



Oklahoma  
State  
Senate

# Legislative Brief

August 2003

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## Tort Reform

### Issue Background:

Across the nation the cost of medical malpractice insurance has soared, doctors are shutting their doors, and the number of underwriters has dropped. Earlier this year *The Daily Oklahoman* (2/27/03 Killackey) reported: "Premiums for medical malpractice insurance went up 30 to 60 percent this year for Oklahoma physicians." On February 3, 2003, doctors across New Jersey shut their doors to protest soaring liability insurance in an action that sent hundreds of people to emergency rooms for routine medical care. (*The Star-Ledger* (2/4/03 Campbell) According to *The Houston Chronicle* (2/20/03 Elliott), "[t]he number of insurance companies writing medical liability policies dropped from seventeen to four since 2000." And in Florida, thousands of doctors took part in street rallies—their battle cry was medical malpractice. (*Naples Daily News* (3/30/03 Freeman).

Thirty-four states and Congress debated reforms this year to address the increase in cost and decrease in availability of medical malpractice insurance. The legal system and the insurance industry emerged as culprits. Parties that blamed the legal system claimed that frivolous lawsuits have driven up the premium costs and are driving doctors out of business. Tort-reform opponents claimed that insurance companies have raised the cost of medical malpractice premiums to recoup their losses on failing investments.

During the 1<sup>st</sup> Session of the 49<sup>th</sup> Legislature (2003), Governor Brad Henry appointed members to a task force created to address medical malpractice liability issues before Oklahoma reached the crisis that other states have had and are still having to address. The members consisted of representatives from the medical community, the nursing home industry and the legal profession. From their work emerged a tort reform package that will keep medical malpractice rates affordable and help ensure that Oklahomans have access to high-quality, affordable health care.

Summary of Legislation:

SB 629 (Fisher/Adair and Askins): Creates the "Affordable Access to Health Care Act" for purposes of improving the availability of health care services; lowering the cost of medical liability insurance; ensuring fair and adequate compensation for health care claims; and improving the cost-effectiveness of this state's current medical liability system. Specifically, this measure:

- ◆ Caps non-economic damages at \$300,000 for obstetric cases and for cases that initiate in the emergency room;
- ◆ Excepts from damage cap wrongful death actions and cases where judge finds out of the presence of jury that clear and convincing evidence of negligence exists;
- ◆ Requires plaintiff in medical liability action to obtain a written opinion from a qualified expert stating the acts or omissions of a health care provider constitute professional negligence;
- ◆ Requires plaintiff to provide opinion to defendant upon request;
- ◆ Reduces prejudgment interest rate by 4%;
- ◆ Relieves defendants from responsibility for plaintiffs' attorney fees in certain nursing home actions;
- ◆ Requires plaintiff to provide defendant with authorization for release of medical records for 5 years prior to the incident at issue in the lawsuit;
- ◆ Requires the court to admit evidence of payments made to the plaintiff from collateral sources unless the court determines that the payment is subject to subrogation or other right of recovery;
- ◆ Requires insurers to file a certain closed claim report within a certain time in which a claim for recovery under a medical professional liability insurance policy is closed (reports shall include but not be limited to: whether a lawsuit was filed, whether attorneys were involved, number of defendants, amount paid on claim, any appeal and amount paid for defense costs);
- ◆ Requires Insurance Commissioner to prepare a composite summary report of closed claim reports and make such summary available to the public; and
- ◆ Authorizes a policyholder to request a hearing to determine whether a requested rate change by an insurer is appropriate.

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