
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 160 Session of
2003

INTRODUCED BY ORIE, KUKOVICH, COSTA, ERICKSON, C. WILLIAMS,
RAFFERTY, LEMMOND AND FERLO, OCTOBER 8, 2003

AS AMENDED, MARCH 10, 2004

A RESOLUTION

1 Directing the Joint State Government Commission to study the
2 feasibility of establishing an alternative to the existing
3 liability system with regard to medical professional
4 liability actions.

5 WHEREAS, Pennsylvania is facing its third medical liability
6 crisis since the 1970s; and

7 WHEREAS, The General Assembly has already enacted numerous
8 reforms to the medical tort system, including the elimination of
9 joint and several liability, limitations on punitive damages and
10 revisions of the expert witness, collateral source and
11 remittitur concepts; and

12 WHEREAS, The General Assembly passed comprehensive
13 legislation, Act 13 of 2002, designed to address the medical
14 malpractice issue systemically; and

15 WHEREAS, The Pennsylvania Supreme Court has approved official
16 rules limiting venue shopping and frivolous lawsuits and
17 requiring certifications of merit in medical professional
18 liability cases; and

1 WHEREAS, In its June 2003 report entitled "Medical
2 Malpractice Insurance: Multiple Factors Have Contributed to
3 Increased Premium Rates," the United States General Accounting
4 Office concluded that falling investment income, rising
5 reinsurance costs and, particularly, losses on medical
6 malpractice claims have all contributed to recent increases in
7 malpractice premium rates; and

8 WHEREAS, In January 2003, Americans for Insurance Reform
9 released a study entitled "Medical Malpractice Insurance: Stable
10 Losses/Unstable Rates in Pennsylvania," which concluded that
11 medical insurance premiums have risen and fallen in relation to
12 the state of the economy while payouts over the last decade have
13 approximately tracked the rate of medical inflation; and

14 WHEREAS, In its June 6, 2003, report entitled "Understanding
15 Pennsylvania's Medical Malpractice Crisis," the Project on
16 Medical Liability in Pennsylvania, funded by the Pew Charitable
17 Trusts, found that this debate is peppered with advocates' own
18 statistics, that judicial data on malpractice litigation and
19 jury verdicts are incomplete and that general economic trends
20 explain part of Pennsylvania's situation, but other State-
21 specific factors affect the affordability of liability coverage
22 in Pennsylvania, including high assessments for the State's
23 catastrophic loss fund, cyclical changes within the insurance
24 industry and the rising cost of legal claims; and

25 WHEREAS, In its June 13, 2003, report entitled "Resolving the
26 Medical Malpractice Crisis: Fairness Considerations," the
27 Project on Medical Liability in Pennsylvania concluded that the
28 traditional medical malpractice system performs poorly on many
29 benchmarks of substantive and procedural fairness because:

30 (1) the "negligence" standard for malpractice is too

1 narrow in that a fairer system would compensate all those who
2 suffered harm as the result of an avoidable medical error;

3 (2) the system is not predictable and consistent in its
4 treatment of cases or providers;

5 (3) a fairer system would emphasize preventing future
6 errors rather than punishing individual malfeasance; and

7 (4) the financing of the system is unsteady, with
8 anecdotal evidence that it threatens access to care for some
9 patients;

10 and

11 WHEREAS, The current system has fostered a culture of blame
12 in which participants must worry about their own legal risk
13 instead of the common good, honesty and candor are hindered,
14 making it difficult to rid the system of bad providers or even
15 determine the proper scope of health care, and some victims are
16 left without compensation while others receive huge rewards; and

17 WHEREAS, Despite the actions already taken by two branches of
18 State government and in light of the foregoing studies it
19 continues to be urged that more health care liability reforms
20 are necessary to lower the cost of liability insurance and that
21 more actions need to be taken to reduce medical errors and
22 ensure that meritorious claims continue to receive fair and
23 adequate compensation; and

24 WHEREAS, There is a wide range of strategies that exist to
25 control costs, improve predictability and attract insurers to
26 the Pennsylvania market, including, in addition to conventional
27 tort and insurance reforms, systematic changes to the way
28 injuries caused by medical care are identified, compensated and
29 prevented; therefore be it

30 RESOLVED, That there is a need for a comprehensive study of

1 the value of making a long-term systemic change that would
2 replace the current medical tort liability scheme with a more
3 reliable and predictable system of medical justice that protects
4 patients against bad practices, protects providers who act
5 reasonably, collects adequate data and interprets standards of
6 care so that all participants know where they stand and where
7 they must improve; and be it further

8 RESOLVED, That the Senate direct the Joint State Government
9 Commission to conduct a study to consider the feasibility of
10 creating a new system, such as a new no fault administrative
11 system, a peer review system or specialized medical malpractice
12 courts, which will promote better health care practices,
13 regulate costs and rates and fairly compensate patients; and be
14 it further

15 RESOLVED, That the Joint State Government Commission create
16 an advisory committee composed of individuals from health care,
17 law and insurance as deemed appropriate by it to assist in
18 exploring alternative mechanisms to resolve health care
19 liability claims; and be it further

20 RESOLVED, That the Joint State Government Commission report
21 its findings and recommendations to the Senate no later than
22 ~~June 1, 2004~~ NOVEMBER 30, 2004.

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