

EDITORIAL

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True grit: A tale of Texas tort reform

The name “Texas” originated with the Caddo Native Americans, who called themselves “Tejas,” meaning “those who are friends.” True to precedent, modern-day Texans have transformed their state into an especially friendly place to practice obstetrics and gynecology.

The struggle tested the grit of tort reform advocates for more than 25 years, but proved the power of state-level efforts.

■ How the test was won

Back in 1977, Texas enacted the Medical Liability and Insurance Improvement Act, limiting noneconomic damages to \$500,000, plus cost-of-living increases.* These increases eventually raised the cap to about \$1.3 million.

The Texas Supreme Court headed off full implementation with a 1988 ruling that made the cap unconstitutional, except in cases of wrongful death. The size of awards for noneconomic damages soon shot up, as did insurance premiums. The state of professional liability was becoming unfriendly, and not just in Texas.

Texas decided to do something about it, and in 2003 legislated another cap on noneconomic liability awards: \$250,000 for physicians and \$500,000 for institutions. Concerned that the state supreme court would again outlaw a cap, tort reform proponents marshaled forces and pursued a constitutional amendment that would give the legislature, by a three-fifths vote of its

members, the right to set limits in liability litigation. Last fall, Texans approved the amendment by a 51% to 49% margin.

Within weeks, liability insurers stepped forward and let it be known that they would reduce premiums. There are reports that Healthcare Indemnity, a large insurer for hospitals, has reduced premiums by 20%. Texas Medical Liability Trust, a large insurer, initially reduced rates by 12%, and then decreased them by another 5%.

■ Guess who fought the law

The dust has cleared. These rate reductions establish cause-and-effect between limits on noneconomic damages and stabilization of insurance premiums. The Lone Star State stands as proof.

Who fought the law that made Texas an obstetrician-friendly state? Our good friends in personal injury litigation mounted a spirited and well-funded campaign. The trial lawyers outspent the advocates of tort reform, but did not get the better of them.

As national leaders continue to reason with a US Senate unfriendly to tort reform, state leaders can appeal to voters and legislators to understand and acknowledge that frivolous lawsuits and unjust jackpot-style awards lead directly to deteriorating access to care. The Texas saga proved that legislation at the state level can create a physician-friendly place to practice.

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FAST TRACK

The Lone Star State proves it: Limits on noneconomic damages can stabilize liability insurance rates

* Noneconomic damages include pain and suffering, physical impairment, disfigurement, and other losses such as loss of consortium or companionship.