

## **Senate Bill No. 6**

2 (By Senators Ferns, Boley, Carmichael, Gaunch, Leonhardt, Mullins, Nohe, Trump, Blair,  
3 Plymale, Stollings, Cole (Mr. President) and Takubo)

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<sup>5</sup> [Introduced January 14, 2015; referred to the Committee on the Judiciary.]

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9 A BILL to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-  
10 7B-9c and §55-7B-11 of the Code of West Virginia, 1931, as amended; and to amend said  
11 code by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all relating  
12 to medical professional liability; adding provisions to control the increase in the cost of  
13 liability insurance and to maintain access to affordable health care services for West  
14 Virginians; providing mechanism to increase the limitation on civil damages in medical  
15 malpractice cases to account for inflation by linking increases to the Consumer Price Index;  
16 requiring appellate courts to review de novo certain decisions made by circuit court judges;  
17 adding provisions limiting the admissibility and use of certain information; and requiring  
18 adjustment of verdicts for past medical expenses.

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

20 That §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c and §55-  
21 7B-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said  
22 code be amended by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all to

1 read as follows:

2 **ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.**

3 **§55-7B-1. Legislative findings and declaration of purpose.**

4 The Legislature hereby finds and declares that:

5 The citizens of this state are entitled to the best medical care and facilities available and that  
6 health care providers offer an essential and basic service which requires that the public policy of this  
7 state encourage and facilitate the provision of such service to our citizens;

8 That As in every human endeavor the possibility of injury or death from negligent conduct  
9 commands that protection of the public served by health care providers be recognized as an  
10 important state interest;

11 That Our system of litigation is an essential component of this state's interest in providing  
12 adequate and reasonable compensation to those persons who suffer from injury or death as a result  
13 of professional negligence, and any limitation placed on this system must be balanced with and  
14 considerate of the need to fairly compensate patients who have been injured as a result of negligent  
15 and incompetent acts by health care providers;

16 That Liability insurance is a key part of our system of litigation, affording compensation to  
17 the injured while fulfilling the need and fairness of spreading the cost of the risks of injury;

18 That A further important component of these protections is the capacity and willingness of  
19 health care providers to monitor and effectively control their professional competency, so as to  
20 protect the public and insure to the extent possible the highest quality of care;

21 That It is the duty and responsibility of the Legislature to balance the rights of our individual  
22 citizens to adequate and reasonable compensation with the broad public interest in the provision of

1 services by qualified health care providers and health care facilities who can themselves obtain the  
2 protection of reasonably priced and extensive liability coverage;

3       **That** In recent years, the cost of insurance coverage has risen dramatically while the nature  
4 and extent of coverage has diminished, leaving the health care providers, the health care facilities  
5 and the injured without the full benefit of professional liability insurance coverage;

6       **That** Many of the factors and reasons contributing to the increased cost and diminished  
7 availability of professional liability insurance arise from the historic inability of this state to  
8 effectively and fairly regulate the insurance industry so as to guarantee our citizens that rates are  
9 appropriate, that purchasers of insurance coverage are not treated arbitrarily and that rates reflect the  
10 competency and experience of the insured health care providers and health care facilities;

11       **That** The unpredictable nature of traumatic injury health care services often result in a greater  
12 likelihood of unsatisfactory patient outcomes, a higher degree of patient and patient family  
13 dissatisfaction and frequent malpractice claims, creating a financial strain on the trauma care system  
14 of our state, increasing costs for all users of the trauma care system and impacting the availability  
15 of these services, requires appropriate and balanced limitations on the rights of persons asserting  
16 claims against trauma care health care providers, this balance must guarantee availability of trauma  
17 care services while mandating that these services meet all national standards of care, to assure that  
18 our health care resources are being directed towards providing the best trauma care available; **and**

19       **That** The cost of liability insurance coverage has continued to rise dramatically, resulting in  
20 the state's loss and threatened loss of physicians, which, together with other costs and taxation  
21 incurred by health care providers in this state, have created a competitive disadvantage in attracting  
22 and retaining qualified physicians and other health care providers;

1       The Legislature further finds that Medical liability issues have reached critical proportions  
2 for the state's long-term health care facilities, as: (1) Medical liability insurance premiums for  
3 nursing homes in West Virginia continue to increase and the number of claims per bed has increased  
4 significantly; (2) the cost to the state Medicaid program as a result of such higher premiums has  
5 grown considerably in this period; (3) current medical liability premium costs for some nursing  
6 homes constitute a significant percentage of the amount of coverage; (4) these high costs are leading  
7 some facilities to consider dropping medical liability insurance coverage altogether; and (5) the  
8 medical liability insurance crisis for nursing homes may soon result in a reduction of the number of  
9 beds available to citizens in need of long-term care; and

10       Decisions of the Supreme Court of Appeals of West Virginia have narrowly interpreted the  
11 provisions of this article, resulting in uncertainty over its application and have expanded claims  
12 against health care facilities, health care providers and related entities. The decisions frustrate the  
13 objectives of this article which are to control the increase in the cost of liability insurance and to  
14 maintain access to affordable health care services for our citizens.

15       Therefore, the purpose of this article is to provide for a comprehensive resolution of the  
16 matters and factors which the Legislature finds must be addressed to accomplish the goals set forth  
17 in this section. In so doing, the Legislature has determined that reforms in the common law and  
18 statutory rights of our citizens must be enacted together as necessary and mutual ingredients of the  
19 appropriate legislative response relating to:

20       (1) Compensation for injury and death;  
21       (2) The regulation of rate making and other practices by the liability insurance industry,  
22 including the formation of a physicians' mutual insurance company and establishment of a fund to

1 assure adequate compensation to victims of malpractice; and  
2           (3) The authority of medical licensing boards to effectively regulate and discipline the health  
3 care providers under such board.

4 **§55-7B-2. Definitions.**

5           (a) "Board" means the state Board of Risk and Insurance Management.  
6           (b) "Collateral source" means a source of benefits or advantages for economic loss that the  
7 claimant has received from:

8           (1) Any federal or state act, public program or insurance which provides payments for  
9 medical expenses, disability benefits, including workers' compensation benefits or other similar  
10 benefits. Benefits payable under the Social Security Act are not considered payments from collateral  
11 sources except for Social Security disability benefits directly attributable to the medical injury in  
12 question;

13           (2) Any contract or agreement of any group, organization, partnership or corporation to  
14 provide, pay for or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy  
15 or other health care services or provide similar benefits, but excluding any amount that a group,  
16 organization, partnership, corporation or health care provider agrees to reduce, discount or write off  
17 of a medical bill;

18           (3) Any group accident, sickness or income disability insurance, any casualty or property  
19 insurance (including automobile and homeowners' insurance) which provides medical benefits,  
20 income replacement or disability coverage, or any other similar insurance benefits, except life  
21 insurance, to the extent that someone other than the insured, including the insured's employer, has  
22 paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

1               (4) Any contractual or voluntary wage continuation plan provided by an employer or  
2 otherwise or any other system intended to provide wages during a period of disability.

3               (c) "Consumer Price Index" means the most recent Consumer Price Index for All Consumers  
4 published by the United States Department of Labor.

5               (d) "Emergency condition" means any acute traumatic injury or acute medical condition  
6 which, according to standardized criteria for triage, involves a significant risk of death or the  
7 precipitation of significant complications or disabilities, impairment of bodily functions, or, with  
8 respect to a pregnant woman, a significant risk to the health of the unborn child.

9               (e) "Health care" means:

10               (1) Any act, service or treatment provided under, pursuant to or in the furtherance of a  
11 physician's plan of care, a health care facility's plan of care, medical diagnosis or treatment;  
12               (2) Any act, service or treatment performed or furnished, or which should have been  
13 performed or furnished, by any health care provider or person supervised by or acting under the  
14 direction of a health care provider or licensed professional for, to or on behalf of a patient during  
15 the patient's medical care, treatment or confinement, including, but not limited to, staffing, medical  
16 transport, custodial care or basic care, infection control, positioning, hydration, nutrition, and similar  
17 patient services; and

18               (3) The process employed by health care providers and health care facilities for the  
19 appointment, employment, contracting, credentialing, privileging and supervision of health care  
20 providers.

21               (f) "Health care facility" means any clinic, hospital, nursing home, ~~or~~ assisted living facility,  
22 ~~including personal care home, residential care community and residential board and care home, or~~

1 end stage renal disease facility, home health agency, child welfare agency, group residential facility,  
2 behavioral health care facility or comprehensive community mental health/mental retardation center,  
3 in and licensed healthcenter, intellectual/developmental disability center, or program, or other  
4 ambulatory health care facility, in and licensed, regulated or certified by the State of West Virginia  
5 under state or federal law and any state-operated institution or clinic providing health care and any  
6 related entity to the health care facility.

7           (g) "Health care provider" means a person, partnership, corporation, professional limited  
8 liability company, health care facility or institution licensed by, or certified in, this state or another  
9 state, to provide health care or professional health care services, including, but not limited to, a  
10 physician, osteopathic physician, physician assistant, advanced practice registered nurse, hospital,  
11 health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist,  
12 chiropractor, physical therapist, psychologist, speech therapist, occupational therapist, psychologist,  
13 pharmacist, technician, certified nursing assistant, emergency medical service personnel, emergency  
14 medical services authority or agency, any person supervised by or acting under the direction of a  
15 licensed professional, any person taking actions or providing service or treatment pursuant to or in  
16 furtherance of a physician's plan of care, a health care facilities plan of care, medical diagnosis or  
17 treatment; or an officer, employee or agent thereof of a healthcare provider acting in the course and  
18 scope of such the officer's, employee's or agent's employment.

19           (h) "Medical injury" means injury or death to a patient arising or resulting from the rendering  
20 of or failure to render health care.

21           (i) "Medical professional liability" means any liability for damages resulting from the death  
22 or injury of a person for any tort or breach of contract based on health care services rendered, or

1 which should have been rendered, by a health care provider or health care facility to a patient. It also  
2 means other claims that may be contemporaneous to or related to the alleged tort or breach of  
3 contract or otherwise provided in the context of rendering health care services.

4 (j) “Medical professional liability insurance” means a contract of insurance or any actuarially  
5 sound self-funding program that pays for the legal liability of a health care facility or health care  
6 provider arising from a claim of medical professional liability. In order to qualify as medical  
7 professional liability insurance for purposes of this article, a self-funding program for an individual  
8 physician must meet the requirements and minimum standards set forth in section twelve of this  
9 article.

10 (k) “Noneconomic loss” means losses, including, but not limited to, pain, suffering, mental  
11 anguish and grief.

12 (l) “Patient” means a natural person who receives or should have received health care from  
13 a licensed health care provider under a contract, expressed or implied.

14 (m) “Plaintiff” means a patient or representative of a patient who brings an action for medical  
15 professional liability under this article.

16 (n) “Related entity” means any corporation, foundation, partnership, joint venture,  
17 professional limited liability company, limited liability company, trust, affiliate or other entity under  
18 common control or ownership, whether directly or indirectly, partially or completely, legally,  
19 beneficially or constructively, with a health care provider or health care facility; or which owns  
20 directly, indirectly, beneficially or constructively any part of a health care provider or health care  
21 facility.

22 (n) (o) “Representative” means the spouse, parent, guardian, trustee, attorney or other legal

1 agent of another.

2 **§55-7B-7. Testimony of expert witness on standard of care.**

3       (a) The applicable standard of care and a defendant's failure to meet the standard of care, if  
4 at issue, shall be established in medical professional liability cases by the plaintiff by testimony of  
5 one or more knowledgeable, competent expert witnesses if required by the court. Expert testimony  
6 may only be admitted in evidence if the foundation therefor is first laid establishing that: (1) The  
7 opinion is actually held by the expert witness; (2) the opinion can be testified to with reasonable  
8 medical probability; (3) the expert witness possesses professional knowledge and expertise coupled  
9 with knowledge of the applicable standard of care to which his or her expert opinion testimony is  
10 addressed; (4) the expert witness's opinion is grounded on a scientifically valid and properly applied  
11 methodology; (5) the expert witness maintains a current license to practice medicine with the  
12 appropriate licensing authority of any state of the United States: *Provided*, That the expert witness'  
13 license has not been revoked or suspended in the past year in any state; and (5) (6) the expert witness  
14 is engaged or qualified in a medical field in which the practitioner has experience and/or training in  
15 diagnosing or treating injuries or conditions similar to those of the patient. If the witness meets all  
16 of these qualifications and devoted, at the time of the medical injury, sixty percent of his or her  
17 professional time annually to the active clinical practice in his or her medical field or specialty, or  
18 to teaching in his or her medical field or specialty in an accredited university, there shall be a  
19 rebuttable presumption that the witness is qualified as an expert. The parties shall have the  
20 opportunity to impeach any witness' qualifications as an expert. Financial records of an expert  
21 witness are not discoverable or relevant to prove the amount of time the expert witness spends in  
22 active practice or teaching in his or her medical field unless good cause can be shown to the court.

1           (b) Nothing contained in this section ~~may be construed to limit limits~~ a trial court's discretion  
2 to determine the competency or lack of competency of a witness on a ground not specifically  
3 enumerated in this section.

4           (c) An appellate court shall review de novo whether the circuit court applied the proper  
5 standards in qualification of an expert witness, in deciding whether to admit or exclude expert  
6 testimony and to ascertain whether the expert evidence was scientific, technical or otherwise  
7 specialized knowledge.

8 **§55-7B-7a. Admissibility and use of certain information.**

9           (a) In an action brought, there is a rebuttable presumption that the following information may  
10 not be introduced unless it applies specifically to the injured person or it involves substantially  
11 similar conduct that occurred within one year of the particular incident involved:

12           (1) A state or federal survey, audit, review or other report of a health care provider or health  
13 care facility;  
14           (2) Disciplinary actions against a health care provider's license, registration or certification;  
15           (3) An accreditation report of a health care provider or health care facility; and  
16           (4) An assessment of a civil or criminal penalty.

17           (b) In any action brought, if the health care facility or health care provider demonstrates  
18 compliance with the minimum staffing requirements under state law, the health care facility or health  
19 care provider is entitled to a rebuttable presumption that appropriate staffing was provided.

20           (c) Information under this section may only be introduced in a proceeding if:  
21           (1) It has been affirmed by the entry of a final order of the applicable state or federal board,  
22 agency or department and after exhaustion of any applicable administrative or civil appeal and is not

1 subject to further appeal; and

2 (2) It is otherwise admissible under the West Virginia Rules of Evidence.

3 (d) Information described in subsection (a) of this section may not be used by any person or

4 entity in an advertisement unless the advertisement includes all of the following:

5 (1) The date of the survey report, disciplinary action, accreditation report or civil or criminal

6 penalty;

7 (2) A statement of the frequency of inspections of the health care facility or individual;

8 (3) If a finding or deficiency cited in a report or survey has been substantially corrected or

9 if the applicable plan of compliance or correction has been accepted, a statement that the finding or

10 deficiency has been substantially corrected or the plan of correction or compliance was accepted and

11 the date that the finding or deficiency was substantially corrected or the plan of correction or

12 compliance was accepted;

13 (4) If no person was injured as a result of a finding or deficiency cited in a report or survey,

14 a statement to this effect; and

15 (5) A statement that the advertisement is neither authorized nor endorsed by any government

16 agency.

17 **§55-7B-8. Limit on liability for noneconomic loss.**

18 (a) In any professional liability action brought against a health care provider pursuant to this

19 article, the maximum amount recoverable as compensatory damages for noneconomic loss shall may

20 not exceed \$250,000 per for each occurrence, regardless of the number of plaintiffs or the number

21 of defendants or, in the case of wrongful death, regardless of the number of distributees, except as

22 provided in subsection (b) of this section.

1               (b) The plaintiff may recover compensatory damages for noneconomic loss in excess of the  
2 limitation described in subsection (a) of this section, but not in excess of \$500,000 for each  
3 occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of  
4 wrongful death, regardless of the number of distributees, where the damages for noneconomic losses  
5 suffered by the plaintiff were for: (1) Wrongful death; (2) permanent and substantial physical  
6 deformity, loss of use of a limb or loss of a bodily organ system; or (3) permanent physical or mental  
7 functional injury that permanently prevents the injured person from being able to independently care  
8 for himself or herself and perform life sustaining activities.

9               (c) On January 1, 2004, and in each year thereafter, the limitation for compensatory damages  
10 contained in subsections (a) and (b) of this section shall increase to account for inflation by an  
11 amount equal to the Consumer Price Index published by the United States Department of Labor, up  
12 to fifty percent of the amounts specified in those subsections ~~(b) and (c)~~ as a limitation of  
13 compensatory noneconomic damages.

14               (d) The limitations on noneconomic damages contained in subsections (a), (b), (c) and (e)  
15 of this section are not available to any defendant in an action pursuant to this article which does not  
16 have medical professional liability insurance in the aggregate amount of at least \$1 million per for  
17 each occurrence covering the medical injury which is the subject of the action.

18               (e) If subsection (a) or (b) of this section, as enacted during the 2003 regular session of the  
19 Legislature, or the application thereof to any person or circumstance, is found by a court of law to  
20 be unconstitutional or otherwise invalid, the maximum amount recoverable as damages for  
21 noneconomic loss in a professional liability action brought against a health care provider under this  
22 article shall thereafter not exceed \$1 million.

1   **§55-7B-9. Several liability.**

2           (a) In the trial of a medical professional liability action under this article involving multiple  
3   defendants, the trier of fact shall report its findings on a form provided by the court which contains  
4   each of the possible verdicts as determined by the court. Unless otherwise agreed by all the parties  
5   to the action, the jury shall be instructed to answer special interrogatories, or the court, acting  
6   without a jury, shall make findings as to:

- 7           (1) The total amount of compensatory damages recoverable by the plaintiff;  
8           (2) The portion of the damages that represents damages for noneconomic loss;  
9           (3) The portion of the damages that represents damages for each category of economic loss;  
10          (4) The percentage of fault, if any, attributable to each plaintiff; and  
11          (5) The percentage of fault, if any, attributable to each of the defendants.

12          (b) In assessing percentages of fault, the trier of fact shall consider only the fault of the parties  
13   in the litigation at the time the verdict is rendered and ~~shall~~ may not consider the fault of any other  
14   person who has settled a claim with the plaintiff arising out of the same medical injury. *Provided,*  
15   That, upon the creation of the patient injury compensation fund provided for in article twelve-c,  
16   chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any  
17   amount of economic damages awarded by the trier of fact which the plaintiff has been unable to  
18   collect, the trier of fact shall, in assessing percentages of fault, consider the fault of all alleged  
19   parties, including the fault of any person who has settled a claim with the plaintiff arising out of the  
20   same medical injury.

21          (c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of  
22   several, but not joint, liability against each defendant in accordance with the percentage of fault

1 attributed to the defendant by the trier of fact.

2           (d) To determine the amount of judgment to be entered against each defendant, the court shall  
3 first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted  
4 verdict by the amount of any preverdict settlement arising out of the same medical injury. The court  
5 shall then, with regard to each defendant, multiply the total amount of damages remaining, with  
6 interest, by the percentage of fault attributed to each defendant by the trier of fact. The resulting  
7 amount of damages, together with any post-judgment interest accrued, shall be the maximum  
8 recoverable against the defendant.

9           (e) Upon the creation of the patient injury compensation fund provided for in article twelve-c,  
10 chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any  
11 amount of economic damages awarded by the trier of fact which the plaintiff has been unable to  
12 collect, the court shall, in determining the amount of judgment to be entered against each defendant,  
13 first multiply the total amount of damages, with interest, recoverable by the plaintiff by the  
14 percentage of each defendant's fault and that amount, together with any post-judgment interest  
15 accrued, is the maximum recoverable against said defendant. Prior to the court's entry of the final  
16 judgment order as to each defendant against whom a verdict was rendered, the court shall reduce the  
17 total jury verdict by any amounts received by a plaintiff in settlement of the action. When any  
18 defendant's percentage of the verdict exceeds the remaining amounts due plaintiff after the  
19 mandatory reductions, each defendant shall be liable only for the defendant's pro rata share of the  
20 remainder of the verdict as calculated by the court from the remaining defendants to the action. The  
21 plaintiff's total award may never exceed the jury's verdict less any statutory or court-ordered  
22 reductions.

1           (f) Nothing in this section is meant to eliminate or diminish any defenses or immunities  
2 which exist as of the effective date of this section, except as expressly noted in this section.

3                 (g) Nothing in this article is meant to preclude a health care provider from being held  
4 responsible for the portion of fault attributed by the trier of fact to any person acting as the health  
5 care provider's agent or servant or to preclude imposition of fault otherwise imputable or attributable  
6 to the health care provider under claims of vicarious liability. A health care provider may not be held  
7 vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the  
8 alleged agent does not maintain professional liability insurance covering the medical injury which  
9 is the subject of the action in the aggregate amount of at least \$1 million for each occurrence.

10 §55-7B-9a. Reduction in compensatory damages for economic losses for payments from  
11 collateral sources the same injury.

12               (a) In any action arising after the effective date of this section, a defendant who has been  
13 found liable to the plaintiff for damages for medical care, rehabilitation services, lost earnings or  
14 other economic losses may present to the court, after the trier of fact has rendered a verdict, but  
15 before entry of judgment, evidence of payments the plaintiff has received for the same injury from  
16 collateral sources.

(b) In any a hearing held pursuant to subsection (a) of this section, the defendant may present evidence of future payments from collateral sources if the court determines that:

19           (1) There is a preexisting contractual or statutory obligation on the collateral source to pay  
20 the benefits:

21                   (2) The benefits, to a reasonable degree of certainty, will be paid to the plaintiff for expenses  
22 the trier of fact has determined the plaintiff will incur in the future; and

1                 (3) The amount of the future expenses is readily reducible to a sum certain.  
2                 (c) In ~~the a~~ hearing held pursuant to subsection (a) of this section, the plaintiff may present  
3 evidence of the value of payments or contributions he or she has made to secure the right to the  
4 benefits paid by the collateral source.

5                 (d) After hearing the evidence presented by the parties, the court shall make the following  
6 findings of fact:

7                 (1) The total amount of damages for economic loss found by the trier of fact;  
8                 (2) The total amount of damages for each category of economic loss found by the trier of fact;  
9                 (3) The total amount of allowable collateral source payments received or to be received by  
10 the plaintiff for the medical injury which was the subject of the verdict in each category of economic  
11 loss; and

12                 (4) The total amount of any premiums or contributions paid by the plaintiff in exchange for  
13 the collateral source payments in each category of economic loss found by the trier of fact.

14                 (e) The court shall subtract the total premiums the plaintiff was found to have paid in each  
15 category of economic loss from the total collateral source benefits the plaintiff received with regard  
16 to that category of economic loss to arrive at the net amount of collateral source payments.

17                 (f) The court shall then subtract the net amount of collateral source payments received or to  
18 be received by the plaintiff in each category of economic loss from the total amount of damages  
19 ~~awarded the plaintiff by the trier of fact for that category of economic loss~~ to arrive at the adjusted  
20 verdict.

21                 (g) The court ~~shall~~ may not reduce the verdict rendered by the trier of fact in any category of  
22 economic loss to reflect:

1           (1) Amounts paid to or on behalf of the plaintiff which the collateral source has a right to  
2 recover from the plaintiff through subrogation, lien or reimbursement;

3           (2) Amounts in excess of benefits actually paid or to be paid on behalf of the plaintiff by a  
4 collateral source in a category of economic loss;

5           (3) The proceeds of any individual disability or income replacement insurance paid for  
6 entirely by the plaintiff;

7           (4) The assets of the plaintiff or the members of the plaintiff's immediate family; or

8           (5) A settlement between the plaintiff and another tortfeasor.

9           (h) After determining the amount of the adjusted verdict, the court shall enter judgment in  
10 accordance with the provisions of section nine.

11 **§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is  
12 admitted to a designated trauma center; exceptions; emergency rules.**

13           (a) In any action brought under this article for injury to or death of a patient as a result of  
14 health care services or assistance rendered in good faith and necessitated by an emergency condition  
15 for which the patient enters a health care facility designated by the Office of Emergency Medical

16 Services as a trauma center, including health care services or assistance rendered in good faith by  
17 a licensed EMS emergency medical services authority or agency, certified emergency medical

18 service personnel, or an employee of an licensed EMS emergency medical services authority or  
19 agency, the total amount of civil damages recoverable shall may not exceed \$500,000 for each

20 occurrence, exclusive of interest computed from the date of judgment, and regardless of the number  
21 of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number  
22 of distributees.

1               (b) The limitation of liability in subsection (a) of this section also applies to any act or  
2 omission of a health care provider in rendering continued care or assistance in the event that surgery  
3 is required as a result of the emergency condition within a reasonable time after the patient's  
4 condition is stabilized.

5               (c) The limitation on liability provided under subsection (a) of this section does not apply to  
6 any act or omission in rendering care or assistance which:

7               (1) Occurs after the patient's condition is stabilized and the patient is capable of receiving  
8 medical treatment as a nonemergency patient; or  
9               (2) Is unrelated to the original emergency condition.

10              (d) In the event that: (1) A physician provides follow-up care to a patient to whom the  
11 physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical  
12 condition arises during the course of the follow-up care that is directly related to the original  
13 emergency condition for which care or assistance was rendered pursuant to said subsection, there is  
14 rebuttable presumption that the medical condition was the result of the original emergency condition  
15 and that the limitation on liability provided by said subsection applies with respect to that medical  
16 condition.

17              (e) There is a rebuttable presumption that a medical condition which arises in the course of  
18 follow-up care provided by the designated trauma center health care provider who rendered good  
19 faith care or assistance for the original emergency condition is directly related to the original  
20 emergency condition where the follow-up care is provided within a reasonable time after the  
21 patient's admission to the designated trauma center.

22              (f) The limitation on liability provided under subsection (a) of this section does not apply

1 where health care or assistance for the emergency condition is rendered:

2       (1) In willful and wanton or reckless disregard of a risk of harm to the patient; or

3       (2) In clear violation of established written protocols for triage and emergency health care

4 procedures developed by the office of emergency medical services in accordance with subsection

5 (e) of this section. In the event that the office of emergency medical services has not developed a

6 written triage or emergency medical protocol by the effective date of this section, the limitation on

7 liability provided under subsection (a) of this section does not apply where health care or assistance

8 is rendered under this section in violation of nationally recognized standards for triage and

9 emergency health care procedures.

10       (g) The Office of Emergency Medical Services shall, prior to the effective date of this

11 section, develop a written protocol specifying recognized and accepted standards for triage and

12 emergency health care procedures for treatment of emergency conditions necessitating admission

13 of the patient to a designated trauma center.

14       (h) In its discretion, the Office of Emergency Medical Services may grant provisional trauma

15 center status for a period of up to one year to a health care facility applying for designated trauma

16 center status. A facility given provisional trauma center status is eligible for the limitation on

17 liability provided in subsection (a) of this section. If, at the end of the provisional period, the facility

18 has not been approved by the Office of Emergency Medical Services as a designated trauma center,

19 the facility ~~will~~ is no longer ~~be~~ eligible for the limitation on liability provided in subsection (a) of

20 this section.

21       (i) The Commissioner of the Bureau for Public Health may grant an applicant for designated

22 trauma center status a one-time only extension of provisional trauma center status, upon submission

1 by the facility of a written request for extension, accompanied by a detailed explanation and plan of  
2 action to fulfill the requirements for a designated trauma center. If, at the end of the six-month  
3 period, the facility has not been approved by the Office of Emergency Medical Services as a  
4 designated trauma center, the facility ~~will no longer have~~ has the protection of the limitation on  
5 liability provided in subsection (a) of this section.

6 (j) If the Office of Emergency Medical Services determines that a health care facility no  
7 longer meets the requirements for a designated trauma center, it shall revoke the designation, at  
8 which time the limitation on liability established by subsection (a) of this section ~~shall cease~~ ceases  
9 to apply to that health care facility for services or treatment rendered thereafter.

10 (k) The Legislature hereby finds that an emergency exists compelling promulgation of an  
11 emergency rule, consistent with the provisions of this section, governing the criteria for designation  
12 of a facility as a trauma center or provisional trauma center and implementation of a statewide  
13 trauma/emergency care system. The Legislature therefore directs the Secretary of the Department  
14 of Health and Human Resources to file, on or before July 1, 2003, emergency rules specifying the  
15 criteria for designation of a facility as a trauma center or provisional trauma center in accordance  
16 with nationally accepted and recognized standards and governing the implementation of a statewide  
17 trauma/emergency care system. The rules governing the statewide trauma/emergency care system  
18 shall include, but not be limited to:

19 (1) System design, organizational structure and operation, including integration with the  
20 existing emergency medical services system;

21 (2) Regulation of facility designation, categorization and credentialing, including the  
22 establishment and collection of reasonable fees for designation; and

1           (3) System accountability, including medical review and audit to assure system quality. Any  
2 medical review committees established to assure system quality shall include all levels of care,  
3 including emergency medical service providers, and both the review committees and the providers  
4 shall qualify for all the rights and protections established in article three-c, chapter thirty of this code.

5           (l) On January 1, 2016, and in each year after that, the limitation for civil damages contained  
6 in subsection (a) of this section shall increase to account for inflation by an amount equal to the  
7 Consumer Price Index published by the United States Department of Labor, up to fifty percent of the  
8 amounts specified in subsection (a) as a limitation of civil damages.

9 **§55-7B-9d. Adjustment of verdict for past medical expenses.**

10          A verdict for past medical expenses is limited to:

11          (1) The total amount of past medical expenses paid by or on behalf of the plaintiff; and  
12          (2) The total amount of past medical expenses incurred but not paid by or on behalf of the  
13 plaintiff for which the plaintiff or another person on behalf of the plaintiff is obligated to pay.

14 **§55-7B-11. Severability.**

15          (a) If any provision of this article as enacted during the First Extraordinary Session of the  
16 Legislature, 1986, in House Bill 149, or as enacted during the regular session of the Legislature,  
17 1986, in Senate Bill 714, or as enacted during the Regular Session of the Legislature, 2015, or the  
18 application thereof to any person or circumstance is held invalid, such the invalidity shall does not  
19 affect other provisions or applications of this article, and to this end, the provisions of this article are  
20 declared to be severable.

21          (b) If any provision of the amendments to section five of this article, any provision of new  
22 section six-d of this article or any provision of the amendments to section eleven, article six, chapter

1 fifty-six of this code as provided in House Bill 601, enacted during the Sixth Extraordinary Session  
2 of the Legislature, 2001 is held invalid, or the application thereof to any person is held invalid, then,  
3 notwithstanding any other provision of law, every other provision of said House Bill 601 shall be  
4 deemed invalid and of no further force and effect.

5 (c) If any provision of the amendments to sections six or ten of this article or any provision  
6 of new sections six-a, six-b or six-c of this article as provided in House Bill 601, enacted during the  
7 Sixth Extraordinary Session of the Legislature, 2001 is held invalid, ~~such the~~ shall does  
8 not affect other provisions or applications of this article, and to this end, such provisions are deemed  
9 severable.

NOTE: The purpose of this bill is to control the increase in the cost of liability insurance and to maintain access to affordable health care services for West Virginians. It provides a mechanism to increase the limitation on civil damages in medical malpractice cases to account for inflation by linking increases to the Consumer Price Index. It also requires appellate courts to review de novo certain decisions made by circuit court judges; adds provisions limiting the admissibility and use of certain information; and requires adjustment of verdicts for past medical expenses.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§55-7B-7a and §55-7B-9d are new; therefore, strike-throughs and underscoring have been omitted.