



Ankin Law Office LLC

Protecting the Rights of Injured Workers

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Do Damage Cap Laws Pass Constitutional Muster?

By Admin - CO on December 1st, 2011



Nearly 30 states currently limit the amount of damages that can be received in a medical malpractice lawsuit, **according to the American Medical Association**. States with damage caps vary wildly in their limitations and the types of damages that are limited. For instance, California limits non-compensatory damages at \$250,000, while Nebraska limits total damages at \$1.75 million.

In 2005, an Illinois law invoked limitations on non-economic damages at \$500,000 in lawsuits alleging **medical malpractice**, including **wrongful death**, against a physician, and \$1 million in lawsuits against a hospital. In 2010, however, the Illinois Supreme Court deemed the damage cap to be unconstitutional because it interfered with the authority of judges and juries to reduce verdicts.

Similarly, a wrongful death lawsuit filed in Indiana as a result of a **catastrophic stage collapse** that killed seven people challenges the constitutionality of the Indiana damage cap. The plaintiffs' lawsuit argues that Indiana's damage cap of \$5 million violates the Constitution's due process and equal protection clauses, as well as the Indiana Constitution.

Some state legislatures have recently proposed tort reform initiatives that would invoke damage caps. For instance, earlier this year, the Tennessee legislature approved comprehensive medical malpractice tort reform that limits non-economic damages, such as pain and suffering, to \$750,000 in most cases; caps punitive damages at two times compensatory damage or \$500,000, whichever is greater; and prohibits punitive damages in most **products liability** lawsuits. Similarly, the North Carolina Senate approved a tort reform bill that would cap non-economic damages at \$500,000.

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On the other hand, Virginia proposed legislation to raise the cap on damages in medical malpractice cases from \$2 million to \$3 million and would increase the amount by \$50,000 every year until 2031, but the bill was ultimately vetoed by the governor on March 31, 2011. Given the overwhelming support for the Virginia bill, however, it remains uncertain whether the veto will stand or whether the bill will pass.

Medical malpractice damage caps undoubtedly hurt patients and the general public by failing to hold doctors, hospitals and other medical professionals financially responsible for their injuries or deaths that they have caused. The **Chicago medical malpractice attorneys** at Ankin Law Offices, LLC are committed to protecting the rights of victims of medical malpractice and their families.

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