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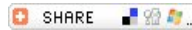
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OPINION

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Lawsuit reform progresses in states

By **Quin Hillyer**

Examiner Columnist | 1/27/09 4:45 PM

While lawmakers in the nation's capital do back flips kowtowing to plaintiffs' lawyers who heavily finance their campaigns, individual states continue to move in the opposite direction to rein in lawsuit abuse by the plaintiffs' bar.

States repeatedly have found that reasonable limits on lawsuits help boost their economies and/or health-care systems, whereas unfettered jackpot justice is seriously detrimental.

Major efforts at lawsuit reforms are underway in at least four states: Wyoming, Georgia, Oregon, and President Barack Obama's home state of Hawaii. But in Congress, the plaintiffs' bar is securing a huge windfall with the "sue anytime" rules of the new Lilly Ledbetter Act, slated for final passage this week, and by pushing so many other measures that the U.S. Chamber of Commerce's Institute for Legal Reform created a whole web site dedicated to tracking them. (See <http://www.triallawyerearmarks.com/>).

What solons in DC ignore, but what state lawmakers recognize, is that lawsuit abuse can wreck economies or chase away medical specialists in droves.

In Hawaii, for instance, at least 100 doctors have left the state just since 2007. Orthopedic surgeons are particularly scarce. Numerous local news reports there quote doctors saying that the culprit is the high cost of insurance against malpractice lawsuits.

A bipartisan group of legislators tried last year to pass lawsuit reforms, but fell just short. Now state Sen. Josh Green, a Democrat, vows to try again: "I will work with every lawyer, with every nurse, with every educator to pass this bill because it's for people," said Sen. Green. "It's not about doctors versus lawyers."

Likewise in Wyoming, where popular Gov. Dave Freudenthal prominently included a call for lawsuit reform in his State of the State Address on Jan. 20. Five years ago, a proposed constitutional amendment to put a cap on "non-economic damages" for medical malpractice garnered 49.65 percent of the vote, just shy of passage. But after five more years of lawsuit abuse, Freudenthal seems confident that more voters have warmed to the idea.

In Oregon, a 2007 state Supreme Court decision upended a law that effectively provided liability caps for all doctors who work for state government entities. Now a Democratic leader in the state Senate, Alan Bates, says he wants protections for "every doctor in the state," and Republican leaders in both houses of the legislature also say they will push for liability limits.

Georgia, meanwhile, already adopted liability caps in 2005. They proved so effective that Republican Gov. Sonny Perdue now is calling for a second round of lawsuit reform.

This time, Perdue's main push will be to adopt a "loser pays" rule requiring plaintiffs to pick up all legal fees if their suits are dismissed early in the process (an indicator of frivolousness).

Mirroring an issue also high on Congress's agenda (but moving in the opposite direction than Democratic congressional leaders prefer), Perdue also is proposing immunity from lawsuits for Georgia biomedical companies if the product being challenged in court already has received approval

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from the federal Food and Drug Administration.

All these efforts show recognition that tort reform has worked superbly in states where it has been tried, especially ones formerly known as legal "hellholes" like Mississippi and Alabama.

In Hawaii, for instance, lawsuit reform boosters have brought in a doctor from Mississippi, Dr. Connie McCaa, to personally attest to the improvements in the Magnolia State since Mississippians passed tort reform in 2003.

"The number of lawsuits have gone from 2,500, down to 196 last year," Dr. McCaa told Hawaii's KHNL-TV.

And Alabama, the original "tort hell," put caps on punitive damages while electing a less jackpot-friendly state Supreme Court. Lawsuit reformers there say it's no coincidence that Alabama's economy soon started experiencing higher growth and lower unemployment after 1999 reforms were upheld by the more business-friendly court majority that took hold in 2001.

Also, despite cries from plaintiffs' lawyers that public safety would suffer if lawsuit awards were limited, the opposite happened: Workplace injuries and illnesses dropped from 7.5 per 100 workers in 1999 to 4.7 per 100 in 2006.

The states always have been known as "laboratories of democracy." Congress should recognize when those laboratory experiments are working, and emulate them - not undue them, as Congress now seems determined to do.

Quin Hillyer is associate editorial page editor for The Washington Examiner. He can be reached at qhillyer@gmail.com.

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POSTED Jan 27, 2009

Quin Hillyer: "Porky has a good point. I did not originally have the words "class-action" in there, but a glitch in the process resulted in "class-action" being inserted several times by mistake. It is being fixed shortly."

POSTED Feb 11, 2009

mcb: "I agree that abuse can have an adverse effect on the medical profession but tort reform has just hurt those that have been wronged with misdiagnosis and patient dumping. What is their recourse when dumped patients only ask for a refund - nothing extra, just a refund and doctors or hospitals just ignore you and lawyers refuse to take a case? Just curious about what you think about it."

Sports



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