



TAXPAYERS
PROTECTION
ALLIANCE

QUANTIFYING THE POST-VICP VAX TAX

*Economic Modeling of Civil Tort Exposure and Per-Dose
Liability Costs Following Vaccine Injury Compensation
Program Repeal*

Ross Marchand
David Williams

OCTOBER 2026

INTRODUCTION AND HISTORICAL CONTEXT: THE 1986 COMPROMISE

During the early 1980s, a surge in product liability lawsuits targeted manufacturers of essential childhood vaccines, most notably the whole-cell pertussis component of the DTP vaccine. Civil court juries awarded several high-dollar verdicts, causing liability insurance premiums to skyrocket,¹ and rendering future litigation risk nearly unquantifiable for pharmaceutical companies. As a 1986 article in *The Journal of the American Medical Association* by Alan R. Hinman, MD explained, “Information provided by the three commercial manufacturers of diphtheria and tetanus toxoids and pertussis vaccine, adsorbed (DTP vaccine) indicates a striking increase in the number of lawsuits filed against them alleging damage caused by the vaccine. Only one such case was filed in 1978, whereas 73 were filed in 1984.”² The average amount claimed per suit skyrocketed from \$10 million in 1978 to \$46.5 million in 1984.³

Faced with extreme litigation exposure and unsustainable defense costs, numerous pharmaceutical manufacturers exited the vaccine market entirely. By 1986, the United States faced severe supply shortages for critical childhood immunizations, leaving the national public health framework in a precarious state. In direct response to this risk of market collapse, Congress enacted the National Childhood Vaccine Injury Act of 1986, establishing the National Vaccine Injury Compensation Program (VICP).⁴

VICP created a specialized no-fault administrative system under the U.S. Court of Federal Claims—often referred to as the “Vaccine Court.” Under this system, injured parties file claims against the Department of Health and Human Services (HHS) rather than suing manufacturers. To finance injury compensation without burdening federal expenditures or forcing manufacturers into bankruptcy, Congress instituted an excise tax of \$0.75 per covered disease dose, deposited directly into the Vaccine Injury Compensation Trust Fund. Although injured parties can still file civil lawsuits after pursuing a claim with the VICP, vaccine manufacturers received substantial protection from state tort claims, restoring market stability.

Since its inception, more than 30,000 petitions have been filed with the VICP, and total compensation arising out of the program approaches \$6 billion.⁵ Yet, public officials such as HHS Secretary Robert F. Kennedy Jr. have characterized VICP as “broken” and a “morass of inefficiency, favoritism, and outright corruption.”⁶ Legislative proposals such as the End the Vaccine Carveout Act would effectively neuter the VICP by allowing individuals to bypass the

¹ <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=2718&context=dlr>.

² <https://jamanetwork.com/journals/jamapediatrics/article-abstract/512916>.

³ *Id.*

⁴ <https://www.congress.gov/99/statute/STATUTE-100/STATUTE-100-Pg3743.pdf>.

⁵ <https://www.hrsa.gov/sites/default/files/hrsa/vicp/vicp-stats-09-01-26.pdf>.

⁶ <https://spectrumlocalnews.com/us/snplus/news/2025/07/29/hhs-secretary-rfk-jr--blasts-vaccine-injury-program--vows-overhaul-changes>.

program entirely and file direct civil lawsuits in state or federal court against vaccine manufacturers.⁷ To model the impact of ending or effectively ending the VICP, the Taxpayers Protection Alliance (TPA) attempts to quantify the toll of expanded litigation on manufacturers and—consequently—patients.

DECONSTRUCTING THE POST-VICP CIVIL TORT LANDSCAPE

A repeal of the VICP would dismantle the current administrative shield against most civil litigation, thrusting vaccine injury claims back into the conventional state and federal civil court systems. Under a post-VICP regime, claimants would seek compensation through standard product liability lawsuits, including those alleging failure to warn.

Transitioning from an administrative “no-fault” mechanism to standard civil torts fundamentally alters the cost structure of injury resolution. Under the VICP, proceedings are streamlined before specialized special masters, avoiding lengthy jury trials and the extensive evidentiary burdens associated with proving fault or causation under state tort law. Re-exposing manufacturers to civil suits reintroduces massive legal defense bills, uncertain jury verdicts, and systemic liability insurance surcharges.

Methodological Foundation: Transitioning to Civil Litigation

To quantify the financial burden of dissolving the VICP, TPA projects three primary cost drivers: direct legal defense costs, annualized judicial verdict payouts, and secondary commercial liability insurance risk premiums.

STEP-BY-STEP ECONOMIC MODELING AND CALCULATIONS

To calculate the total financial exposure borne by vaccine manufacturers post-VICP, TPA’s analysis builds from baseline historical petition rates through defense costs, plaintiff win rates, and liability insurance market adjustments.

Step 1: Projecting Annual Civil Suit Volume

In 2021, a high-water mark of 2,057 petitions was filed under the VICP.⁸ We utilize this figure as a baseline proxy to capture potential expansions in claim eligibility (such as incorporating long-debunked autism spectrum claims under revised regulations or policy). In a traditional civil litigation landscape, not all administrative claims translate into formal lawsuits due to legal representation costs, procedural hurdles, and jurisdictional limits. Assuming a conservative 40

⁷ <https://www.congress.gov/bill/119th-congress/house-bill/4668>.

⁸ <https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/vaccines/dicp-update-02-21-2023.pdf>.

percent conversion rate from administrative petitions to formal civil tort lawsuits and excluding settlements:

Annual Civil Suits = 2,057 petitions × 0.40 = ~823 annual civil lawsuits

Step 2: Calculating Annual Legal Defense Overhead

Product liability litigation—especially involving complex biomedical data, epidemiological testimony, and toxicological causation—is exceptionally resource-intensive. Industry benchmarks establish the average defense cost for a complex medical product liability lawsuit at \$876,000 per case.⁹ Applying this figure to projected case volume yields:

Annual Defense Costs = 823 lawsuits × \$876,000 = ~\$721 million

Step 3: Estimating Judicial Verdict and Settlement Payouts

Across historical medical product liability litigation, the median jury verdict stands at \$1,254,000,¹⁰ while the historical plaintiff win rate in product liability trials averages 34 percent.¹¹ Multiplying the suit volume, the median award, and the victory probability gives the expected annual liability payout:

Annual Verdict Payouts = 823 lawsuits × \$1,254,000 median verdict × 0.34 win proportion = ~\$351 million

Step 4: Combining Direct Costs and Applying Liability Insurance Surcharges

Summing direct defense overhead (\$721 million) and projected verdict payouts (\$351 million) establishes a baseline direct annual litigation cost of ~\$1.1 billion. However, corporate entities do not retain this unhedged risk on their balance sheets. Manufacturers mitigate catastrophic litigation exposure through commercial product liability insurance. Actuarial modeling indicates that insuring unhedged, volatile litigation risks of this scale incurs an estimated 54 percent overhead surcharge (covering administrative margin, underwriting, reinsurance, and capital reserves)¹²:

Total Post-VICP Liability Expense = \$1.072 billion × 1.54 = \$1,650,880,000 (~\$1.7 billion)

⁹ <https://www.products-liability-insurance.com/defense-costs-inside-or-outside-the-limits-of-liability/>.

¹⁰ <https://www.millerandzois.com/maryland-injury-victim-help-center/product-liability-statistics/>.

¹¹ <https://bjs.ojp.gov/library/publications/federal-tort-trials-and-verdicts-2002-03>.

¹² <https://www.iii.org/table-archive/23867>.

Calculating the Implied “Vax Tax” and Comparative Policy Analysis

To translate this total enterprise liability burden into a per-dose cost increment—the effective “Vax Tax”—the aggregate expense of \$1.7 billion must be distributed across the total volume of CDC-recommended covered vaccine doses distributed annually in the United States.

For instance, CDC data show that over 5 billion covered vaccine doses were distributed from 2006 to 2023.¹³ Assuming an annual distribution of approximately 300 million doses, the post-VICP liability burden equates to approximately \$5.67 per dose.

Scenario	Primary Funding Mechanism	Annual Financial Exposure	Per-Dose Cost / Tax Impact
Current VICP Regime	\$0.75 statutory excise tax	~\$300 million (Trust Fund collections)	\$0.75 per dose (predictable)
Post-VICP Baseline Direct Costs	Direct corporate defense & litigation payouts	~\$1.1 billion	~\$3.67 per dose
Post-VICP All-In Exposure (With Insurance)	Commercial liability insurance premiums & reserves	~\$1.7 billion	~\$5.67 per dose
Net Cost Shift / Impact	Shift from public trust fund to commercial tort market	+\$1.4 billion net burden increase	4.9x to 7.6x increase per dose

CONCLUSION AND POLICY IMPLICATIONS

Comparing the current legislative framework to a post-VICP tort landscape reveals a stark economic trade-off. Under the existing VICP structure, claims are paid under a predictable statutory excise tax of \$0.75 per disease component, providing financial stability for vaccine manufacturers and guaranteed compensation for injured parties without threatening market viability.

¹³ <https://www.flsenate.gov/Session/Bill/2026/1756/Analyses/2026s01756.pre.hp.PDF>

Repealing the VICP would replace this predictable tax with an implicit and highly volatile “vax tax” ranging between \$3.67 and \$5.67 per dose— conservatively representing a five-fold increase in per-dose liability overhead. Because vaccine manufacturing requires heavy capital investment and fixed marginal production costs, manufacturers would inevitably pass these elevated insurance and litigation expenses onto healthcare providers and patients.

Ultimately, repealing the VICP would reallocate and multiply costs into an unpredictable civil litigation process often untethered from rigorous evidentiary standards. The resulting surge in per-dose expenses could mean significant increases in vaccine prices and diminished healthcare innovation across the country—and around the world. Policymakers should avoid the “vax tax” at all costs.