

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 6**

5 (Senators Ferns, Boley, Carmichael, Gaunch, Leonhardt,

6 Mullins, Nohe, Trump, Blair, Plymale, Stollings,

7 Cole (Mr. President) and Takubo, *original sponsors*)

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9 [Passed February 23, 2015; in effect from passage.]  
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12  
13 AN ACT to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a,  
14 §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended; and  
15 to amend said code by adding thereto two new sections, designated §55-7B-7a and §55-7B-  
16 9d, all relating to medical professional liability generally; providing additional legislative  
17 findings and purposes related to medical professional liability; providing definitions;  
18 modifying qualifications for competency of experts who testify in medical professional  
19 liability actions; providing rebuttable presumptions and evidentiary requirements related to  
20 admission of certain government, health care provider or health care facility information;  
21 modifying maximum amount of recovery for, and availability of, noneconomic damages;  
22 clarifying that health care provider is not vicariously liable unless alleged agent does not  
23 maintain certain insurance; clarifying eligibility for, and application of, emergency medical

1 services caps; providing methodology for determining amount of trauma care caps to account  
2 for inflation; providing certain limitations of verdicts for past medical expenses of plaintiff;  
3 establishing effective date; and providing for severability.

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

5 That §55-7B-1 of the Code of West Virginia, 1931, as amended, be repealed; that §55-7B-2,  
6 §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c and §55-7B-11 of said code be amended and  
7 reenacted; and that said code be amended by adding thereto two new sections, designated §55-7B-7a  
8 and §55-7B-9d, all to read as follows:

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

10 **§55-7B-1. Legislative findings and declaration of purpose.**

11 The Legislature finds and declares that:

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

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

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

23 Liability insurance is a key part of our system of litigation, affording compensation to the

1 injured while fulfilling the need and fairness of spreading the cost of the risks of injury;

2 A further important component of these protections is the capacity and willingness of health  
3 care providers to monitor and effectively control their professional competency, so as to protect the  
4 public and ensure to the extent possible the highest quality of care;

5 It is the duty and responsibility of the Legislature to balance the rights of our individual  
6 citizens to adequate and reasonable compensation with the broad public interest in the provision of  
7 services by qualified health care providers and health care facilities who can themselves obtain the  
8 protection of reasonably priced and extensive liability coverage;

9 In recent years, the cost of insurance coverage has risen dramatically while the nature and  
10 extent of coverage has diminished, leaving the health care providers, the health care facilities and  
11 the injured without the full benefit of professional liability insurance coverage;

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

17 The unpredictable nature of traumatic injury health care services often results in a greater  
18 likelihood of unsatisfactory patient outcomes, a higher degree of patient and patient family  
19 dissatisfaction and frequent malpractice claims, creating a financial strain on the trauma care system  
20 of our state, increasing costs for all users of the trauma care system and impacting the availability  
21 of these services, requires appropriate and balanced limitations on the rights of persons asserting  
22 claims against trauma care health care providers, this balance must guarantee availability of trauma  
23 care services while mandating that these services meet all national standards of care, to assure that

1 our health care resources are being directed towards providing the best trauma care available;

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

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

15         The modernization and structure of the health care delivery system necessitate an update of  
16 provisions of this article in order to facilitate and continue the objectives of this article which are to  
17 control the increase in the cost of liability insurance and to maintain access to affordable health care  
18 services for our citizens.

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

1 (1) Compensation for injury and death;

2 (2) The regulation of rate making and other practices by the liability insurance industry,  
3 including the formation of a physicians' mutual insurance company and establishment of a fund to  
4 assure adequate compensation to victims of malpractice; and

5 (3) The authority of medical licensing boards to effectively regulate and discipline the health  
6 care providers under such board.

7 **§55-7B-2. Definitions.**

8 (a) "Board" means the State Board of Risk and Insurance Management.

9 (b) "Collateral source" means a source of benefits or advantages for economic loss that the  
10 claimant has received from:

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

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

21 (3) Any group accident, sickness or income disability insurance, any casualty or property  
22 insurance, including automobile and homeowners' insurance, which provides medical benefits,  
23 income replacement or disability coverage, or any other similar insurance benefits, except life

1 insurance, to the extent that someone other than the insured, including the insured's employer, has  
2 paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

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

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

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

11 (e) "Health care" means:

12 (1) Any act, service or treatment provided under, pursuant to or in the furtherance of a  
13 physician's plan of care, a health care facility's plan of care, medical diagnosis or treatment;

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

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

23 (f) "Health care facility" means any clinic, hospital, pharmacy, nursing home, assisted living

1 facility, residential care community, end-stage renal disease facility, home health agency, child  
2 welfare agency, group residential facility, behavioral health care facility or comprehensive  
3 community mental health center, 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, entity or institution licensed by, or certified in, this state or  
9 another state, to provide health care or professional health care services, including, but not limited  
10 to, a physician, osteopathic physician, physician assistant, advanced practice registered nurse,  
11 hospital, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist,  
12 chiropractor, physical therapist, speech-language pathologist and audiologist, occupational therapist,  
13 psychologist, pharmacist, technician, certified nursing assistant, emergency medical service  
14 personnel, emergency medical services authority or agency, any person supervised by or acting under  
15 the direction of a licensed professional, any person taking actions or providing service or treatment  
16 pursuant to or in furtherance of a physician's plan of care, a health care facility’s plan of care,  
17 medical diagnosis or treatment; or an officer, employee or agent of a health care provider acting in  
18 the course and scope of 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  
23 which should have been rendered, by a health care provider or health care facility to a patient. It also

1 means other claims that may be contemporaneous to or related to the alleged tort or breach of  
2 contract or otherwise provided, all in the context of rendering health care services.

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

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

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

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

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

21 (o) “Representative” means the spouse, parent, guardian, trustee, attorney or other legal agent  
22 of another.

23 **§55-7B-7. Testimony of expert witness on standard of care.**

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

22 (b) Nothing contained in this section limits a trial court's discretion to determine the  
23 competency or lack of competency of a witness on a ground not specifically enumerated in this

1 section.

2 **§55-7B-7a. Admissibility and use of certain information.**

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

6 (1) A state or federal survey, audit, review or other report of a health care provider or health  
7 care facility;

8 (2) Disciplinary actions against a health care provider's license, registration or certification;

9 (3) An accreditation report of a health care provider or health care facility; and

10 (4) An assessment of a civil or criminal penalty.

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

14 (c) Information under this section may only be introduced in a proceeding if it is otherwise  
15 admissible under the West Virginia Rules of Evidence.

16 **§55-7B-8. Limit on liability for noneconomic loss.**

17 (a) In any professional liability action brought against a health care provider pursuant to this  
18 article, the maximum amount recoverable as compensatory damages for noneconomic loss may not  
19 exceed \$250,000 for each occurrence, regardless of the number of plaintiffs or the number of  
20 defendants or, in the case of wrongful death, regardless of the number of distributees, except as  
21 provided in subsection (b) of this section.

22 (b) The plaintiff may recover compensatory damages for noneconomic loss in excess of the  
23 limitation described in subsection (a) of this section, but not in excess of \$500,000 for each

1 occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of  
2 wrongful death, regardless of the number of distributees, where the damages for noneconomic losses  
3 suffered by the plaintiff were for: (1) Wrongful death; (2) permanent and substantial physical  
4 deformity, loss of use of a limb or loss of a bodily organ system; or (3) permanent physical or mental  
5 functional injury that permanently prevents the injured person from being able to independently care  
6 for himself or herself and perform life-sustaining activities.

7 (c) On January 1, 2004, and in each year thereafter, the limitation for compensatory damages  
8 contained in subsections (a) and (b) of this section shall increase to account for inflation by an  
9 amount equal to the Consumer Price Index published by the United States Department of Labor, not  
10 to exceed one hundred fifty percent of the amounts specified in said subsections. (d) The limitations  
11 on noneconomic damages contained in subsections (a), (b), (c) and (e) of this section are not  
12 available to any defendant in an action pursuant to this article which does not have medical  
13 professional liability insurance in the aggregate amount of at least \$1 million for each occurrence  
14 covering the medical injury which is the subject of the action.

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

20 **§55-7B-9. Several liability.**

21 (a) In the trial of a medical professional liability action under this article involving multiple  
22 defendants, the trier of fact shall report its findings on a form provided by the court which contains  
23 each of the possible verdicts as determined by the court. Unless otherwise agreed by all the parties

1 to the action, the jury shall be instructed to answer special interrogatories, or the court, acting  
2 without a jury, shall make findings as to:

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

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

17 (c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of  
18 several, but not joint, liability against each defendant in accordance with the percentage of fault  
19 attributed to the defendant by the trier of fact.

20 (d) To determine the amount of judgment to be entered against each defendant, the court shall  
21 first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted  
22 verdict by the amount of any preverdict settlement arising out of the same medical injury. The court  
23 shall then, with regard to each defendant, multiply the total amount of damages remaining, with

1 interest, by the percentage of fault attributed to each defendant by the trier of fact. The resulting  
2 amount of damages, together with any post-judgment interest accrued, shall be the maximum  
3 recoverable against the defendant.

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

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

20 (g) Nothing in this article is meant to preclude a health care provider from being held  
21 responsible for the portion of fault attributed by the trier of fact to any person acting as the health  
22 care provider's agent or servant or to preclude imposition of fault otherwise imputable or attributable  
23 to the health care provider under claims of vicarious liability. A health care provider may not be held

1 vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the  
2 alleged agent does not maintain professional liability insurance covering the medical injury which  
3 is the subject of the action in the aggregate amount of at least \$1 million for each occurrence.

4 **§55-7B-9a. Reduction in compensatory damages for economic losses for payments from**  
5 **collateral sources for the same injury.**

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

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

13 (1) There is a preexisting contractual or statutory obligation on the collateral source to pay  
14 the benefits;

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

17 (3) The amount of the future expenses is readily reducible to a sum certain.

18 (c) In a hearing held pursuant to subsection (a) of this section, the plaintiff may present  
19 evidence of the value of payments or contributions he or she has made to secure the right to the  
20 benefits paid by the collateral source.

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

23 (1) The total amount of damages for economic loss found by the trier of fact;

1 (2) The total amount of damages for each category of economic loss found by the trier of fact;

2 (3) The total amount of allowable collateral source payments received or to be received by  
3 the plaintiff for the medical injury which was the subject of the verdict in each category of economic  
4 loss; and

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

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

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

14 (g) The court may not reduce the verdict rendered by the trier of fact in any category of  
15 economic loss to reflect:

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

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

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

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

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

1 (h) After determining the amount of the adjusted verdict, the court shall enter judgment in  
2 accordance with the provisions of section nine of this article.

3 **§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is**  
4 **admitted to a designated trauma center; exceptions; emergency rules.**

5 (a) In any action brought under this article for injury to or death of a patient as a result of  
6 health care services or assistance rendered in good faith and necessitated by an emergency condition  
7 for which the patient enters a health care facility designated by the Office of Emergency Medical  
8 Services as a trauma center, including health care services or assistance rendered in good faith by  
9 a licensed emergency medical services authority or agency, certified emergency medical service  
10 personnel or an employee of a licensed emergency medical services authority or agency, the total  
11 amount of civil damages recoverable may not exceed \$500,000 for each occurrence, exclusive of  
12 interest computed from the date of judgment, and regardless of the number of plaintiffs or the  
13 number of defendants or, in the case of wrongful death, regardless of the number of distributees.

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

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

20 (1) Occurs after the patient's condition is stabilized and the patient is capable of receiving  
21 medical treatment as a nonemergency patient; or

22 (2) Is unrelated to the original emergency condition.

23 (d) In the event that: (1) A physician provides follow-up care to a patient to whom the

1 physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical  
2 condition arises during the course of the follow-up care that is directly related to the original  
3 emergency condition for which care or assistance was rendered pursuant to said subsection, there is  
4 rebuttable presumption that the medical condition was the result of the original emergency condition  
5 and that the limitation on liability provided by said subsection applies with respect to that medical  
6 condition.

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

12 (f) The limitation on liability provided under subsection (a) of this section does not apply  
13 where health care or assistance for the emergency condition is rendered:

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

15 (2) In clear violation of established written protocols for triage and emergency health care  
16 procedures developed by the Office of Emergency Medical Services in accordance with subsection  
17 (e) of this section. In the event that the Office of Emergency Medical Services has not developed a  
18 written triage or emergency medical protocol by the effective date of this section, the limitation on  
19 liability provided under subsection (a) of this section does not apply where health care or assistance  
20 is rendered under this section in violation of nationally recognized standards for triage and  
21 emergency health care procedures.

22 (g) The Office of Emergency Medical Services shall, prior to the effective date of this  
23 section, develop a written protocol specifying recognized and accepted standards for triage and

1 emergency health care procedures for treatment of emergency conditions necessitating admission  
2 of the patient to a designated trauma center.

3 (h) In its discretion, the Office of Emergency Medical Services may grant provisional trauma  
4 center status for a period of up to one year to a health care facility applying for designated trauma  
5 center status. A facility given provisional trauma center status is eligible for the limitation on  
6 liability provided in subsection (a) of this section. If, at the end of the provisional period, the facility  
7 has not been approved by the Office of Emergency Medical Services as a designated trauma center,  
8 the facility is no longer eligible for the limitation on liability provided in subsection (a) of this  
9 section.

10 (i) The Commissioner of the Bureau for Public Health may grant an applicant for designated  
11 trauma center status a one-time only extension of provisional trauma center status, upon submission  
12 by the facility of a written request for extension, accompanied by a detailed explanation and plan of  
13 action to fulfill the requirements for a designated trauma center. If, at the end of the six-month  
14 period, the facility has not been approved by the Office of Emergency Medical Services as a  
15 designated trauma center, the facility no longer has the protection of the limitation on liability  
16 provided in subsection (a) of this section.

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

21 (k) The Legislature hereby finds that an emergency exists compelling promulgation of an  
22 emergency rule, consistent with the provisions of this section, governing the criteria for designation  
23 of a facility as a trauma center or provisional trauma center and implementation of a statewide

1 trauma/emergency care system. The Legislature therefore directs the Secretary of the Department  
2 of Health and Human Resources to file, on or before July 1, 2003, emergency rules specifying the  
3 criteria for designation of a facility as a trauma center or provisional trauma center in accordance  
4 with nationally accepted and recognized standards and governing the implementation of a statewide  
5 trauma/emergency care system. The rules governing the statewide trauma/emergency care system  
6 shall include, but not be limited to:

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

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

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

15 (1) On January 1, 2016, and in each year after that, the limitation for civil damages contained  
16 in subsection (a) of this section shall increase to account for inflation by an amount equal to the  
17 Consumer Price Index published by the United States Department of Labor, not to exceed one  
18 hundred fifty percent of said subsection.

19 **§55-7B-9d. Adjustment of verdict for past medical expenses.**

20 A verdict for past medical expenses is limited to:

21 (1) The total amount of past medical expenses paid by or on behalf of the plaintiff; and

22 (2) The total amount of past medical expenses incurred but not paid by or on behalf of the  
23 plaintiff for which the plaintiff or another person on behalf of the plaintiff is obligated to pay.

1 **§55-7B-10. Effective date; applicability of provisions.**

2 (a) The provisions of House Bill 149, enacted during the first extraordinary session of the  
3 Legislature, 1986, shall be effective at the same time that the provisions of Enrolled Senate Bill 714,  
4 enacted during the Regular session, 1986, become effective, and the provisions of said House Bill  
5 149 shall be deemed to amend the provisions of Enrolled Senate Bill 714. The provisions of this  
6 article shall not apply to injuries which occur before the effective date of this said Enrolled Senate  
7 Bill 714.

8 The amendments to this article as provided in House Bill 601, enacted during the sixth  
9 extraordinary session of the Legislature, 2001, apply to all causes of action alleging medical  
10 professional liability which are filed on or after March 1, 2002.

11 The amendments to this article provided in Enrolled Committee Substitute for House Bill  
12 No. 2122 during the regular session of the Legislature, 2003, apply to all causes of action alleging  
13 medical professional liability which are filed on or after July 1, 2003.

14 (b) The amendments to this article provided in Enrolled Committee Substitute for Senate Bill  
15 No. 6 during the regular session of the Legislature, 2015, apply to all causes of action alleging  
16 medical professional liability which are filed on or after July 1, 2015.

17 **§55-7B-11. Severability.**

18 (a) If any provision of this article as enacted during the first extraordinary session of the  
19 Legislature, 1986, in House Bill 149, or as enacted during the regular session of the Legislature,  
20 1986, in Senate Bill 714, or as enacted during the regular session of the Legislature, 2015, or the  
21 application thereof to any person or circumstance is held invalid, the invalidity does not affect other  
22 provisions or applications of this article, and to this end, the provisions of this article are declared  
23 to be severable.

1           (b) If any provision of the amendments to section five of this article, any provision of section  
2 six-d of this article or any provision of the amendments to section eleven, article six, chapter fifty-six  
3 of this code as provided in House Bill 601, enacted during the sixth extraordinary session of the  
4 Legislature, 2001, is held invalid, or the application thereof to any person is held invalid, then,  
5 notwithstanding any other provision of law, every other provision of said House Bill 601 shall be  
6 deemed invalid and of no further force and effect.

7           (c) If any provision of the amendments to section six or ten of this article or any provision  
8 of section six-a, six-b or six-c of this article as provided in House Bill 601, enacted during the sixth  
9 extraordinary session of the Legislature, 2001, is held invalid, the invalidity does not affect other  
10 provisions or applications of this article, and to this end, such provisions are deemed severable.