

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

This year we are experiencing an unprecedented volume of significant bills targeting medical liability reforms with greater momentum behind them. We found ourselves going head-to-head with legislatures whose leadership ranks are dominated by plaintiffs' lawyers.

Out of the 4,545 bills we are currently tracking, 922 have been enacted, 1,472 are dead, and 2,149 are still active.

Most of the part-time legislatures have ended their regular sessions for the year leaving only eleven legislative bodies still active. The activity described below is significant in terms of mission and impact to TDC Group members and is reported in greater detail in the lower sections of this report.

Significant developments worth noting since our last report include:

- Averting the retroactive repeal of Nevada's medical liability reforms, including the cap on non-economic damages through compromise legislation reached by a broad healthcare coalition.
- Defeating legislation in Oregon that would have increased insurance rates.
- Launching a grassroots campaign to urge New York Governor Hochul to veto this year's iteration of the wrongful death legislation.
- Defeating a Florida bill that would have significantly increased the damages recoverable in a wrongful death action.
- Identifying and lobbying against a complex Michigan bill involving how damages and pre-judgement interest are awarded.
- Continuing our work with coalition partners in Colorado on efforts to avert a future ballot measure to alter that state's medical liability damage caps.
- Actively advocating on more than a dozen bills in New York– including bills to secure key budget provisions affecting medical liability insurance.

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 8/1/2023)

158,543

bills were introduced
(Federal and State combined)

4,545

of those have been
identified as impactful to
TDC Group members

326

insurance
regulation

546

civil litigation/
procedure bills

415

reproductive
healthcare bills

151

gender affirming
healthcare bills

203

medical
crime bills

3,095

practice of
medicine

358

scope of practice/independence
for Advanced Practice
Providers/Clinicians

31

damage
awards

224

data usage and
privacy legislation

651

healthcare
facilities

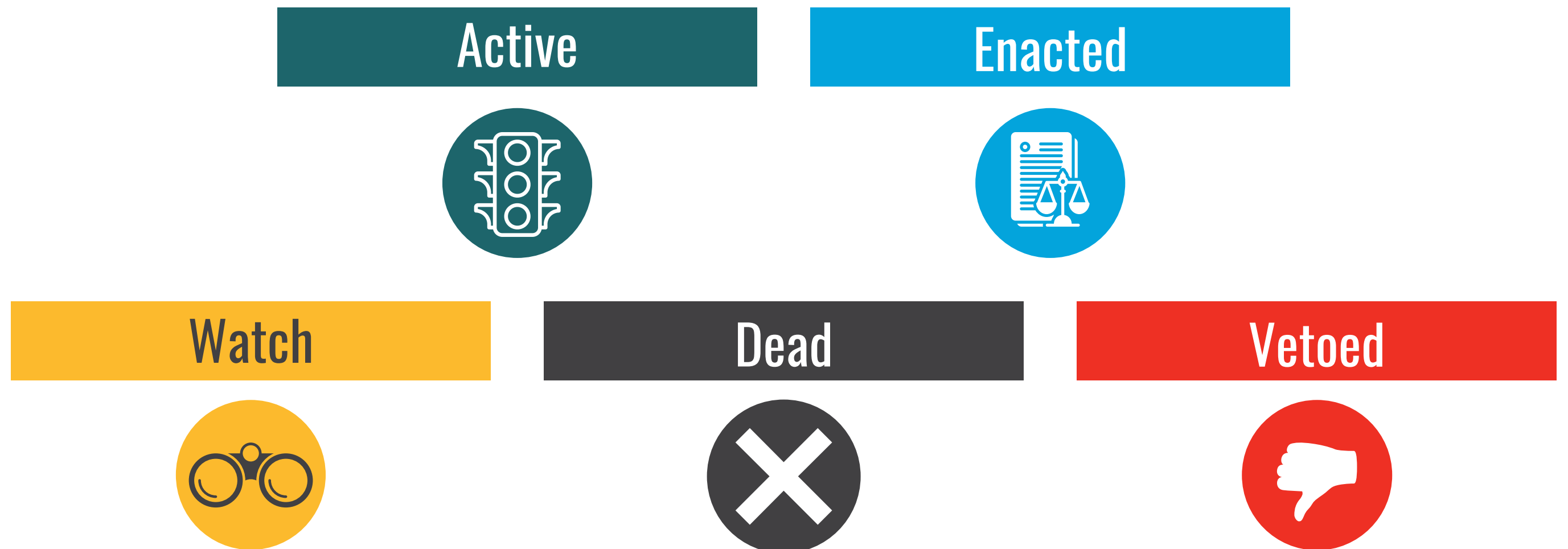
379

medical
liability



Currently, there are 117 bills on our highest priority list. We are also tracking 57 judicial cases. We are actively advocating for or against these bills and are involved in amicus activity on multiple cases at the appellate level.

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



Federal/U.S.

Winnett v. Frank
U.S. Texas Western District
Court (2023)

Plaintiffs chose not to appeal the dismissal of the case on June 15, 2023. Plaintiffs in this Texas federal district court case argued that the state's cap on non-economic damages was an unconstitutional violation of the U.S. Constitution's right to a civil jury trial, even though this federal right had never been applied to the states. On April 26, 2023, the trial court dismissed the case without reaching constitutional arguments after finding that the plaintiffs lacked standing to bring the suit because they did not demonstrate that they suffered actual injury.

Arizona

DEAD

AZ HB 2157 - Medical Malpractice Statute of Limitations

This bill would have extended the statute of limitations for a medical malpractice action in Arizona from two years to five years. TDC Group worked to defeat this legislation.

TDC Position: Oppose

AZ SB 1199 - Wrongful Death Actions and Attorneys' Fees

This bill would have required Arizona courts to grant reasonable attorneys' fees to plaintiffs who win wrongful death actions against a long-term care provider. TDC Group worked to defeat this legislation.

TDC Position: Oppose

Arkansas

DEAD

AR HB 1418 - Medical Bills

This bill would have limited 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 Group supported this legislation; however, it failed in its first committee.

TDC Position: Support

AR SB 350 - Additional Damages

Under current Arkansas law, where an insurer fails to pay the losses within the time specified in the policy after demand is made, an additional 12% penalty is added to the damages along with all reasonable attorneys' fees for the prosecution and collection of the loss. This bill would have increased this penalty from 12% to 25%. TDC Group worked with others to defeat this measure. The bill is expected to resurface.

TDC Position: Oppose

California

ENACTED

CA SB 652 - Expert Witness Testimony
Effective: January 1, 2024

This legislation seeks to address an evidentiary issue created by a California appellate court decision. The new section of law would essentially say that if, as a condition to testify, a plaintiff's expert's opinion on causation must meet a reasonable medical certainty, then a defense expert must also testify to a reasonable medical certainty standard when offering an opinion regarding an alternative cause or causes of the plaintiff's injury. This new rule does not apply to an expert who is testifying that a matter cannot meet a reasonable degree of probability in the applicable field, and providing the basis for that opinion. The new standard only applies where the defense expert is going to offer alternative theories of causation.

TDC Group Position: Oppose



Florida

DEAD

FL SB 690 - Damages Recoverable in Wrongful Death Actions

This bill was 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 Group successfully defeated this bill last session and this year worked with a coalition to defeat this bill once again. However, we anticipate this bill being reintroduced next session.

TDC Position: Oppose

Louisiana

DEAD

LA HCR 57 - Medical Malpractice

This "study bill" sought to solicit input, recommendations, and advice from interested stakeholders on the current effectiveness of the medical malpractice limitations to compensation and medical review panels.

Louisiana (Cont.)

TDC Group worked with local partners to seek amendments to ensure medical liability insurance carriers would have input into this study.

TDC Position: Neutral

Maine

DEAD

ME HB 354 - Statute of Limitations for Medical Malpractice

This bill would have increased 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 proposed to change the beginning of the three-year start time to when a plaintiff discovers, or reasonably should have discovered, the alleged malpractice. TDC Group worked with our coalition partners to defeat this bill.

TDC Position: Oppose

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

This bill would have increased the statute of limitations from two to three years, and doubled 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 would have increased the amount a jury may award in punitive damages from \$250,000 to \$1 million. We actively opposed this bill.

TDC Position: Oppose

Michigan

ACTIVE

MI Collateral Source Amendments (Awaiting Introduction)

A draft proposal is circulating around the Michigan Capitol that seeks to amend the order of judgement statute for medical malpractice by (1) allocating the non-economic damage cap to future non-economic damages first (this would leave a larger portion of past non-economic damages for pre-judgment interest to be calculated), (2) applying interest calculations before applying a set-off from a settling defendant, and (3) reducing future damages to present value at a simple interest rate (current law is reduction compounded annually). TDC Group is working closely with our trade partners to get ahead of the bill and potentially stop its introduction.

TDC Position: Oppose



Minnesota

ENACTED

MN HB 1019 / SB 997 / HB 447 (Chapter 73 – 2023) - Wrongful Death **Effective: May 27, 202**

These bills were amended into the State's Omnibus Civil Law Bill (HB 447). The new law 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 statute of repose of six years (triggered by the date of the act or omission) and within three years of the person's death. TDC Group advocated against this bill.

TDC Position: Oppose

DEAD

MN HB 464 / SB 638 - Medical Malpractice Claims

This bill would have modified 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 stated the cause of action would not accrue until discovery of the alleged malpractice, error, mistake, or failure to cure. This bill was not heard prior to adjournment, and it died in committee.

TDC Position: Oppose

Missouri

DEAD

MO HB 128 - Non-economic Damages

This bill would have removed long-term care facilities from the entities that are covered by the State's damages cap. TDC Group advocated against the bill. An earlier version of the bill, HB 1561, was defeated in 2022.

TDC Position: Oppose

MO HB 272 - Statute of Limitations for Personal Injury Claims

This bill would have reduced the statute of limitations for personal injury claims from five years to two years. TDC Group advocated for this bill.

TDC Position: Support

MO HB 273 - Collateral Source

This bill would have allowed 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 would have restricted parties from introducing evidence of the amount billed if it has been discounted and allowed parties to introduce evidence of the actual cost of care. TDC Group advocated in favor of this bill.

TDC Position: Support

MO SB 467 - Allocation of Damages

This bill would have allocated damages in the amount of fault attributable to each party or entity, regardless of when the person or entity is party to the suit. TDC Group advocated for this bill.

TDC Position: Support



Nevada

ENACTED

NV AB 398 - Prohibition of Defense Inside Limits Effective: 10/1/2023

Beginning October 1, 2023, this law provides that no insurer in Nevada may issue or renew a liability insurance policy that contains a provision that reduces the limit of liability by the cost of defense, legal costs and fees, and other expenses for claims; or otherwise limits the availability of coverage for the costs of defense, legal costs, and fees and other expenses for claims. After TDC Group and other stakeholders requested clarification, the Division of Insurance (DOI) and Governor issued emergency regulations stating that the legislation does not apply to liability insurance from Risk Retention Groups or captive insurance that does not cover third-party liability. By law, emergency regulations are valid for 120 days after filing and may not be renewed. It is expected that the DOI will begin the process to make these regulations permanent. It is likely that this legislation will negatively impact some of TDC Group's members.

TDC Position: Oppose

NV AB 404 - Increase Non-economic Damages Cap Effective: 10/1/2023

A compromise was reached that averted a wholesale retroactive repeal of the medical liability reforms put in place in 2002/2004, such as collateral source reductions, and a proposed increase to the cap on non-economic damages of \$2.5 million. The bill was amended to increase the non-economic damages cap from \$350,000 to \$750,000 over five years, followed thereafter by an annual 2.1% cost of living increase. Additionally, the statute of limitations will increase by one year, and plaintiffs' attorneys will be able to charge fees of up to 35%. TDC Group was instrumental in preserving medical liability reforms for Nevadans. It is our highest priority to defend medical liability reforms in every state.

TDC Position: Opposed until compromise was reached

New York

ACTIVE

NY SB 6636 / AB 6698 - Wrongful Death

New York re-introduced its wrongful death proposal on May 2, 2023. The bill adds grief damages, expands the pool of beneficiaries, and extends the statute of limitations. It has been fast-tracked through the legislative process. TDC Group is actively working with healthcare providers and industry partners to urge Governor Hochul to veto this legislation.

TDC Position: Oppose

ENACTED

NY AB 3007 / SB 4007 / Chapter 57 (2023) - New York State Budget: Section 18 Funding Effective: Section 18 Funding May 2, 2023, through June 15, 2024

New York adopted its 2023 state budget, and it contains funding for Section 18 excess coverage at the same level as last year's budget (\$102 million) and continues funding until June 15, 2024. TDC Group with our lobbying team advocated in support of this proposal.

TDC Position: Support

NY AB 3007 / SB 4007 / Chapter 57 (2023) - New York State Budget: Medical Professional Liability Insurance and Abortion Effective: May 3, 2023

An amendment to the Health and Mental Hygiene section of the proposed state budget further expands that medical professional insurers cannot take adverse action (e.g., cancellation, nonrenewal) against a provider on the sole basis that they provide abortion services that are legal in New York, including services related to the use or prescription of misoprostol. TDC Group actively worked to amend the language to make it clear the services are legally provided in the State of New York.

TDC Position: Neutral if amended



New York (Cont.)

DEAD

**NY AB 3007 / SB 4007 /
Chapter 57 (2023) - New York
State Budget: Prejudgment
Interest**

New York adopted its 2023 state budget, and the proposed changes to the current 9% prejudgment interest rate to set the interest rate at the market rate (the weekly average one-year constant maturity Treasury yield) failed. TDC Group with our lobbying team advocated in support of this proposal.

TDC Position: Support

**NY AB 234 – Disclosure of
Medical Records**

This bill would have provided 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.

TDC Position: Support

**NY SB 152 - Prohibition on
Destruction of Medical Records
and Cause of Action**

This bill would have established 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.

TDC Position: Monitor

**NY SB 1024 - Economic Loss,
Calculation of Healthcare
Costs, Affidavit of Merit**

This bill would have made a series of procedural changes to malpractice proceedings intended to create a more level playing field between parties and to bring down the cost of adjudicating actions. The proposal sought to clarify that both non-economic 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.

TDC Position: Support

**NY SB 1052 - DFS (Department
of Financial Services) Study on
the Adequacy and Affordability
of MPL Payouts and Insurance
Coverage**

This bill would have required 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.

TDC Position: Monitor

**NY SB 2368 / HB 7448 and SB
2410 / HB 7450 - MPL Civil
Action Enhanced Contingency
Fees MPL**

These bills would have amended the contingency fee rules for attorneys in medical, dental, and podiatric malpractice actions to permit applications for enhanced fees.

TDC Position: Oppose

**NY AB 4597 / SB 2796 - Medical
Malpractice Excess Line
Insurance**

This bill would have repealed the requirement that excess line brokers must obtain a declination from the State's medical malpractice insurance pool before the broker can place primary insurance in the excess line market.

TDC Position: Monitor

Rhode Island

ACTIVE

**RI SB 1057 - Fair and
Reasonable Charge for
Healthcare Services**

This bill mandates in civil actions for personal injury or wrongful death that only the "billed" amount for medical care may be introduced into evidence. It also makes inadmissible the amount actually paid to satisfy the cost of medical care. We provided opposition testimony.

TDC Position: Oppose



Rhode Island (Cont.)

RI SB 1058 - Punitive Damages in Civil Actions for Willful Conduct

This bill changes the standard for the award of punitive damages to a plaintiff. Currently, punitive damages are allowed for egregious and morally reprehensible conduct. This bill would permit punitive damages for willful or wanton conduct that foreseeably harms another person. We provided opposition testimony.

TDC Position: Oppose

ENACTED

RI HB 5513/SB 1056 - Death by Wrongful Act
Effective Date: 01/01/2024

This proposal was amended to increase the minimum damages that must be awarded to a prevailing plaintiff in a wrongful death case from \$250,000 to \$350,000. Prior to the amendment, the increase would have been to increase the minimum damages to \$365,000. Additionally, the amendment eliminated an annual consumer price index (CPI) increase. Prior to the amendment, the \$365,000 higher amount would have been increased each year after January 31, 2024, by the percentage increase in the CPI. TDC Group worked with its coalition partners to oppose this bill and testified in opposition.

TDC Position: Oppose

Tennessee

Borngne ex rel. Hyter v. Chattanooga-Hamilton County Hosp. Auth.

Tennessee Supreme Court (2023)

A 3-2 majority of the Tennessee Supreme Court held that a defendant healthcare provider cannot be compelled to provide expert opinion testimony against another defendant healthcare provider as to whether the co-defendant acted within the standard of care. In doing so, the three-justice majority established a new “evidentiary privilege” that a party may not be compelled to provide expert testimony. According to the concurring opinion (that agreed in the result and not the establishment of a new privilege), the creation of this privilege is contrary to most states, including Arkansas, Alabama, Colorado, Kansas, Kentucky, Louisiana, Minnesota, Missouri, New Hampshire, North Carolina, South Dakota, Texas, Virginia, and Washington. Only Oregon and Tennessee have established this privilege.

Texas

DEAD

TX HB 536 - Healthcare Liability Claim Limits

This proposal was the annual effort to tie the cap on non-economic damages in medical liability claims to the Consumer Price Index (CPI). TDC Group worked with its coalition partners to defeat this bill.

TDC Position: Oppose

TX HB 888 - Healthcare Liability Claim Statute of Limitations

This bill would have extended 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 Group worked with other interested parties in Texas to oppose this legislation and ensured that testimony was provided opposing portions of the bill that would increase liability exposure for healthcare professionals.

TDC Position: Oppose

TX SB 1198 - Statute of Limitations on a Healthcare Liability Claim

This bill proposed extending 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, thereby increasing liability for healthcare providers. TDC Group worked to defeat this legislation because it would have increased liability for healthcare providers.

TDC Position: Oppose



Washington

DEAD

WA HB 1649 / SB 5059 - Prejudgment Interest

These bills would have created 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. TDC Group's coalition presented testimony in multiple committees in opposition to the bill, and ultimately the bill failed.

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.

