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★ NOVEMBER 2008

# TORT REFORM

## THE ISSUE

Since 1995, no state has done more than Texas to restore the trust of citizens in their court system. Tort reform has lowered liability costs for numerous occupations, reduced frivolous lawsuits, and reduced overall costs to businesses and consumers in Texas. Texas' efforts to reform its tort system have been successful in lowering medical malpractice premiums and attracting physicians to Texas. However, Texas' tort climate still has problem areas, namely its number of "judicial hellholes," areas with histories of large or excessive verdicts against tort defendants.

## THE FACTS

- ★ Prior to tort reforms passed in 2003 by the Texas Legislature, frequent lawsuits against physicians and hospitals and escalating jury awards to plaintiffs drove doctors and insurers from the state, leading to physician shortages and higher costs for doctors and patients.
- ★ Between 1996 and 2000, one of four Texas doctors was sued. In the 10 years following 1989, the average medical malpractice verdict skyrocketed from \$472,982 to \$2,048,541. The percentage of such awards attributable to noneconomic damages, which are intangible injuries like pain and suffering, increased from 35.7 percent to 65.6 percent. Between 2000 and 2003, 13 of the state's 17 medical insurance carriers pulled out of Texas.
- ★ Pre-reform, medical malpractice rates were rising 15 percent to 20 percent per year. Texas Medical Liability Trust (TMLT), the state's largest medical malpractice insurance carrier, has now reduced rates the last six years. For the first five years, rates were reduced across the board for all specialties: 12 percent in 2004; 5 percent in 2005; 5 percent in 2006; 7.5 percent in 2007; and 6.5 percent in 2008. For 2009, all specialties will receive a rate decrease, but the reduction will vary by specialty and territory, with an average decrease of 4.7 percent. According to TMLT, the cumulative premium savings realized by policyholders since January 2004 will exceed \$275 million. Since the passage of medical liability reform, TMLT insured physicians will have saved \$380 million in decreased premiums, once this latest round of rate cuts and dividends is implemented.
- ★ In May 2003, there were 35,723 in-state medical doctors. Today, there are 46,632, a 30.5 percent increase.
- ★ From May 2003 to September 2008, the number of medical doctors practicing in the counties of Bexar, Dallas, El Paso, Harris, and Travis increased 25.9 percent, 22.6 percent, 14.6 percent, 24.3 percent, and 28.3 percent, respectively.

## TEXAS PUBLIC POLICY FOUNDATION

- ★ As of October 31, 2008, the number of pending applications to practice medicine in Texas was 2,191.
- ★ Texas ranks 18th (1 = best) in the Pacific Research Institute's 2008 *U.S. Tort Liability Index*, which ranks states' tort laws and tort costs. Texas is ranked 5th in the category of monetary tort loss but 46th in the category of litigation risk. In PRI's last tort index (2006), Texas received the top overall ranking.

### RECOMMENDATIONS

- ★ Do not roll back the legal reforms passed since 1995 (e.g., reforms in the areas of venue shopping, punitive damages, medical malpractice, and asbestos and silica), as they have led to a fairer system of justice, a more attractive business climate, and a stronger economy. Specifically:
  - ★ Do not increase caps on punitive damages, as doing so will inevitably lead to increased filing of lawsuits and increased seeking of large punitive-damage awards, both of which will place added strain on Texas' civil justice system.
  - ★ Do not increase caps on non-economic damages in medical malpractice cases, as Texas' 2003 medical malpractice reforms have led to an enormous influx of physicians.
  - ★ Do not allow *qui tam* actions, as 1) such actions, though well-intentioned, can lead to a private "bounty" system of justice that encourages the filing of frivolous lawsuits, and 2) Texas' Attorney General's Office is sufficient to bring actions on behalf of the state.
- ★ Award attorneys' fees to defendants in lawsuits found to be meritless.
- ★ Strengthen the standards for expert testimony, in order to ensure expert witnesses are qualified and unbiased.

### RESOURCES

- *A History of Lawsuit Reform in Texas* by Joe Nixon, Texas Public Policy Foundation (May 2008) <http://www.texas-policy.com/pdf/2008-05-RR04-tortreform-jnixon-posting.pdf>.
- "Tort reform the right cure for Texas' doctor shortage" by Drew Thornley, *Houston Chronicle* (Nov. 2007) <http://www.texaspolicy.com/pdf/2007-11-24-HC-DT.pdf>.
- *Restoring Civil Justice in Texas: Finishing What We Started* by Bill Peacock, Texas Public Policy Foundation (Apr. 2006) <http://www.texaspolicy.com/pdf/2006-04-PP-tortreform-bp.pdf>.
- *Prop 12 Paying Off: Naysayers Proved Wrong Month After Election* by Brooke Leslie Rollins, Texas Public Policy Foundation (Oct. 2003) [http://www.texaspolicy.com/commentaries\\_single.php?report\\_id=397](http://www.texaspolicy.com/commentaries_single.php?report_id=397).
- *Curing Texas' Lawsuit Headache* by Joe Nixon, Texas Public Policy Foundation (Sept. 2003) <http://www.texaspolicy.com/pdf/2003-09-06-veritas-nixon.pdf>.
- *Critical Condition: How Lawsuit Abuse Is Hurting Health Care & What Texans Can Do About It* by Chris Patterson, Colleen Whalen, and John Pisciotta, Texas Public Policy Foundation (Apr. 2003) <http://www.texaspolicy.com/pdf/2003-04-29-CRITICALCONDITION.pdf>.
- *A Texas Turnaround: The Impact of Lawsuit Reform on Business Activity in the Lone Star State*, The Perryman Group (Apr. 2008) [http://tlrfoundation.com/beta/files/Texas\\_Tort\\_Reform\\_Report\\_2008.pdf](http://tlrfoundation.com/beta/files/Texas_Tort_Reform_Report_2008.pdf).
- *Don't Rollback Tort Reform in Texas: Oppose SB 1309*, Texas Civil Justice League (May 2007) [http://tcjl.com/index.php/article\\_news/oppose\\_sb\\_1309/](http://tcjl.com/index.php/article_news/oppose_sb_1309/).
- Texas Medical Liability Trust (accessed 31 Oct. 2008) <http://www.tmlt.org/>.

