

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

TDC Government Relations continues its legislative and judicial advocacy work in a year of unprecedented legislative volume and momentum. Following is a snapshot of the state of play as of April 30, 2023.

- **34 Legislative bodies are in session.** 30 state legislatures remain in regular session in addition to the District of Columbia and the U.S. Congress, and two state legislatures are in special session.
- **158,543 bills have been introduced** (federal and state combined) to date.
- **4,044 bills impact TDC and its members.** TDC's Government Relations team is actively advocating – either directly or through coalition efforts – on many of these bills.
- **51 judicial cases** that may change laws protecting healthcare providers are being tracked by the Government Relations team.

15 states introduced bills dealing with damage caps to date: Iowa, Illinois, Indiana, Kansas, Maine, Maryland, Michigan, Missouri, Nevada, New Mexico, New York, Rhode Island, Texas, Utah, and Virginia. Cap legislation is also 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 4/30/2023)

158,543

bills were introduced
(Federal and State combined)

4,044

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

140

vaccination bills
under consideration

546

civil litigation/
procedure bills

394

reproductive
healthcare bills

124

gender affirming
healthcare bills

199

medical crime bills

354

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

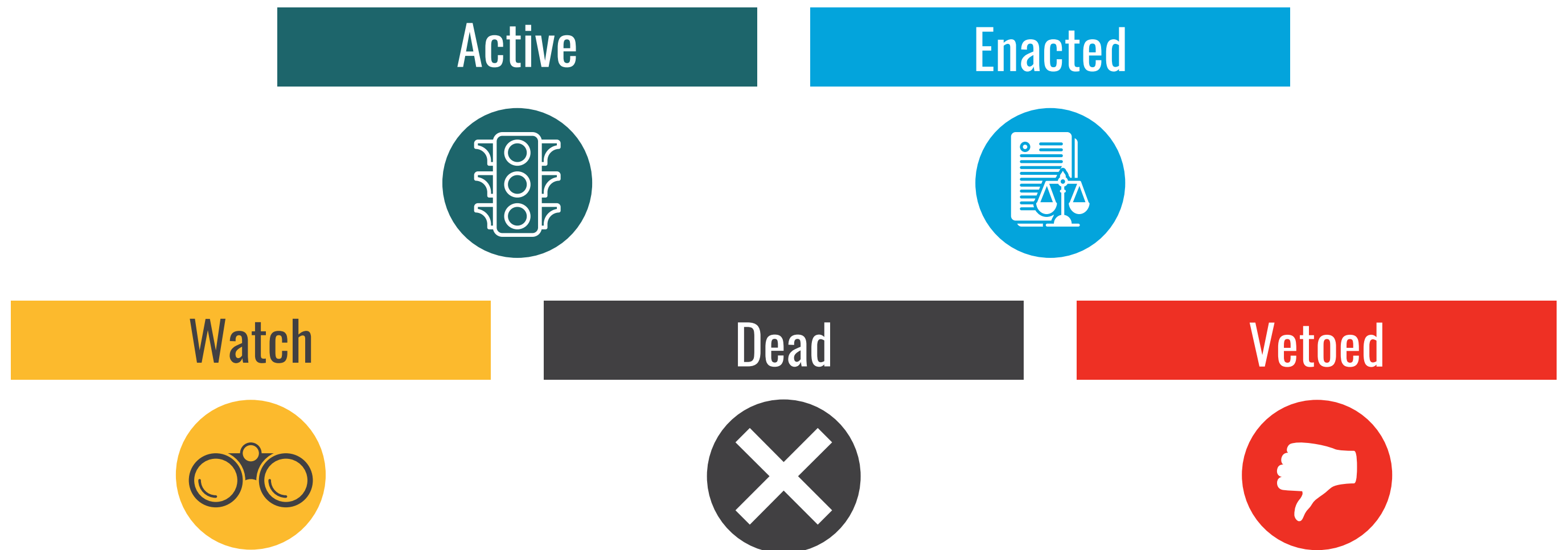
224

data usage and privacy legislation



Currently, there are 107 bills on our highest priority list. We are actively advocating for or against these bills. The following is a selection of the bills that we feel are important to bring to your attention.

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



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 see this legislation defeated. We have been able to have this legislation referred to multiple committees and have spoken to committee chairs who have indicated that they are not inclined to see this bill move forward. While we will continue to monitor this legislation until the session officially ends, the legislation never left its chamber of origin and is unlikely to be enacted in 2023.

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 other interested parties to see this legislation defeated. This legislation has not moved since its introduction and is unlikely to be enacted.

TDC Position: Oppose

Arkansas

ACTIVE

AR: HB 1418 – Medical Bills

This bill limits 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. This legislation continues to sit in its first Committee of referral with no action. TDC continues to support this legislation, but it is unlikely that it will pass during the 2023 session.

TDC Position: Support

Colorado

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.

Delaware

ACTIVE

DE SB 81 – Wrongful Death Actions

This bill permits the recovery of punitive damages when the death of a person was due to malicious intent, or the result of willful or wanton misconduct. TDC, with our trade partners, are actively advocating against the bill.

TDC Position: Oppose

Florida

ACTIVE

FL SB 690 – Damages Recoverable in Wrongful Death Actions

This bill is a reintroduction of last year’s proposal that sought to add non-dependent adult children and the parents of adult children to the list of plaintiffs who may bring a wrongful death action in Florida. TDC worked to defeat this bill last session and continues to work with a coalition to defeat this bill.

TDC Position: Oppose



Indiana

DEAD

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. We advocated against this bill with our partners and the bill died in committee without action.

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 for nonpecuniary losses in wrongful death actions. It remains in committee and has not had a hearing. TDC continues to work with our industry partners to advocate against this bill.

TDC Position: Oppose

Louisiana

ACTIVE

LA HCR 57 – Medical Malpractice

This is a “study bill” that seeks to solicit input, recommendations, and advice from interested stakeholders on the current effectiveness of the medical malpractice limitations to compensation and medical review panels. TDC is working with partners to ensure that medical liability insurance carriers have input into this study.

TDC Position: Neutral

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

ME HB 581 – Damages for the Loss of Comfort and Society Limits

This bill increases the statute of limitations from two to three years, and doubles the amount a jury may award in damages for a Wrongful Death case from \$750,000 to \$1.5 million for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as the underlying claim, to the persons for whose benefit the action is brought. It also increases the amount a jury may award in punitive damages from \$250,000 to \$1 million. We are actively opposing this bill by working through a coalition. The committee held a work session on this in which our coalition submitted opposition.

TDC Position: Oppose



Maryland

DEAD

HB 862 – Repeals Noneconomic Damages Cap

This bill repeals the state's noneconomic damages caps in both personal injury and wrongful death claims. We advocated against this bill in partnership with our coalition and the bill did not progress. Session adjourned April 10, 2023.

TDC Position: Oppose

Minnesota

ACTIVE

MN HB 1019 / SB 997 – Wrongful Death Claims

This bill removes the prohibition on the survival of an action after a person dies, and amends the wrongful death statute to allow the plaintiff's surviving spouse or next of kin to recover for all damages (in particular, pain and suffering), not just special damages. It establishes a six-year statute of repose (triggered by the date of the act or omission) and within three years of the person's death; our aligned interests have joined with the broader business community to actively advocate against this bill; however, the bill has been moving rapidly through the committee process this month.

TDC Position: Oppose

Missouri

ACTIVE

MO HB 272 – Personal Injury Claims Statute of Limitations

This bill reduces the statute of limitations for personal injury claims from five years to two years. This bill continues to move through the legislative process. Session adjourns May 30, 2023, and 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 continues to move through the legislative process. We continue to advocate in support of this bill.

TDC Position: Support

MO HB 489 / SB 410 – Diversity, Equity, Inclusion Damages

This bill prohibits all healthcare providers and medical institutions of higher education from requiring employees, contractors, volunteers, vendors, or agents to participate in diversity, equity, and inclusion instruction. The aggrieved person is entitled to recover declaratory and injunctive relief, statutory damages of not less than \$100,000, compensatory damages, costs, and attorneys' fees. The state attorney general may investigate and pursue civil action against healthcare providers and facilities. The bill has been heard in several House and Senate committees. TDC, with our legislative counsel and trade partners, continues to advocate against the bill.

TDC Position: Oppose



Missouri (Cont.)

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 formal action in committee, although it may be added to an omnibus bill. Session adjourns May 30, 2023, and we continue to advocate for this bill with our partners.

TDC Position: Support

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. There was no legislative action this month. TDC is advocating against the bill. An earlier version of the bill, HB 1561, failed in 2022.

TDC Position: Oppose

Nevada

ACTIVE

NV AB 404 – Increase Noneconomic Damages and Repeal Medical Liability

This is the second bill introduced to revise or eliminate medical liability tort reforms. The first bill, AB 209, is not moving forward and would have repealed the state's cap on non-economic damages entirely as well as eliminating all other MPL reforms in Nevada. This bill, AB 404, has significant momentum behind it and 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, 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. TDC, along with a large coalition of like-minded interests, are advocating on this bill and negotiations are underway.

TDC Position: Oppose

New Mexico

ENACTED

NM SB 523 – Medical Malpractice
Effective: June 6, 2023

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 HB 75 in 2021. This bill defines a distinction between outpatient healthcare facilities owned and/or controlled by a hospital and those considered independent physician owned. Under current law, independent outpatient healthcare facilities have a damage cap (excluding punitive damages and past and future medical care) of \$750,000, that would have increased to \$6 million over the next two years. Under SB 523, 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 be liable for the first \$500,000 of damages with anything over the \$500,000 paid by the PCF. TDC worked with the medical association and public officials to reach this compromise resolution.

TDC Position: Support



New York

ACTIVE

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). House and Senate committees heard these proposals, and TDC continues to advocate for this funding.

TDC Position: Support

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 has not been heard in committee this month.

TDC Position: Monitor

NY SB 1052 – Adequacy and Affordability of MPL Payouts and Insurance Coverage

This bill requires 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 has not been heard in committee this month.

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 has not been heard in committee this month; we continue to advocate against this bill.

TDC Position: Oppose

Pennsylvania

ACTIVE

PA HB 747 – Venue

This bill makes the court of common pleas of the county in which a medical professional liability action arises to be the entity having exclusive subject matter jurisdiction over claims against healthcare providers. The bill has not been heard in any committee yet. We are working closely with our Pennsylvania coalition partners to advance this legislation.

TDC Position: Support

Rhode Island

ACTIVE

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 continues to work with its coalition partners to oppose this bill. The Judiciary Committee has recommended that this bill be held for study.

TDC Position: Oppose



Rhode Island (Cont.)

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

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 other interested parties to see this bill once again defeated. This legislation continues to sit in its first committee of referral.

TDC Position: Oppose

TX SB 1198 –Healthcare Liability Claim Statue of Limitations

This bill proposes to extend the statute of limitations for medical liability claims related to the provision of gender healthcare 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. To date, it has not left its original committee of assignment.

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

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.

