

Senate Bill No. 532

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

[Introduced February 20, 2015;
referred to the Committee on the Judiciary;
and then to the Committee on Finance.]

A BILL 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.**

[S. B. NO. 532]

§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 is an essential governmental function in which the state has a substantial and compelling interest;

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

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

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

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

21 That the continued availability of the revenues to the state's medical and dental schools is

[S. B. NO. 532]

1 necessary to their ongoing operation and delivery of the benefits described above;

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

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

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

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

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

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

21 That the clinical practice plans become integrated with their respective medical and dental
22 schools and exclusively serve the interests of these schools and their faculty;

[S. B. NO. 532]

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

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

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

12 **§55-7E-2. Definitions.**

13 For purposes of this article:

14 (1) "Clinical practice plan" means any of the nonprofit corporations that are operated to assist
15 the state's medical and dental schools in providing clinical services to patients and which are
16 controlled by governing boards all the voting members of which are faculty members or university
17 officials.

18 (2) "Contractor" means an independent contractor, whether compensated or not, who is
19 licensed as a health care professional under chapter thirty of this code and who is acting within the
20 scope of his or her authority for a state medical school or a clinical practice plan.

21 (3) "Employee" means a director, officer, employee, agent or servant, whether compensated
22 or not, who is licensed as a health care professional under chapter thirty of this code and who is

[S. B. NO. 532]

1 acting within the scope of his or her authority or employment for a state medical school or a clinical
2 practice plan.

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

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

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

12 (7) "Patient" means a natural person who receives or should have received health care from
13 a director, officer, employee, agent or contractor of a state medical school or a clinical practice plan
14 under a contract, express or implied.

15 (8) "Scope of authority or employment" means performance by a director, officer, employee,
16 agent or contractor acting in good faith within the duties of his or her office, employment or contract
17 with a state medical school or a clinical practice plan, but does not include corruption or fraud.

18 (9) "State's medical and dental schools" or "state medical school" means the Marshall
19 University School of Medicine, the West Virginia School of Osteopathic Medicine, the West
20 Virginia University School of Medicine and the West Virginia University School of Dentistry.

21 **§55-7E-3. Immunity for clinical practice plans and their directors, officers, employees, agents**
22 **and contractors.**

[S. B. NO. 532]

1 Notwithstanding any other provision of this code, all clinical practice plans, and all
2 employees and contractors of a state medical school or a clinical practice plan, are not liable for a
3 medical injury to a patient, including death resulting, in whole or in part, from the medical injury,
4 either through act or omission, or whether actual or imputed, while acting within the scope of their
5 authority or employment for a state medical school or a clinical practice plan. The provisions of this
6 article apply to the acts and omissions of all full-time, part-time, visiting and volunteer directors,
7 officers, faculty members, resident physicians, fellows, students, employees, agents and contractors
8 of a state medical school or a clinical practice plan, regardless of whether the persons are engaged
9 in teaching, research, clinical, administrative or other duties giving rise to the medical injury,
10 regardless of whether the activities were being performed on behalf of a state medical school or on
11 behalf of a clinical practice plan and regardless of where the duties were being carried out at the time
12 of the medical injury.

13 **§55-7E-4. Medical professional liability insurance for state medical schools.**

14 The State Board of Risk and Insurance Management shall provide medical professional
15 liability insurance to all of the state's medical and dental schools, all of their clinical practice plans
16 and all of their directors, officers, employees, agents and contractors in an amount to be determined
17 by the State Board of Risk and Insurance Management, but in no event less than \$1 million for each
18 occurrence. The provision of professional liability insurance is not a waiver of immunity that any
19 of the foregoing entities or persons may have pursuant to this article or under any other law. Any
20 judgment obtained for a medical injury to a patient as a result of health care performed or furnished,
21 or which should have been performed or furnished, by any employee or contractor of a state medical
22 school or clinical practice plan shall not exceed the limits of medical professional liability insurance

[S. B. NO. 532]

1 coverage provided by the State Board of Risk and Insurance Management pursuant to this section.

2 **§55-7E-5. Applicability of provisions.**

3 The provisions of this article are applicable prospectively to all civil actions commenced on
4 or after July 1, 2015.

5 **§55-7E-6. Construction.**

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

(NOTE: The purpose of this bill is to provide immunity from civil liability for clinical practice plans, and personnel associated with the state's medical and dental schools. It also requires the State Board of Risk and Insurance Management to provide medical professional liability insurance for all of the state's medical and dental schools.

This article is new; therefore, strike-throughs and underscoring have been omitted.)