

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*)

8 _____
9 [Passed March 10, 2015; in effect from passage.]
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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; amending existing definitions
18 of “collateral source”, “health care”, “health care facility”, “health care provider” and
19 “medical professional liability” and creating a new definition for “related entity” all of which
20 expand the scope of the Medical Professional Liability Act; modifying the qualifications for
21 the competency of experts who testify in medical professional liability actions; providing
22 rebuttable presumptions and evidentiary requirements relating to state and federal reports,
23 disciplinary actions, accreditation reports, assessments and staffing; modifying the maximum

1 amount of recovery for, and availability of, noneconomic damages; clarifying amounts of
2 medical professional liability insurance coverage that must exist to receive noneconomic
3 damages limitations; clarifying that a health care provider is not vicariously liable unless the
4 alleged agent does not maintain certain insurance; clarifying eligibility for, and application
5 of, emergency medical services caps; providing a methodology for determining the amount
6 of trauma care caps to account for inflation; providing certain limitations of verdicts for past
7 medical expenses of the plaintiff; establishing effective date; and providing for severability.

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

9 That §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10
10 and §55-7B-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that
11 said code be amended by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d,
12 all to read as follows:

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

14 **§55-7B-1. Legislative findings and declaration of purpose.**

15 The Legislature finds and declares that:

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

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

22 Our system of litigation is an essential component of this state's interest in providing
23 adequate and reasonable compensation to those persons who suffer from injury or death as a result

1 of professional negligence, and any limitation placed on this system must be balanced with and
2 considerate of the need to fairly compensate patients who have been injured as a result of negligent
3 and incompetent acts by health care providers;

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

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

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

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

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

21 The unpredictable nature of traumatic injury health care services often results in a greater
22 likelihood of unsatisfactory patient outcomes, a higher degree of patient and patient family
23 dissatisfaction and frequent malpractice claims, creating a financial strain on the trauma care system

1 of our state, increasing costs for all users of the trauma care system and impacting the availability
2 of these services, requires appropriate and balanced limitations on the rights of persons asserting
3 claims against trauma care health care providers, this balance must guarantee availability of trauma
4 care services while mandating that these services meet all national standards of care, to assure that
5 our health care resources are being directed towards providing the best trauma care available;

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

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

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

23 Therefore, the purpose of this article is to provide a comprehensive resolution of the matters

1 and factors which the Legislature finds must be addressed to accomplish the goals set forth in this
2 section. In so doing, the Legislature has determined that reforms in the common law and statutory
3 rights of our citizens must be enacted together as necessary and mutual ingredients of the appropriate
4 legislative response relating to:

5 (1) Compensation for injury and death;

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

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

11 **§55-7B-2. Definitions.**

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

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

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

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

1 of a medical bill;

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

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

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

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

15 (e) "Health care" means:

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

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

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

4 (f) “Health care facility” means any clinic, hospital, pharmacy, nursing home, assisted living
5 facility, residential care community, end-stage renal disease facility, home health agency, child
6 welfare agency, group residential facility, behavioral health care facility or comprehensive
7 community mental health center, intellectual/developmental disability center or program, or other
8 ambulatory health care facility, in and licensed, regulated or certified by the state of West Virginia
9 under state or federal law and any state-operated institution or clinic providing health care and any
10 related entity to the health care facility.

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

23 (h) “Medical injury” means injury or death to a patient arising or resulting from the rendering

1 of or failure to render health care.

2 (i) “Medical professional liability” means any liability for damages resulting from the death
3 or injury of a person for any tort or breach of contract based on health care services rendered, or
4 which should have been rendered, by a health care provider or health care facility to a patient. It also
5 means other claims that may be contemporaneous to or related to the alleged tort or breach of
6 contract or otherwise provided, all in the context of rendering health care services.

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

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

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

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

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

1 facility.

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

4 **§55-7B-7. Testimony of expert witness on standard of care.**

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

1 the expert witness spends in active practice or teaching in his or her medical field unless good cause
2 can be shown to the court.

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

6 **§55-7B-7a. Admissibility and use of certain information.**

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

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

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

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

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

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

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

20 **§55-7B-8. Limit on liability for noneconomic loss.**

21 (a) In any professional liability action brought against a health care provider pursuant to this
22 article, the maximum amount recoverable as compensatory damages for noneconomic loss may not
23 exceed \$250,000 for each occurrence, regardless of the number of plaintiffs or the number of

1 defendants or, in the case of wrongful death, regardless of the number of distributees, except as
2 provided in subsection (b) of this section.

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

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

19 (e) If subsection (a) or (b) of this section, as enacted during the 2003 regular session of the
20 Legislature, or the application thereof to any person or circumstance, is found by a court of law to
21 be unconstitutional or otherwise invalid, the maximum amount recoverable as damages for
22 noneconomic loss in a professional liability action brought against a health care provider under this
23 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 may not consider the fault of any other person
14 who has settled a claim with the plaintiff arising out of the same medical injury: *Provided*, That,
15 upon the creation of the Patient Injury Compensation Fund provided for in article twelve-c, chapter
16 twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any amount
17 of economic damages awarded by the trier of fact which the plaintiff has been unable to collect, the
18 trier of fact shall, in assessing percentages of fault, consider the fault of all alleged parties, including
19 the fault of any person who has settled a claim with the plaintiff arising out of the same medical
20 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
23 attributed to the defendant by the trier of fact.

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

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

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

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

8 **§55-7B-9a. Reduction in compensatory damages for economic losses for payments from**
9 **collateral sources for the same injury.**

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

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

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

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

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

22 (c) In a hearing held pursuant to subsection (a) of this section, the plaintiff may present
23 evidence of the value of payments or contributions he or she has made to secure the right to the

1 benefits paid by the collateral source.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (2) In clear violation of established written protocols for triage and emergency health care
20 procedures developed by the Office of Emergency Medical Services in accordance with subsection

21 (e) of this section. In the event that the Office of Emergency Medical Services has not developed a
22 written triage or emergency medical protocol by the effective date of this section, the limitation on
23 liability provided under subsection (a) of this section does not apply where health care or assistance

1 is rendered under this section in violation of nationally recognized standards for triage and
2 emergency health care procedures.

3 (g) The Office of Emergency Medical Services shall, prior to the effective date of this
4 section, develop a written protocol specifying recognized and accepted standards for triage and
5 emergency health care procedures for treatment of emergency conditions necessitating admission
6 of the patient to a designated trauma center.

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

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

21 (j) If the Office of Emergency Medical Services determines that a health care facility no
22 longer meets the requirements for a designated trauma center, it shall revoke the designation, at
23 which time the limitation on liability established by subsection (a) of this section ceases to apply to

1 that health care facility for services or treatment rendered thereafter.

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

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

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

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

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

23 **§55-7B-9d. Adjustment of verdict for past medical expenses.**

1 A verdict for past medical expenses is limited to:

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

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

5 **§55-7B-10. Effective date; applicability of provisions.**

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

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

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

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

20 **§55-7B-11. Severability.**

21 (a) If any provision of this article as enacted during the first extraordinary session of the
22 Legislature, 1986, in House Bill 149, or as enacted during the regular session of the Legislature,
23 1986, in Senate Bill 714, or as enacted during the regular session of the Legislature, 2015, or the

1 application thereof to any person or circumstance is held invalid, the invalidity does not affect other
2 provisions or applications of this article, and to this end, the provisions of this article are declared
3 to be severable.

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

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