
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 20 Session of
2019

INTRODUCED BY BAKER, SCARNATI, CORMAN, LANGERHOLC, HUTCHINSON,
MENSCH, J. WARD, REGAN, YAW, MARTIN, BARTOLOTTA, ALLOWAY,
DISANTO, FOLMER, WHITE, LAUGHLIN, BROOKS, AUMENT AND KILLION,
FEBRUARY 1, 2019

REFERRED TO JUDICIARY, FEBRUARY 1, 2019

A RESOLUTION

1 Directing the Legislative Budget and Finance Committee to
2 conduct a study of the impact of venue for medical
3 professional liability actions on access to medical care and
4 maintenance of health care systems in this Commonwealth and
5 requesting that the Pennsylvania Supreme Court delay action
6 on the proposed amendment to Pa.R.C.P. No. 1006.

7 WHEREAS, The Commonwealth faced a medical malpractice crisis
8 in 2002; and

9 WHEREAS, The Project on Medical Liability in Pennsylvania
10 {project}, funded by The Pew Charitable Trusts, reported in 2003
11 that Philadelphia County and Allegheny County ranked high in
12 malpractice filings per population among 45 large counties
13 across the United States as surveyed by Federal officials in
14 1992 and 1996; and

15 WHEREAS, The rate in Allegheny County, which includes the
16 City of Pittsburgh, was more than 50% above the national median;
17 and

18 WHEREAS, The rate in Philadelphia County, which includes the
19 City of Philadelphia, was more than double the national median;

1 and

2 WHEREAS, Payouts in Pennsylvania were higher than in any
3 neighboring state; and

4 WHEREAS, Payouts in Pennsylvania were nearly one-third above
5 the national average; and

6 WHEREAS, In contrast, payouts in California were more than
7 one-third below the national average; and

8 WHEREAS, The rising cost of legal claims was the greatest
9 component affecting affordability of liability coverage; and

10 WHEREAS, The project further reported that Pennsylvania
11 exceeded the national average for legal costs because of high
12 claims rates and payouts; and

13 WHEREAS, Plaintiffs were twice as likely to win jury trials
14 in the City of Philadelphia as in the rest of the country, and a
15 substantial percentage of cases there resulted in verdicts
16 greater than \$1 million; and

17 WHEREAS, A 2003 Pennsylvania Medical Society report on the
18 Pennsylvania medical liability crisis found that practitioners
19 were leaving the State or retiring early due to availability and
20 affordability issues when obtaining medical liability coverage;
21 and

22 WHEREAS, The report further stated that new practitioners
23 were choosing to practice elsewhere when faced with the same
24 conditions; and

25 WHEREAS, Pennsylvania was on a precipice of adverse events in
26 patient care as physicians scaled back their practices to
27 exclude obstetric deliveries and surgeries and as the number of
28 specialists in general surgery, neurosurgery, orthopedic surgery
29 and obstetrics decreased; and

30 WHEREAS, To address the medical malpractice crisis, the

1 General Assembly passed Act 13 of 2002, known as the Medical
2 Care Availability and Reduction of Error (Mcare) Act {Act 13};
3 and

4 WHEREAS, Section 102 of Act 13 sets forth the following:

5 The General Assembly finds and declares as follows:

6 (1) It is the purpose of this act to ensure that medical
7 care is available in this Commonwealth through a
8 comprehensive and high-quality health care system.

9 (2) Access to a full spectrum of hospital services and
10 to highly trained physicians in all specialties must be
11 available across this Commonwealth.

12 (3) To maintain this system, medical professional
13 liability insurance has to be obtainable at an affordable and
14 reasonable cost in every geographic region of this
15 Commonwealth.

16 (4) A person who has sustained injury or death as a
17 result of medical negligence by a health care provider must
18 be afforded a prompt determination and fair compensation.

19 (5) Every effort must be made to reduce and eliminate
20 medical errors by identifying problems and implementing
21 solutions that promote patient safety.

22 (6) Recognition and furtherance of all of these elements
23 is essential to the public health, safety and welfare of all
24 the citizens of Pennsylvania;

25 and

26 WHEREAS, Section 514(a) of Act 13 sets forth the following:

27 (a) Declaration of policy.--The General Assembly further
28 recognizes that recent changes in the health care delivery
29 system have necessitated a revamping of the corporate structure
30 for various medical facilities and hospitals across this

1 Commonwealth. This has unduly expanded the reach and scope of
2 existing venue rules. Training of new physicians in many
3 geographic regions has also been severely restricted by the
4 resultant expansion of venue applicability rules. These
5 physicians and health care institutions are essential to
6 maintaining the high quality of health care that our citizens
7 have come to expect;
8 and

9 WHEREAS, Section 514(b) of Act 13 established the Interbranch
10 Commission on Venue {Commission} for actions relating to medical
11 professional liability; and

12 WHEREAS, Under Act 13, the Commission consists of
13 representatives of the executive, judicial and legislative
14 branches of State government; and

15 WHEREAS, Act 13 charged the Commission with reviewing and
16 analyzing the issue of venue as it relates to medical
17 professional liability actions filed in this Commonwealth; and

18 WHEREAS, Act 13 further charged the Commission with reporting
19 its findings and recommendations for legislative action or
20 promulgation of court rules on venue to the General Assembly and
21 the Pennsylvania Supreme Court; and

22 WHEREAS, The Commission issued its report on August 8, 2002;
23 and

24 WHEREAS, A majority of Commission members recommended "that
25 venue be limited in medical professional liability actions to a
26 county where a cause of action arose or where a transaction or
27 occurrence took place out of which a cause of action arose";
28 and

29 WHEREAS, The General Assembly, in keeping with the
30 Commission's report, passed Act 127 of 2002 {Act 127}; and

1 WHEREAS, Act 127 provided that, as a matter of public policy,
2 there existed a need to change venue requirements for medical
3 professional liability actions; and

4 WHEREAS, Act 127 added 42 Pa.C.S. § 5101.1, providing in
5 part:

6 (b) General rule.--Notwithstanding any other provision to
7 the contrary, a medical professional liability action may be
8 brought against a health care provider for a medical
9 professional liability claim only in the county in which the
10 cause of action arose;

11 and

12 WHEREAS, On January 27, 2003, the Pennsylvania Supreme Court
13 modified Pa.R.C.P. No. 1006, relating to venue, by adding the
14 following subdivision:

15 (a.1) Except as otherwise provided by subdivision (c), a
16 medical professional liability action may be brought against a
17 health care provider for a medical professional liability claim
18 only in a county in which the cause of action arose. This
19 provision does not apply to a cause of action that arises
20 outside the Commonwealth;

21 and

22 WHEREAS, Changes governing venue in medical professional
23 liability actions have been in place, largely without further
24 modification, for more than 15 years; and

25 WHEREAS, The medical malpractice crisis which existed in
26 Pennsylvania in 2002 has abated; and

27 WHEREAS, On December 22, 2018, the Civil Procedural Rules
28 Committee published notice in the Pennsylvania Bulletin that it
29 intends to propose to the Pennsylvania Supreme Court a change to
30 Pa.R.C.P. No. 1006 eliminating the provision for venue in

1 medical malpractice liability actions as that provision "no
2 longer appears warranted"; and

3 WHEREAS, The Senate notes that it is important to determine
4 the extent to which venue provisions adopted more than 15 years
5 ago have alleviated Pennsylvania's medical malpractice crisis;
6 and

7 WHEREAS, The Senate further notes that it is important to
8 determine the effects of rescinding the venue provisions;
9 therefore be it

10 RESOLVED, That the Senate direct the Legislative Budget and
11 Finance Committee to conduct a study of the impact of venue for
12 medical professional liability actions on access to medical care
13 and maintenance of health care systems in this Commonwealth; and
14 be it further

15 RESOLVED, That the study include an assessment the effects of
16 the 2003 changes governing venue in medical professional
17 liability actions on the following:

18 (1) availability of medical care in this Commonwealth;

19 (2) availability of, and access to, a full spectrum of
20 hospital services and highly trained physicians in all
21 specialties across this Commonwealth;

22 (3) availability, cost and affordability of medical
23 professional liability insurance in every geographic region
24 of this Commonwealth;

25 (4) prompt determination of, and fair compensation for,
26 injuries and death resulting from medical negligence by
27 health care providers in Pennsylvania;

28 and be it further

29 RESOLVED, That the study include an assessment of the likely
30 impact of the Civil Procedural Rules Committee proposed

1 amendment to Pa.R.C.P. No. 1006 on the matters enumerated above;
2 and be it further

3 RESOLVED, That the study include a history of claims made to,
4 and payouts made by, the Pennsylvania Professional Liability
5 Joint Underwriting Association from 2003 through the present;
6 and be it further

7 RESOLVED, That the Legislative Budget and Finance Committee
8 hold at least one public hearing prior to preparing its report
9 and accept testimony from affected parties, including, but not
10 limited to, representatives of the health care industry, the
11 insurance industry and the legal community; and be it further

12 RESOLVED, That the Legislative Budget and Finance Committee
13 report its findings to the General Assembly no later than
14 January 1, 2020; and be it further

15 RESOLVED, That the Senate request that the Pennsylvania
16 Supreme Court delay action on the proposed amendment to
17 Pa.R.C.P. No. 1006 until the Legislative Budget and Finance
18 Committee submits its report to the General Assembly; and be it
19 further

20 RESOLVED, That the Secretary of the Senate transmit duly
21 certified copies of this resolution to the Justices of the
22 Pennsylvania Supreme Court and the members of the Civil
23 Procedural Rules Committee.