

iNET Legislative Review

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Introducing iNET Legislative Review

iNET Legislative Review is a project of the Institute for New Economy Technologies and the Salmon P. Chase College of Law at Northern Kentucky University. Each review features an analysis of legislation pending in the Kentucky General Assembly and assesses its potential effects on the development of a knowledge-based economy in Kentucky. New reviews will appear several times each week during the legislative session.

SB 1 (Sens. Williams, Roeding)

AN ACT proposing amendments to the Constitution of Kentucky relating to health care matters

KEYWORDS: CONSTITUTIONAL AMENDMENT, TORT REFORM,
MEDICAL MALPRACTICE, MEDICAL INNOVATION,
JOB RETENTION

Available at: <http://www.lrc.state.ky.us/record/03rs/SB1.htm>

Purpose of the bill:

The bill seeks to amend the Kentucky Constitution to give the General Assembly authority to address the decreasing availability of and increasing cost of medical malpractice insurance.

Summary of provisions:

The bill would amend the state constitution by adding a new section 54A to the state constitution and making conforming amendments to sections 14, 54, and 241. If also approved by the voters at an election, the amendments would allow the General Assembly to limit recoveries in medical malpractice actions. The General Assembly would have specific authority to cap non-economic losses, cap punitive damages, provide for mandatory alternative dispute resolution, and enact a statute of limitations.

Effects of current law bill would alter:

Sections 14, 54, and 241 of the Kentucky Constitution comprise the so-called “jural rights doctrine.” See *Ludwig v. Johnson*, 49 S.W.2d 347 (Ky. 1932). The Kentucky Supreme Court interprets this doctrine to limit the ability of the General Assembly to restrict or abolish common law causes of action existing when Kentucky adopted its current Constitution in 1891. Section 54 in particular provides, “The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or injuries to person or property.” The section was a direct response to fears that interest groups would pressure the General Assembly to limit the damages available in personal injury actions.

Justification:

The jural rights doctrine inhibits the ability of the General Assembly to respond to the current medical malpractice insurance problem that recently led West Virginia doctors to stage a work stoppage and to protests in other states. Availability of malpractice insurance is decreasing and premiums for available insurance are increasing rapidly. Stateline.org reports that doctors in Kentucky faced premium increases of twenty percent last year. See Mary Guiden, *States Grapple with Malpractice Crisis*, <http://www.stateline.org/story.do?storyId=231278>. Supporters of reform assert that the problem is less severe in California owing to its Medical Injury Compensation Reform Act, passed in the 1970s in legislative response to a similar situation. Absent the proposed constitutional amendments, however, the jural rights doctrine would preclude adoption of such an approach in Kentucky. See *Williams v. Wilson*, 972 S.W.2d 260 (1998) (modification of Kentucky law of punitive damages held unconstitutional).

Technological impact:

Proponents and opponents of malpractice reform disagree about the source of the problem, variously citing frivolous lawsuits, escalating jury verdicts, insurance industry investment losses, and bad doctors among the relevant factors. Regardless of the source, “unchecked, unbalanced tort law can remove good products from the marketplace, discourage innovation, limit the supply of necessary medical services, result in loss of jobs, and unduly raise costs for consumers.” Victor E. Schwartz et al., *Illinois Tort Law: A Rich History of Cooperation and Respect Between the Courts and the Legislature*, 28 Loyola University of Chicago Law Journal 745, 746 (1997). As the Kentucky Supreme Court observed in *Perkins v. Northeastern Log Homes*, 808 S.W.2d 809, 812 (1991), the drafters of the current state constitution distrusted the General Assembly. They restrained it in part by giving Kentucky tort law a constitutional dimension that precludes Kentucky from following the example of states like California or Illinois.

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