> <p>H 3091. Medical providers and pharmaceutical companies not liable when plaintiff fills prescription outside U.S. for FDA-approved drug.</p> <p>H 3108. Relating to panelists on Medical Disciplinary Commission, provisions relating to investigations of complaints against physicians.</p> <p>H 3279. Requesting Congress to support and enact malpractice reform.</p> <p>H 3339, H 3465. Establishes limits on noneconomic damages in malpractice actions; periodic payments authorized; limits attorney fees; establishes Medical Claims Review Office within Department of Insurance to review claims; establishes claim review panels within Office to review claims for damages prior to filing of lawsuits.</p> | <p>H 3108 passed. Became law without Governor's signature, June 9, 2005.</p> |
| <p>South Dakota Adjourned sine die March 22, 2005.</p> | <p>HB 1104. Damages limited that may be awarded in malpractice action against a podiatrist.</p> <p>HB 1148. Certain statements and actions expressing apology or sympathy made by health care providers not admissible to prove negligence in medical malpractice actions.</p> | <p>Both bills passed. Signed by Governor, Feb. 22, 2005.</p> |
| <p>Tennessee Adjourned sine die May 28, 2005.</p> | <p>SB 212, HB 326. Any medical practitioner who voluntarily and without compensation provides health care services within scope of state license at health care clinics receives civil immunity for rendered services unless act or omission was gross negligence or willful misconduct.</p> <p>SB 234, HB 1236. Limits noneconomic damages in medical malpractice action to \$1 million.</p> <p>SB 290, HB 211. Eliminates requirement that expert witness in medical malpractice case be from contiguous bordering state.</p> <p>SB 349, HB 258. Periodic payments authorized by court upon the request of either party when award of future damages exceeds \$100,000; periodic payments not allowed when malpractice was intentional.</p> <p>SB 442, HB 1011. Expert witness qualifications and disclosures in malpractice actions.</p> <p>SB 693, HB 2194. Malpractice insurance providers to report to Insurance Department any intention to raise premium rates, Department to approve or reject.</p> <p>SB 730, HB 1193. Confidential reports of malpractice incidents to be reported to Board of Medical Examiners to determine if disciplinary action is warranted.</p> <p>SB 1233, HB 1850. Creation of medical review panel to provide opinion of malpractice prior to lawsuit being filed; procedures and membership outlined; no evidence or witnesses admitted; decision admitted as evidence in court;</p> | <p>SB 212 passed. Signed by Governor, May 24, 2005.</p> |

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| | <p>parties not bound by panel decision.</p> <p>SB 1579. Noneconomic damages limited to \$250,000; attorney fees based on amount of damages; periodic payments may be allowed by court if damages awarded are over \$75,000.</p> <p>SB 1590, HB 94. Statute of limitations in malpractice action to commence within 4 years unless minor under age 6.</p> <p>SB 1591, HB 95. Collateral source admissible into evidence; noneconomic damages limited to \$250,000; periodic payments may be allowed by court if damages awarded are over \$50,000; attorney fees limited on sliding scale; any contract including provisions of binding arbitration to include specified notice language.</p> <p>SB 1608, HB 483. Applicable patient medical information available to defendant with no violation to doctor-patient privilege, dismissal of claim if information release refused by plaintiff.</p> <p>SB 1860, HB 1572. Medical liability insurer not to issue policies with higher premium rates based on other states' claims experience than Tennessee's claims experience would justify.</p> <p>SB 1898, HB 2226. Medical malpractice insurance rates to be approved by Insurance Commissioner prior to sale or issuance of medical liability policy; basis for approval or rejection of rates by Commissioner; Commissioner to annually provide state elected officials with number of requests for rate changes and any disapprovals issued.</p> <p>SB 1926, HB 2231. In malpractice action in which liability is admitted or established, if claimant did not have health insurance at time of incident, damages awarded only to include actual economic loss, no other damages awarded.</p> <p>SB 2110, HB 2033. Sorry Works program established in which participating medical facilities and medical professionals promptly acknowledge errors and offer fair settlement; noneconomic damages awarded under program limited to \$250,000.</p> <p>SB 2178, HB 2122. Noneconomic damages limited to \$250,000 in specific cases; periodic payments may be allowed by court if damages awarded are over \$75,000; attorney fees limited on sliding scale; expert witness qualifications; claimant to file affidavit of expert opinion; "frivolous lawsuit" defined and damages awarded against claimant filing within frivolous definition.</p> <p>SJR 84. Requests Tennessee's Congressional delegation to support President Bush's call for medical malpractice tort reform.</p> <p>HB 1381. Punitive damages in medical malpractice lawsuits not to exceed \$2 million.</p> | |
| <p>Texas</p> <p>Adjourned sine die May 30, 2005.</p> | <p>SB 249. Revision of approval by Department of Insurance relating to liability insurance rates for health care providers.</p> <p>HB 507. Volunteer health care providers not liable any damages other than economic damages as long as volunteer was acting in services provided within</p> | |

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| | <p>scope of license.</p> <p>HB 686. Medical liability insurance providers may not consider lawsuits filed against health care providers for purpose of setting premium rates if lawsuit was dismissed; insurer must provide refund if rates adjusted prior to dismissal.</p> <p>HB 1665. Insurance Department to study rates charged for medical liability insurance from September 2005 to August 2006 to determine effectiveness of insurance regulation and tort liability reform legislation passed in 2003; to be reported to state elected officials and made public via Department's website.</p> | <p>Passed House, sent to Senate.</p> |
| <p>Utah</p> <p>Adjourned sine die March 2, 2005.</p> | <p>SB 83. Medical malpractice action may not be brought against health care provider on the basis of consequences resulting from refusal of child's parent or guardian to consent to treatment recommended by health care provider when sufficient information is provided and legal consent is required; other child protection provisions related to medical care.</p> | <p>Passed. Signed by Governor, March 11, 2005.</p> |
| <p>Vermont</p> <p>Adjourned sine die June 4, 2005.</p> | <p>S 94. Commissioner of insurance administration authorized to direct liability insurance provider required to indemnify a defendant in a malpractice action to pay all or part of medical costs of claimant in cases where liability of insured for those costs is reasonably established, regardless of pending judicial determination.</p> <p>S 149, H 329. Vermont property and casualty guaranty association to pay malpractice claims filed within specified time frame against insolvent insurers; public inspection permitted of all liability rate filings; statute of limitations for minors until age 9 if injury occurs before age 6; standards for physician expert witnesses; noneconomic damages limited to \$250,000 and adjusted according to Consumer Price Index beginning in 2008; doctor expression of regret or apology inadmissible as evidence; limited liability immunity for health care practitioners providing volunteer or public health services; mandatory arbitration process established.</p> <p>H 281. Plaintiff in malpractice actions required to file certificate of qualified expert; collateral source compensation attributed to award and damages reduced accordingly; doctor expression of regret or apology inadmissible as evidence; mandatory mediation process established.</p> <p>H 284. In negligence cases involving multiple defendants, each defendant only liable for proportion of damages caused by that defendant.</p> | |
| <p>Virginia</p> <p>Adjourned sine die February 26, 2005.</p> | <p>SB 855. Limits noneconomic damages in all actions to \$350,000.</p> <p>SB 976, SB 1284, HB 2633. Plaintiff required to have expert witness certify that health care practitioner deviated from standard of care prior to filing lawsuit; information to be included in certification.</p> <p>SB 1173, HB 2659. Requires expert witness certification of deviation from standard of care before malpractice lawsuit can be filed; doctor expression of sympathy not admissible as evidence 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.</p> | <p>Passed. Signed by Governor, March 23, 2005.</p> |

SB 1323, HB 1505. Amends Birth-Related Neurological Injury Compensation Fund designating that when infant weighs less than 1800 grams at birth or is at less than 32 weeks of gestation, the rebuttable presumption will arise that alleged injury is not birth-related injury but result of premature birth.

Passed. Signed by Governor, March 20, 2005.

HB 1544, HB 1693. Limits noneconomic damages against health care providers.

HB 1556. Board of Medicine required to inform licensees about immunity for services to patients of free clinics.

Passed. Signed by Governor, March 20, 2005.

HB 1694. Limits attorney fees in malpractice actions according to specified fee schedule.

HB 1702. Procedures for removing malpractice claims from general district court to circuit court; introduction of medical evidence in each court.

HB 1709. Patient information; prohibition on communication. Prohibits lawyers from obtaining, in connection with litigation, information on a patient from a practitioner's employers, partners, agents, servants, employees, co-employees, or others for whom, at law, the practitioner is or may be liable, or who, at law, are or may be liable for the practitioner's acts or omissions.

HB 1794, HB 1904. Provides that health care provider's expression of sympathy is not admissible as evidence of an admission of liability or against interest in an action.

HB 1903, HB 1953, HB 2718. Medical liability insurers required to submit annual reports to State Corporation Commission containing information regarding claims made against health care providers.

HB 1907. Circuit court clerk required to forward any filing of malpractice action to Office of the Executive Secretary of the Supreme Court; Secretary to provide parties with information on mediation or alternative dispute resolution.

HB 2161. Repeals provisions immunizing physicians from civil liability for failure to respond to report or result of test or examination which physician did not request or authorize.

HB 2205. Modifies reporting and disclosure requirements concerning malpractice settlements; malpractice settlements required to be reported by insurers may not be disclosed online via Physician Information Project; limits reports to Board of Medicine from individual physicians to malpractice judgments.

HB 2375. Establishes limit of \$1 million per occurrence and \$3 million in aggregate per year on amount of malpractice insurance that hospital may require health care provider to purchase as a condition of practicing at that facility.

Passed. Signed by Governor, March 4, 2005.

HB 2410. Requires insurers to provide 90 days notice of policy cancellation or non-renewal, or premium increase of more than 25% for malpractice insurance; exceptions specified.

HB 2485. Division of Risk Management to establish malpractice insurance program for physicians maintaining primary care practice generally open to

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| | <p>the public in locality with specified low-income or poverty level households, or if 50% of regular patients receive Medicaid/Medicare; other criteria; monthly premium not to exceed \$100 per month; program contingent on legislative appropriation to establish program.</p> <p>HB 2561. Limits noneconomic damages in tort actions to \$100,000.</p> <p>HJ 666, HJ 705. Requests State Corporation Commission to study the implications of requiring that malpractice insurance rates for specific specialties be subject to prior approval.</p> | <p>Both adopted by Committee.</p> |
| <p>Washington</p> <p>Adjourned sine die April 24, 2005.</p> | <p>SB 5785, HB 1809. Creation of supplemental medical malpractice insurance program; administration and procedures outlined; annual reports on various subjects to Insurance Commissioner; eligibility guidelines to participate; minimum coverage and other limits set.</p> <p>SB 6038, HB 1929. Insurance Commissioner to give public notice of request to change premium rate less than 15%; public hearing to be held when rate change request is more than 15%; procedures for notice.</p> <p>SB 6072, HB 2279. Department of Health to develop program of tax credits for medical professionals volunteering or discounting services to uninsured; statement of apology, fault or sympathy by health care provider not admissible as evidence in malpractice action; calculation for figuring damages awarded; noneconomic damages limited to \$1 million to take effect upon ratification in state constitution; 3 year statute of limitation or 1 year from discovery, 3 years or until age 8 for minor under age 6; periodic payments permitted if award is over \$50,000 subject to judge creating payment plan; 90 notice of intent to be given to potential defendant; mandatory mediation guidelines and procedures; voluntary arbitration agreements, binding decision and lawsuits disallowed if entered into; certificate of merit to be filed within 45 days of commencement of complaint; expert witness standards; attorney fees limited on sliding scale; Insurance Commissioner to give public notice of request to change premium rate less than 15%; public hearing to be held when rate change request is more than 15%; procedures for notice; closed claim reports to Insurance Commissioner, sanctions for noncompliance by facilities or insurers; annual reports from Insurance Commissioner, contents specified; disclosure of adverse events required from health facilities to department, definitions, timeline for notice, procedures; patient safety fee added to license registration fees for the purpose of grants to enhance patient safety; 1% of any award or settlement to go into patient safety set-aside; medical professional filing complaint against any other member of health profession is immune from civil action; Secretary of Health to establish working group to investigate process of complaint and sanction determination.</p> <p>SB 6087, HB 2292. Stated alternative to Initiatives 330 and 336; statement of apology, fault or sympathy by health care provider not admissible as evidence in malpractice action; medical professional filing complaint against any other member of health profession is immune from civil action; medical disciplining authority to revoke medical license for 3 unrelated incidents of unprofessional conduct within 10 years, definitions of burden of proof in malpractice action; disclosure of adverse events required from health facilities to department, definitions, timeline for notice, procedures, follow up disciplinary action as necessary; prescription legibility requirements; Department of Health to develop program of tax credits for medical</p> | <p>HB 2292 passed House, sent to Senate.</p> |

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| | <p>professionals volunteering or discounting services to uninsured; malpractice insurance providers to file notice with Department of Insurance of closed claims and settlements, procedures, timeline for notice, specifics of report, not released to public; prior approval by Insurance Commissioner for malpractice rate changes; cancellation and non-renewal regulations, insurance underwriting rules modified; 8 year statute of repose, 3 year statute of limitation or 1 year from discovery; expert witness standards; certificate of merit to be filed by plaintiff within 45 days of commencing malpractice action; rules for offers of judgment; voluntary arbitration binding if agreed to, arbitrator may award economic and noneconomic damages limited to \$1 million, procedures and timelines outlined; collateral source admitted into evidence; sanctions for frivolous lawsuits.</p> <p>HB 1223. Relating to underwriting definitions for medical malpractice insurance.</p> <p>HB 1225. Timelines and notice regulations for cancellation and non-renewal of malpractice insurance.</p> <p>HB 1933. Malpractice insurance providers to file notice with Department of Insurance of closed claims and settlements; procedures, timeline for notice, specifics of report, sanctions for noncompliance; closed claim reports exempt from disclosure; Insurance Commissioner to create annual reports, contents specified.</p> <p>HB 1937. Excess Liability Fund created to pay awarded noneconomic damages over \$350,000; administration through state Treasury; funding mechanisms and procedures established; associated reports from Insurance Commissioner.</p> <p><i>Initiatives may be submitted to the Washington State legislature. If the Legislature amends or takes no action, the initiative is placed on the ballot in the next general election.</i></p> <p>Initiative 330. Limits noneconomic damages; limits attorney fees; allows periodic payments of damages awarded; allows jury knowledge of collateral payments such as insurance; allows joint and several liability to hold defendants responsible for only proportion of fault.</p> <p>Initiative 336. Revokes physician licenses after three guilty jury verdicts in ten years; bans secret settlements in malpractice cases; requires public hearings before insurance company can raise malpractice rates more than 15%; requires insurance companies desiring to raise malpractice rates to open financial records to public; establishes supplemental insurance fund for clinics, hospitals and health care providers.</p> | |
| <p>West Virginia</p> <p>Adjourned sine die April 9, 2005.</p> | <p>HB 2011. Health care providers not liable for personal injury caused by prescription drug or medical device used in accordance with FDA regulations.</p> <p>HB 2824. Allows for several liability for specified defendants subject to reallocation; joint and several liability for defendants found to be at more than 25% at fault.</p> <p>HB 3174. Expression made by health care provider of apology, sympathy or compassion not admissible in malpractice action as evidence of admission of liability.</p> | <p>Passed. Governor signed, May 4, 2005.</p> <p>Passed. Governor signed, May 4, 2005.</p> |

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| <p>Wisconsin</p> | <p>SB 74. Removal of requirement that claimant in medical malpractice action must serve notice with attorney general in 180 days from discovery; malpractice action caused by state employee subject to same statute of limitations as that against private medical provider.</p> <p>AB 294. Prohibits legislation to change purpose and coverage provided by Injured Patients and Families Compensation fund.</p> | |
| <p>Wyoming</p> <p>Adjourned sine die March 3, 2005.</p> | <p>SF 0062. Medical Review Panel – pretrial screening panels; prohibiting filing of malpractice claim until it has been reviewed by medical review panel; panel decision not binding but submitted to court with complaint; creation of panel and procedures; any expert witness must not have appeared previously before panel.</p> <p>SF 0078. Relating to insurance – additional advance notice of policy cancellation or premium increase; public hearing if insurer requests to raise premium rate by 30% or more; limiting the premium for “tail” coverage as specified; requiring a public hearing for certain noncompetitive premium rate proceedings; limiting the amount by which an individual insured’s rate may vary, as specified.</p> <p>SF 0088. Relating to insurance – requiring additional information on medical malpractice claims to be reported.</p> <p>SF 0165, HB 0115. Overrides by statute a doctrine established by state Supreme Court – repeals “loss of chance” of recovery status in malpractice and wrongful death cases.</p> <p>HB 0083. Medical Review Panel – repeals existing statutes relating to medical review panel; recreates panel according to state constitution as amended.</p> <p>HB 0108. Relating to civil actions – specifying requirements for expert witnesses in medical injury or wrongful death court actions.</p> | <p>Passed. Signed by Governor Feb. 25, 2005.</p> <p>Passed. Signed by Governor, March 3, 2005.</p> <p>SF 165 failed in Senate.</p> <p>HB 83 passed. Signed by Governor, March 15, 2005.</p> <p>HB 108 failed in House.</p> |

National Conference of State Legislatures

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