

ENROLLED

**Senate Bill No. 532**

(By Senators Trump, Woelfel,  
Plymale, Stollings, Takubo, Prezioso,  
Carmichael, Ferns and Beach)

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[Passed March 12, 2015; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7E-1, §55-7E-2, §55-7E-3, §55-7E-4, §55-7E-5 and §55-7E-6, all relating to immunity from civil liability for clinical practice plans and personnel associated with medical and dental schools; providing legislative findings and declarations of public purpose; defining terms; limiting civil liability for clinical practice plans and their directors, officers, employees, agents and contractors; providing for minimum medical professional liability insurance requirements; and determining the applicability and construction of the immunity from civil liability.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7E-1, §55-7E-2, §55-7E-3, §55-7E-4, §55-7E-5 and §55-7E-6, all to read as follows:

**ARTICLE 7E. IMMUNITY FROM CIVIL LIABILITY FOR CLINICAL PRACTICE  
PLANS AND PERSONNEL ASSOCIATED WITH MEDICAL AND  
DENTAL SCHOOLS.**

**§55-7E-1. Findings and declaration of public purpose.**

1           The Legislature finds and declares:

2           That the citizens of this state have been and should continue to be well served by physicians  
3 and dentists educated and trained at the Marshall University School of Medicine, the West Virginia  
4 School of Osteopathic Medicine, the West Virginia University School of Medicine and the West  
5 Virginia University School of Dentistry;

6           That the state's medical and dental schools play a vital role in ensuring an adequate supply  
7 of qualified and trained physicians throughout the state;

8           That the education, training and research provided at the state's medical and dental schools  
9 and state medical school are an essential governmental function in which the state has a substantial  
10 and compelling interest;

11           That the provision of clinical services to patients by faculty members,, residents, fellows and  
12 students of the state's medical and dental schools and state medical school, is an inseparable  
13 component of the aforementioned education, training and research;

14           That the provision of the clinical services significantly contributes to the ongoing quality,  
15 effectiveness and scope of the state's health care delivery system;

16           That the provision of the clinical services also raises the public profile and reputation of the  
17 respective institutions both regionally and nationally, thereby facilitating the recruitment of talented  
18 faculty, residents, fellows and students to their programs of study;

19           That the provision of the clinical services generates additional revenues needed to fund  
20 faculty salaries and other costs associated with the overall operation of the state medical school and  
21 state's medical and dental schools;

22           That the continued availability of the revenues to the state medical school and state's medical

1 and dental schools is necessary to their ongoing operation and delivery of the benefits described  
2 above;

3         That the continued availability of the revenues is compromised by the cost of medical  
4 professional liability insurance, the cost of defending medical professional liability claims, and the  
5 cost of compensating patients who suffer medical injury or death;

6         That the state concurrently has an interest in providing a system that makes available  
7 adequate and fair compensation to those individual patients who suffer medical injury or death;

8         That it is the duty and responsibility of the Legislature to balance the rights of individual  
9 patients to obtain adequate and fair compensation, with the substantial and compelling state interests  
10 set forth herein supporting the need for a financially viable system of medical and dental schools;

11         That, in balancing these important state interests, the Legislature acknowledges the sovereign  
12 immunity set forth in the West Virginia Constitution under Article VI, Section 35, to prevent the  
13 diversion of state moneys from legislatively appropriated purposes;

14         That, in conjunction with the provision of clinical services to patients by faculty members,  
15 , residents, fellows and students of the state's medical and dental schools, or state medical school,  
16 it is a common practice both here and in other states to create one or more clinical practice plans as  
17 nonprofit corporations;

18         That the clinical practice plans, among other things, administratively support clinical  
19 activities by holding real and personal property, offering personnel and financial management,  
20 providing billing and collection for services rendered, and disbursing excess revenues back to the  
21 respective medical and dental schools;

22         That the clinical practice plans become integrated with their respective state medical school  
23 and state's medical and dental schools and exclusively serve the interests of these schools and their

1 faculty;

2 That any moneys the clinical practice plans expend for the defense, settlement, and  
3 satisfaction of medical professional liability claims inevitably result in a shortfall of funds available  
4 to the medical and dental schools for faculty compensation and other operational purposes, thereby  
5 undermining the sovereign immunity otherwise granted to state institutions by the West Virginia  
6 Constitution;

7 That it is therefore reasonable and appropriate for the Legislature to provide immunity from  
8 civil liability to clinical practice plans and their respective directors, officers, employees and agents  
9 given the substantial and compelling state interests being served; and

10 That it is further reasonable and appropriate to require the state's medical and dental schools  
11 to maintain a level of medical professional liability insurance to adequately and fairly compensate  
12 patients who suffer medical injuries or death.

13 **§55-7E-2. Definitions.**

14 For purposes of this article:

15 (1) "Clinical practice plan" means any of the nonprofit corporations that are operated to assist  
16 the state medical school and state's medical and dental schools in providing clinical services to  
17 patients and which are controlled by governing boards all the voting members of which are faculty  
18 members or university officials. Clinical practice plans as defined herein shall be considered agents  
19 of the state.

20 (2) "Contractor" means an independent contractor, whether compensated or not, who is  
21 licensed as a health care professional under chapter thirty of this code, who is acting within the scope  
22 of his or her authority for a state medical school, state's medical and dental schools, or a clinical  
23 practice plan, and is a member of the faculty of a state's medical and dental schools or state medical

1 school.

2 (3) "Employee" means a director, officer, employee, agent or servant, whether compensated  
3 or not, who is licensed as a health care professional under chapter thirty of this code and who is  
4 acting within the scope of his or her authority or employment for a state's medical and dental  
5 schools, a state medical school or a clinical practice plan.

6 (4) "Health care" means any act or treatment performed or furnished, or which should have  
7 been performed or furnished, by any director, officer, employee, agent or contractor of a state  
8 medical school, state's medical and dental schools, or a clinical practice plan for, to or on behalf of  
9 a patient during the patient's medical care, treatment or confinement.

10 (5) "Medical injury" means injury or death to a patient arising or resulting from the rendering  
11 or failure to render health care.

12 (6) "Medical professional liability insurance" means a contract of insurance, or any  
13 self-insurance retention program established under the provisions of section ten, article five, chapter  
14 eighteen-b of this code, that pays for the legal liability arising from a medical injury.

15 (7) "Patient" means a natural person who receives or should have received health care from  
16 a director, officer, employee, agent or contractor of a state medical school, state's medical and dental  
17 schools, or a clinical practice plan under a contract, express or implied.

18 (8) "Scope of authority or employment" means performance by a director, officer, employee,  
19 agent or contractor acting in good faith within the duties of his or her office, employment or contract  
20 with a state medical school, state's medical and dental schools, or a clinical practice plan, but does  
21 not include corruption or fraud.

22 (9) "State's medical and dental schools" or "state medical school" means the Marshall  
23 University School of Medicine, the West Virginia School of Osteopathic Medicine, the West

1 Virginia University School of Medicine and the West Virginia University School of Dentistry.

2 **§55-7E-3. Immunity for clinical practice plans and their directors, officers, employees, agents**

3 **and contractors.**

4 Notwithstanding any other provision of this code, all clinical practice plans, and all  
5 employees and contractors of a state's medical and dental schools, state medical school or a clinical  
6 practice plan, are only liable up to the limits of insurance coverage procured through the State Board  
7 of Risk and Insurance Management in accordance with section four, article seven-e, chapter fifty-five  
8 of the code, arising from a medical injury to a patient, including death resulting, in whole or in part,  
9 from the medical injury, either through act or omission, or whether actual or imputed, while acting  
10 within the scope of their authority or employment for a state's medical and dental schools, state  
11 medical school or a clinical practice plan. The provisions of this article apply to the acts and  
12 omissions of all full-time, part-time, visiting and volunteer directors, officers, faculty members,  
13 residents, fellows, students, employees, agents and contractors of a state's medical and dental  
14 schools, state medical school or a clinical practice plan, regardless of whether the persons are  
15 engaged in teaching, research, clinical, administrative or other duties giving rise to the medical  
16 injury, regardless of whether the activities were being performed on behalf of a state's medical and  
17 dental schools, state medical school or on behalf of a clinical practice plan and regardless of where  
18 the duties were being carried out at the time of the medical injury.

19 **§55-7E-4. Medical professional liability insurance for state's medical and dental schools**

20 **and state medical schools.**

21 The State Board of Risk and Insurance Management shall provide medical professional  
22 liability insurance to all of the state's medical and dental schools, state medical school, all of their  
23 clinical practice plans and all of their directors, officers, employees, agents and contractors in an

1 amount to be determined by the State Board of Risk and Insurance Management, but in no event less  
2 than \$1.5 million for each occurrence after July 1, 2015, to increase to account for inflation by an  
3 amount equal to the Consumer Price Index published by the United States Department of Labor, up  
4 to \$2 million for each occurrence. The clinical practice plans shall pay for this insurance. The  
5 provision of professional liability insurance is not a waiver of immunity that any of the foregoing  
6 entities or persons may have pursuant to this article or under any other law. Any judgment obtained  
7 for a medical injury to a patient as a result of health care performed or furnished, or which should  
8 have been performed or furnished, by any employee or contractor of a state's medical and dental  
9 school, state medical school or clinical practice plan shall not exceed the limits of medical  
10 professional liability insurance coverage provided by the State Board of Risk and Insurance  
11 Management pursuant to this section.

12 **§55-7E-5. Applicability of provisions.**

13         The provisions of this article are applicable prospectively to all claims that occur and are  
14 commenced on or after July 1, 2015.

15 **§55-7E-6. Construction.**

16         The provisions of this article operate in addition to, and not in derogation of, any of the  
17 provisions contained in article seven-b of this chapter.