

Protecting the Profession from Eroding Medical Liability Tort Reforms and Expanded Liability

There are an unprecedented number of bills circulating this year that chip away at medical liability reforms – and many are aimed directly at increasing or repealing caps on damages.

Social inflation is impacting not only jury awards, but also how policymakers and the public view what constitutes fair compensation in damage awards. This is creating significant momentum behind bills to increase or repeal damage caps.

There has also been a wave of bills introduced targeting healthcare providers who provide reproductive healthcare and gender care.

14 states have introduced bills dealing with limitations on damages to date: Iowa, Illinois, Indiana, Kansas, Maryland, Michigan, Missouri, Nevada, New Mexico, New York, Rhode Island, Texas, Utah, and Virginia. Cap legislation is being contemplated in Colorado, and possibly Montana.

Legislative trends this year include bills attempting to:



Repeal or increase damage limitations (caps)



Expand who can sue for and recover damages in wrongful death cases



Increase pre-judgement interest



Increase statutes of limitations for lawsuits



Expand and enable lawsuit lending



Enact civil and criminal penalties and medical board/licensure sanctions for the provision of reproductive and gender affirming care



Regulate data usage and privacy



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BY THE NUMBERS (as of 3/31/2023)

150,055

bills were introduced
(Federal and State combined)

3,749

of those have been
identified as impactful to
TDC Group or our members

90

are deemed very high
priority liability/insurance
regulation bills

417

civil litigation/
procedure bills

374

reproductive
healthcare bills

118

gender affirming
healthcare bills

179

medical crime bills

318

bills dealing with scope of practice/independence for Advanced
Practice Providers/Clinicians

173

data usage and privacy legislation



Currently, there are **90 bills** on our highest priority list. The following report summarizes a sampling of the bills that we are actively advocating on behalf of our members.

This report is divided by state and current bill status categories as follows:

Active



Enacted



New Notable Litigation



Watch



Dead



Vetoed



Arizona

ACTIVE

AZ: HB 2157 – Medical Malpractice Statute of Limitations

This bill extends the statute of limitations for a medical malpractice action in Arizona from two years to five years. TDC is working with other interested parties to defeat this legislation.

TDC Position: Oppose

AZ: SB 1199 – Wrongful Death Actions and Attorneys' Fees

This bill requires Arizona courts to grant reasonable attorneys' fees to plaintiffs who win wrongful death actions against a long-term care provider. TDC is working with the other interested parties to see this legislation defeated.

TDC Position: Oppose

Arkansas

ACTIVE

AR: HB 1418 – Medical Bills

This bill proposes to limit the recovery of damages for necessary medical care, treatment, etc., to include only those costs actually paid by or on behalf of the plaintiff or similar damages that are unpaid and for which the defendant is legally liable.

TDC Position: Support

Colorado

NEW NOTABLE LITIGATION

At issue before the intermediate level court of appeals is: (1) whether evidence of attorney conduct prior to an admission of liability is admissible into evidence during the damages phase of trial; and (2) whether Colorado's noneconomic damages cap in tort cases (not including medical malpractice claims) is a violation of the federal constitution's right to a civil jury trial. Plaintiff attorney Robert Peck, who is challenging the constitutionality of the medical malpractice noneconomic damages cap in Texas, has brought this challenge in Colorado. The Doctors Company has joined a state and national coalition to prepare an amicus brief to defend the noneconomic damages cap, because if successfully challenged, Colorado's medical malpractice noneconomic damages cap will likely be declared unconstitutional on the same grounds.

WATCH

Health Care Availability Act (HCAA)

Legislation has not yet been introduced to increase damage limitations in medical liability actions. Our coalition is preparing for the possibility of legislation or a ballot measure being introduced during the two-year session that began in January.



Florida

ENACTED

FL: HB 837 – Civil Remedies
Effective: March 23, 2023

This omnibus tort reform legislation addresses multiple issues including: attorneys' fees, bad faith, arbitration, admissibility of evidence regarding medical expenses, letters of protection in lawsuit lending, recoverable damages, and percentages of fault. TDC worked with other tort reform minded interests on this bill to enact reforms favorable to healthcare providers.

TDC Position: Support

ACTIVE

FL: SB 690 – Expansion of Damages Recoverable in Wrongful Death Actions

This bill is a reintroduction of last year's proposal that sought to add adult children and the parents of adult children to the list of plaintiffs who may bring a wrongful death action in Florida. TDC is working to see this legislation defeated once again this session.

TDC Position: Oppose

Illinois

DEAD

IL: HB 35 / SB 208 – Wrongful Death

This bill includes punitive damages in the definition of eligible damages recoverable in a wrongful death action. This bill was re-referred to rules on March 10, 2023; while it is technically "alive" the re-referral effectively killed the bill for the 2023 session. We will continue to advocate against this bill with our partners to deter any future action.

TDC Position: Oppose

Indiana

ACTIVE

IN: SB 288 – Wrongful Death

This bill allows a personal representative in a wrongful death action to recover punitive damages if the wrongful act or omission that caused the death was a criminal act, act of gross negligence, willful or wanton misconduct, fraud, deceit, or another intentional tort. This bill is pending action in committee; we continue to advocate against this bill with our partners.

TDC Position: Oppose

Iowa

ENACTED

IA: HB 161 (formerly HF102 / S 148 / SBB 1063) - Noneconomic Damages Cap and Eligible Costs
Effective: February 16, 2023

This law establishes new hard caps – \$1 million (healthcare providers) / \$2 million (hospitals) – in situations where a jury determines there is a substantial or permanent loss or impairment of function, disfigurement, loss of pregnancy, or death. In all other situations, the current \$250,000 cap remains in law. An annual 2.1% increase for all caps will begin January 1, 2028. In addition, the law clarifies that noneconomic damages do not include dependent care, including loss of childcare. The bill was fast tracked this session after a few years of negotiations.

TDC Position: Support

VETOED

IA: SB 74 / HB 6770 (2022) – Wrongful Death Actions
Vetoed: January 30, 2023

This bill would have changed the state's wrongful death law by extending the statute of limitations from two years to three and one-half years, expanding the pool of benefiting party to include: close family members, spouse, domestic partner, children, siblings, parents, grandparents, step-parents, step-children (currently only parents, spouse, and children are identified beneficiaries) and the list of eligible compensation to include: funeral expenses; medical care; grief and anguish; loss of love, society, protection, companionship, comfort, consortium; pecuniary injuries including loss of services, assistance, diminished inheritance; and, loss of nurture and guidance. TDC Group and our coalition partners executed a comprehensive advocacy campaign encompassing direct lobbying, data collection and analysis, grassroots activities, and media engagement. We expect to see this reintroduced in 2023.

TDC Position: Oppose



Kansas

ACTIVE

KS: HB 2183 – Damages Limitation Removed in Wrongful Death Actions

This bill proposes to repeal the state's noneconomic (pain and suffering) damages cap in wrongful death actions. TDC is working with our industry partners to advocate against this bill.

TDC Position: Oppose

Maine

ACTIVE

ME: HB 354 – Statute of Limitations for Medical Malpractice

This bill increases the statute of limitations in medical malpractice cases. Currently, a lawsuit must be filed within three years of when the act or omission giving rise to the injury occurred. This bill changes the beginning of the three-year start time to when a plaintiff discovers or reasonably should have discovered the alleged malpractice. TDC is working with our coalition partners to oppose this bill.

TDC Position: Oppose

Maryland

ACTIVE

MD: HB 862 – Repeals Noneconomic Damages Cap

This bill proposes to repeal the state's noneconomic damages caps in both personal injury and wrongful death claims. We are actively advocating against this bill in partnership with our coalition.

TDC Position: Oppose

Minnesota

ACTIVE

MN: HB 464 / SB 638 – Medical Malpractice Claims

This bill modifies the time limits on bringing a healthcare claim. Currently, an action must be brought within four years from the date of the cause of action, and this proposal states the cause of action will not accrue until discovery of the alleged malpractice, error, mistake, or failure to cure. This bill is pending action in committee; our aligned interests continue to advocate against this bill.

TDC Position: Oppose

Mississippi

DEAD

MS: HB 480 – Wrongful Death

This bill would have added unborn children to the list of plaintiffs for whom a wrongful death claim could have been filed. TDC worked with coalition partners to see this bill defeated.

TDC Position: Oppose

MS: HB 1395 – Noneconomic Damages

This bill would have doubled the amount of noneconomic damages available in a medical liability case in Mississippi from \$1 million to \$2 million. TDC worked with other interested parties to see this legislation defeated.

TDC Position: Oppose



Missouri

ACTIVE

MO: HB 128 – Noneconomic Damages

This bill proposes to remove long-term care facilities from the entities that are covered by the state’s damages cap. TDC is advocating against the bill. An earlier version of the bill, HB 1561, failed in 2022.

TDC Position: Oppose

MO: HB 498 – Diversity, Equity, Inclusion Damages

This bill proposes to prohibit all healthcare providers and medical institutions of higher education to not require employees, contractors, volunteers, vendors, or agents to participate in diversity, equity, and inclusion instruction. Aggrieved person is entitled to recover declaratory and injunctive relief, statutory damages on not less than \$100,000, compensatory damages, costs, and attorney’s fees. The state attorney general may investigate and pursue civil action against healthcare providers and facilities. TDC is advocating against the bill.

TDC Position: Oppose

MO: HB 272 – Statute of Limitations for Personal Injury Claims

This bill reduces the statute of limitations for personal injury claims from five years to two years. This bill is pending action in committee; we continue to advocate for this bill.

TDC Position: Support

MO: HB 273 – Collateral Source/Truth in Damages

This bill allows any party in a personal injury, bodily injury, or death action to introduce evidence of the actual cost of the medical care or treatment. In addition, the proposal restricts parties from introducing evidence of the amount billed if it has been discounted and allows parties to introduce evidence of the actual cost of care for purposes of future treatment. This bill is pending action in committee; we continue to advocate for this bill with our partners.

TDC Position: Support

MO: SB 467 – Allocation of Damages

This bill allocates damages in the amount of fault attributable to each party or entity, regardless of when the person or entity is party to the suit. This bill is still pending action in committee; we continue to advocate for this bill with our partners.

TDC Position: Support

Nevada

ACTIVE

NV: AB 209 – Repeals Medical Malpractice Reforms

This bill repeals Nevada medical malpractice liability reforms, including (1) the noneconomic damages cap of \$350,000; (2) several liability; (3) the right to dismiss a malpractice suit for failure to file an affidavit of merit; (4) requirement to participate in a settlement conference; (5) statute of limitations; (6) limits on attorney contingent fees; (7) collateral source reduction; (8) periodic payments; and (9) \$50,000 limit on damages when care is rendered in an emergency room or trauma center. It also imposes a minimum \$1,000,000/\$3,000,000 medical malpractice insurance requirement on healthcare providers and creates a new civil action against a healthcare provider who “knowingly” makes or withholds any “material” information from a patient that “prevents, hinders, or delays” the patient from filing a medical malpractice action. The new civil action is brought by the attorney general or a district attorney for a civil fine of not more than \$10,000 per violation. We have retained additional legislative counsel and are actively involved in the Your Nevada Doctors coalition to fight this legislation.

TDC Position: Oppose

NV: AB 404 – Increase Limits on Noneconomic Damages and Repeal Medical Liability Reforms

This bill seeks to increase the cap on noneconomic damages from \$350,000 to \$2.5 million and annually adjusts it for inflation beginning January 1, 2025. It also: (1) increases the statute of limitations and statute of repose from one year and three years , respectively, to two years and four years and applies these revised time limits retroactively; (2) removes certain healthcare facilities from the definition of healthcare provider which causes the noneconomic damages cap to not apply to these facilities; (3) and repeals attorneys’ fees limits, several liability, collateral source reduction, periodic payments, and the \$50,000 cap on damages for emergency department patient liability. We are actively opposing this legislation that would severely harm healthcare providers and reduce access to healthcare for Nevadans. We are working with the Your Nevada Doctors Coalition and have recruited and prepared providers to connect with legislators in opposition to this harmful legislation.

TDC Position: Oppose



New Mexico

DEAD

NM: HB 465 – Medical Malpractice Changes

This bill proposes to repeal the changes to the Medical Practice Act and Patient Compensation Fund as imposed by New Mexico HB 75 (2021). The bill reverts the damage caps to the pre-HB 75 levels and makes other conforming changes. TDC supports this effort; however, there is very little chance that this legislation will move forward.

TDC Position: Support

NM: HB 88 – Medical Malpractice Liability Reform Corrections

This bill proposes to resolve the damage cap issue regarding physician owned outpatient healthcare facilities, which are currently scheduled to be governed by the same cap on damages as is applied to hospitals. TDC continues to support this legislation; however it is highly unlikely to be enacted as structured in this legislation.

TDC Position: Support

NM: SB 445 / 446 / 447 – Medical Liability Reform Amendments

This trio of bills propose to 1) stabilize the New Mexico Patient Compensation Fund, 2) change the definition of “occurrence” for medical liability claims, and 3) adjust the cap on damages for medical liability claims including an annual COLA based on the CPI. These three bills highlight the growing crisis in New Mexico; however, they have very little chance of being enacted. Rather, they are an attempt to put pressure on the rest of the legislature and the Governor to address the growing crisis.

TDC Position: Support

NM: SB 296 – Medical Malpractice Act Changes- Outpatient Healthcare Facilities

This bill is intended to fix the definition of outpatient facilities to ensure that outpatient facilities that are not majority owned or controlled by hospitals fall under the definition of independent providers, and therefore fall under the lower damage caps applied to claims against independent physicians. As written, this bill is unlikely to move forward.

TDC Position: Support as Introduced

NM: HB 500 – Medical Malpractice Premium Assistance

This bill, sought by the Governor, proposes to create the “medical malpractice premium fund” as a non-reverting fund in the state treasury consisting of appropriations, gifts, grants, and donations in the amount of \$70 million. Under the proposal, the medical malpractice premium assistance fund would reimburse independent healthcare providers or independent healthcare provider groups not employed by a hospital or health system a percentage of the cost of the independent healthcare provider's or independent healthcare provider group's annual medical malpractice premium, depending on years practicing in the state. This proposed stop-gap measure is intended to alleviate the strain on New Mexico's healthcare system that was caused by the enactment of 2021's HB 75. TDC Group does not view this as a viable long-term solution to the growing malpractice crises in New Mexico and are actively seeking more appropriate legislative solutions.

TDC Position: Monitor

NM: HB 88 – Medical Malpractice

This bill resolves the damage cap issue regarding physician owned outpatient healthcare facilities, which are currently scheduled to be governed by the same cap on damages as is applied to hospitals. A hearing was held on this legislation and physician turn-out was large with over 50 physicians appearing to testify in person and over 100 physicians appearing telephonically. The bill was tabled with a vote of 7-3 and is unlikely to be enacted as currently drafted.

TDC Position: Support

NM: HB 63 – Medical Malpractice

This bill, introduced by Republican House members, essentially rewrites the Medical Practice Act in New Mexico, undoing most of the changes enacted by HB 75 in 2021. While TDC will support this legislation and continues to work with all interested parties to find a solution to the growing crisis in New Mexico, it is anticipated that this legislation does not have any realistic chance of being enacted.

TDC Position: Support



ACTIVE

NM: SB 523 – Medical Malpractice (Pending Governor’s Signature)

This proposal is the legislative vehicle through which the New Mexico legislature attempts to address the outpatient healthcare facility issue caused by the enactment of NM HB 75 in 2021. This bill defines a distinction between outpatient healthcare facilities owned and/or controlled by a hospital and those considered independent. Under this legislation, starting January 1, 2023, independent outpatient healthcare facilities have a damage cap (excluding punitive damages and past and future medical care) of \$750,000. Beginning January 1, 2024, the cap (with the same exceptions) will be raised to \$1,000,000, and beginning January 1, 2025, and thereafter, the \$1,000,000 cap will be subject to annual adjustments based on the CPI. Independent outpatient care facilities will be eligible to participate in the state’s PCF and will only be liable for the first \$500,000 of damages with anything over the \$500,000 paid by the PCF. TDC worked diligently with other interested parties and government officials to reach this solution.

TDC Position: Support

New York

VETOED

NY: SB 74 / HB 6770 (2022) – Wrongful Death Actions Vetoed: January 30, 2023

This bill would have changed the state’s wrongful death law by extending the statute of limitations from two years to three and one-half years, expanding the pool of benefiting party to include: close family members, spouse, domestic partner, children, siblings, parents, grandparents, step-parents, step-children (currently only parents, spouse, and children are identified beneficiaries) and the list of eligible compensation to include: funeral expenses; medical care; grief and anguish; loss of love, society, protection, companionship, comfort, consortium; pecuniary injuries including loss of services, assistance, diminished inheritance; and, loss of nurture and guidance. TDC Group and our coalition partners executed a comprehensive advocacy campaign encompassing direct lobbying, data collection and analysis, grassroots activities, and media engagement. We expect to see this reintroduced in 2023.

TDC Position: Oppose

ACTIVE

NY: AB 234 – Disclosure of Medical Records

This bill provides that in medical malpractice actions where the plaintiff is not the patient of the defendant and the alleged malpractice is the result of the defendant’s treatment or care of a third party, the defendant may make a motion to the court to compel the non-party patient to waive the privilege in order to obtain disclosure of medical records relevant to the litigation or permit the defendant to testify about his or her interactions with the non-party patient. This bill is pending action in committee; we continue to advocate for this bill.

TDC Position: Support

NY: AB 1362 – Biometric Privacy Act

This bill is like Illinois’ BIPA law and creates a private right of action around the collection of biometric information. It requires private entities in possession of biometric identifiers or biometric information to develop a written policy establishing a retention schedule and guidelines for permanently destroying biometric

identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of the individual’s last interaction with the private entity, whichever occurs first. This bill is pending action in committee; we continue to advocate against this bill.

TDC Position: Oppose

NY: AB 3592 / SB 365, SB 3235, AB 2587 / SB 4201 – New York Privacy Act

These bills create a comprehensive data privacy regulatory scheme and require companies disclose their methods of de-identifying personal information, place safeguards around data sharing, and allow consumers to obtain names of all entities with whom their information is shared. They provide a private right of action and may recover actual damages and attorneys’ fees. They are pending action in committee; we continue to advocate against them with our partners.

TDC Position: Oppose



New York (Cont.)

ACTIVE

NY: SB 152 – Prohibition on Destruction of Medical Records and Cause of Action

This bill establishes a penalty and cause of action for the intentional destruction, mutilation, or significant alteration of medical records by a party to a medical malpractice action. This bill is in committee waiting action.

TDC Position: Monitor

NY: SB 1024 – Economic Loss, Calculation of Healthcare Costs, Affidavit of Merit

This bill makes a series of procedural changes to malpractice proceedings intended to create a more level playing field between parties and bring down the cost of adjudicating actions. The proposal seeks to clarify both noneconomic and economic losses shall not exceed the defendant's equitable share of relative culpability, that the affidavit of merit be executed by a healthcare professional who is knowledgeable and qualified in the issues at hand, and that damages for healthcare costs be calculated with respect to the services provided and within normal and customary rates. It is unclear whether this bill will have a real opportunity to be heard. This bill is pending action in committee; we continue to advocate for this bill.

TDC Position: Support

NY: SB 1052 – DFS Study on the Adequacy and Affordability of MPL Payouts and Insurance Coverage

This bill requires the Department of Financial Services (DFS) to review and report on the adequacy, reasonableness, and affordability of insurance products designed to pay for future medical expenses of injured plaintiffs who receive a judgment or settlement for damages that include future medical expenses. This bill is in committee awaiting action.

TDC Position: Monitor

NY: SB 2368 / SB 2410 – MPL Civil Action Enhanced Contingency Fees

These bills amend the contingency fee rules for attorneys in medical, dental, and podiatric malpractice actions to permit applications for enhanced fees. This bill is pending action in committee; we continue to advocate against this bill.

TDC Position: Oppose

NY: AB 3007 / SB 4007 – New York State Budget / Section 18 Funding / Prejudgment Interest

The Governor released her proposed state budget. It contains funding for Section 18 excess coverage at the same level as last year's budget (\$102 million) to continue funding until June 15, 2024, and changes the current 9% prejudgment interest rate to set the interest rate at the market rate (the weekly average one-year constant maturity Treasury yield). The budget process has begun and we are advocating in support of these proposals.

TDC Position: Neutral if amended

Rhode Island

DEAD

RI: HB 5441 – Collateral Source Rule in Medical Malpractice Actions

This bill repeals the statute that permits introduction into evidence of collateral source payments reducing plaintiff's economic damages and the requirement that juries be instructed to reduce the amount of economic

damages awarded to plaintiff by the amount of collateral source payments, minus any payments made by plaintiff. TDC is working with its coalition partners to oppose this bill.

TDC Position: Oppose

RI: HB 5513 – Death by Wrongful Act

This bill increases the minimum damages that must be awarded to a prevailing plaintiff in a wrongful death case from \$250,000 to \$365,000. Additionally, the \$365,000 higher amount will increase each year after January 31, 2024, by the percentage increase in the consumer price index. TDC is working with its coalition partners to oppose this bill. The judiciary committee has recommended that this bill be held for study.

TDC Position: Oppose



Texas

ACTIVE

TX: HB 536 – Healthcare Liability Claim Limits

This bill is the annual effort to tie the cap on noneconomic damages in medical liability claims to the Consumer Price Index (CPI). TDC is working with the state medical and hospital associations, TAPA (Texas Alliance for Patient Access), and other interested parties to see this bill once again defeated.

TDC Position: Oppose

TX: SB 1198 – Statute of Limitations on a Healthcare Liability Claim

This bill proposes to extend the statute of limitations for medical liability claims related to the provision of gender related services to a minor to the minor's 20th birthday. TDC Group opposes legislation that increases healthcare provider liability or interferes with the relationship between healthcare professionals and their patients.

TDC Position: Oppose

TX: HB 888 – Healthcare Liability Claim Statute of Limitations

This bill extends the statute of limitations in a healthcare liability claim that is related to gender modification drugs or procedures provided to a minor, to the minor's 25th birthday. TDC is working with other interested parties in Texas to oppose this legislation because it expands liability for healthcare professionals and interferes with the provider/patient relationship.

TDC Position: Oppose

Utah

ENACTED

UT: SB 171 – Healthcare Practitioner Liability Amendments

Effective: May 3, 2023

This bill proposes to make a healthcare provider immune for providing treatment that deviates from established practices and medical norms, if the patient is provided notice that the care deviates from established practice, obtains a written consent permitting such deviation, and the provider documents the rationale for deviating from established practice in the patient's medical record. This bill originates from the sponsor's belief that providers should be permitted to prescribe discredited COVID-19 treatments.

TDC Position: Neutral

UT: SB 247 – Medical Malpractice Amendments

Effective: May 3, 2023

This bill clarifies that activity that is primarily sexual in nature, when considering all the circumstances, cannot be medical malpractice even if the sexual activity was performed during a medical procedure and the patient believed that the procedure was medically appropriate. This bill arises from the alleged misconduct of an OB-GYN regarding 93 patients where the courts have defined medical malpractice broadly. TDC has advocated to ensure that this bill does not encompass conduct that should fall under medical malpractice. This bill is likely to pass due to the intense public outrage and media coverage of the underlying misconduct. This bill passed out of both chambers and was signed by the governor.

TDC Position: Neutral



Virginia

DEAD

VA: SB 1311 – Birth Related Neurological Injury Compensation

This bill increases the amount that the neurological birth injury fund may compensate a claimant from \$100,000 to \$500,000. TDC is working with other interested parties to see this legislation appropriately amended, or defeated.

TDC Position: Oppose

Washington

ACTIVE

WA: HB 1649 / SB 5059 – Prejudgment Interest

These bills create prejudgment interest in civil cases from the time of accrual of the cause of action at two percentage points above the average 26-week treasury bill rate. Previously, interest began at entry of judgment. TDC's coalition presented testimony in committee this month in opposition to the bill. The bill passed out of the first committee on a party line vote. The coalition opposed the bill in the Finance Committee, and it failed to move forward. However, it can be revived on the floor with enough votes.

TDC Position: Oppose

NEW NOTABLE LITIGATION

WA: *Bennett v. U.S. (2023)*

The issue before the Washington State Supreme Court is whether the eight-year statute of repose for medical malpractice cases is unconstitutional. A coalition, including TDC Group and the Washington State Medical Association, have funded an amicus brief in support of the United States.

On February 24, 2023, the court set a due date for amicus briefs to be filed by April 28, 2023, and oral arguments to occur on June 14, 2023. TDC is actively assisting amicus counsel and the United States to defend the state's statute of repose.

In 1998, in *DeYoung v. Providence*, the state supreme court held a prior version of the medical malpractice statute of repose was unconstitutional. The current statute of repose was re-enacted in 2006.

This case arises from a certified question from the U.S. District Court. The underlying case involves alleged medical malpractice at the U.S. Naval Hospital at Bremerton. The plaintiff, the civilian wife of a navy servicemember, was treated for sinus issues. Allegedly, a physician negligently inserted nasal packing to staunch bleeding that caused a skull fracture. Although a cracking sound was heard, the fracture was not understood.

Plaintiff suffered a wide variety of illnesses until the fracture was discovered years later after running of the statute of repose. Plaintiff sued under the Federal Tort Claims Act (FTCA).

The U.S. filed a motion to dismiss based on the running of the state's statute of repose. The District Court ruled for the Plaintiff, finding that the FTCA superseded the state's statute of repose. The U.S. appealed to the U.S. Court of Appeals for the Ninth Circuit, who reversed, holding that the state statute of repose was not superseded.

The U.S. District Court then certified two questions to the state supreme court—whether the medical malpractice statute of repose violates (1) the state constitution's privileges and immunities clause, and/or (2) the state constitution's access to the courts provision.



West Virginia

DEAD

WV: HB 2162 – Medical Malpractice Insurer Requirement

This bill requires medical malpractice insurers to establish a separate insurance pool for healthcare providers who conduct abortions. TDC is currently working with coalition partners to oppose this legislation.

TDC Position: Oppose

WV: HB 2424 – Unborn Infants Wrongful Death Act

This bill adds unborn children from conception to those individuals for whom a claim of wrongful death may be alleged. TDC is working with the state medical and hospital associations, to oppose this legislation because it expands liability for healthcare professionals.

TDC Position: Oppose

The Doctors Company has a dedicated Government Relations team to advocate for our members to advance and defend medical liability reforms, safeguard patient access to care, and protect against legislation that would adversely impact our members across the country.

For additional information, please visit thedoctors.com/advocacy.

