

Kentucky Needs Meaningful Medical Liability Reform

General Message

The Commonwealth of Kentucky has one of the nation's most litigation-friendly environments. The sheer volume of litigation, and continual inaction to implement meaningful liability reforms, makes the Commonwealth a target for personal injury lawyers preying upon health care providers. Medical liability reform legislation would maintain due process for all parties involved and reduce the amount of frivolous claims in the state while protecting health care providers from meritless lawsuits.

Message #1 (The ISSUE) – Because Kentucky lacks even the most basic legal liability protections for businesses and health care providers, it has one of the nation's most litigation-friendly environments, making the commonwealth a prime and profitable target for personal injury lawyers.

Supporting Points:

- In 2015, the Institute for Legal Reform ranked Kentucky 39th in the nation for its lawsuit climate, also finding that 75 percent of company general counsels and senior attorneys said that a state's legal environment likely impacts business decisions, including where a company locates or expands.
- In 2013, a study by AON Risk Solutions revealed that Kentucky's nursing homes face the highest litigation rates in the nation.
- In 2011, a study published by the *New England Journal of Medicine* found that lawsuits do not incentivize improved care.

Message #2 (The PROBLEM) – State legislators and legal reform advocates have spent decades trying to advance various judicial reforms to improve the state's legal climate and have been confronted with both constitutional and partisan legislative obstacles. This leaves Kentucky in a weak position with regard to economic development and maintaining an adequate number of physicians.

Supporting Points:

- The Kentucky Supreme Court has held multiple medical liability reform measures invalid as exceeding the state police powers and undermining the jural rights doctrine (judicial limit on the power of the legislature).
- In 2004, the Senate passed medical liability reform as a proposed constitutional amendment that would have limited noneconomic and punitive damages, provided a statute of limitations on actions and required alternative dispute resolution in some cases. The House never considered the bill on the floor.
- More recently, in 2015, the Senate passed peer review confidentiality and privilege reform to include, but not be limited to, medical malpractice actions. The Senate also passed medical review panel legislation to allow a panel of experts to evaluate claims. Neither bill received votes in the House.

Message #3 (The SOLUTION) – The Commonwealth of Kentucky should adopt some form of medical liability reform or full tort reform to address our broken litigation climate and reduce the negative economic impact on the both health care providers and the business community.

Supporting Points:

- Medical liability reform can be passed within the constitutional limitations outlined by the Kentucky Supreme Court. Indiana and Louisiana have more restrictive jural rights doctrines than Kentucky and their states passed medical liability reform.
- Medical liability reform would make Kentucky less of a target for out-of-state trial lawyers.
- Medical liability reform would dissuade purely frivolous suits and protect hardworking health care providers from endless litigation.

It's time for Kentucky to finally enact commonsense liability reforms that will improve both the medical and business climate and protect caregivers from frivolous lawsuits.