

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 602**

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 26, 2016]



1 A BILL to amend and reenact §29-12B-10 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §29-12D-1 and §29-12D-3 of said code; to amend said code by adding  
3 thereto a new section, designated §29-12D-1a; to amend and reenact §55-7B-9 and §55-  
4 7B-9c of said code; and to amend and reenact §59-1-11 and §59-1-28a of said code, all  
5 relating to the Patient Injury Compensation Fund; transferring funds from Medical Liability  
6 Fund to Patient Injury Compensation Fund and thereafter closing Medical Liability Fund;  
7 prohibiting direct recover of legal fees from Patient Injury Compensation Fund; providing  
8 that the board may not compensate claimants who have not filed a claim with the fund by  
9 a specific date; providing an assessment on medical licenses; providing exceptions to  
10 assessment on medical licenses; prohibiting granting or renewal of medical license for  
11 failure to pay assessment; providing an assessment on trauma patients treated at  
12 designated trauma centers; providing an assessment on claims filed under the Medical  
13 Professional Liability Act; defining “qualifying claim”; defining “date” for purposes of  
14 determining applicability of section; directing entities collecting assessments to remit  
15 payment to Board of Risk and Insurance Management; setting schedule for remittance of  
16 payments to Board of Risk and Insurance Management; providing termination of  
17 assessments upon certain deadlines being met; limiting jurisdiction of court reviewing  
18 award from board to approval of final award; clarifying authority of Board of Risk and  
19 Insurance Management make periodic payments or place claims in nonpayment status in  
20 its discretion; permitting trier of fact to consider fault of all alleged parties, including fault  
21 of persons who have settled claims with plaintiff arising out of same medical injury, in  
22 assessing percentages of fault; permitting clarifying manner in which damages are to be  
23 determined with respect to each defendant for purposes of entering judgment when there  
24 is no pre-verdict settlement; providing for limit on liability for economic damages in causes  
25 of actions against a trauma facility to be adjusted for inflation annually beginning January  
26 1, 2016; setting limit on inflation increase; authorizing plaintiff who suffers economic

27 damages in excess of limit of liability to collect economic damages up to an additional \$1  
28 million; clarifying that additional economic liability limit is not subject to inflation; providing  
29 that a claimant's attorney fees may not be paid out of the fund; providing that several  
30 liability applies in all cases under the Medical Professional Liability Act; increasing filing  
31 fee for causes of action under the Medical Professional Liability Act; and directing clerk of  
32 court to deposit a portion of the filing fee into Patient Injury Compensation Fund.

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

1 That §29-12B-10 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that §29-12D-1 and §29-12D-3 of said code be amended and reenacted; that said  
3 code be amended by adding thereto a new section, designated §29-12D-1a; that §55-7B-9 and  
4 §55-7B-9c of said code be amended and reenacted; and that §59-1-11 and §59-1-28a of said  
5 code be amended and reenacted, all to read as follows:

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICES.**

### **ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL LIABILITY INSURANCE AVAILABILITY ACT.**

#### **§29-12B-10. Deposit, expenditure and investment of premiums.**

1 (a) The premiums charged and collected by the board under this article shall be deposited  
2 into a special revenue account hereby created in the state Treasury known as the "Medical  
3 Liability Fund", and shall not be part of the general revenues of the state. Disbursements from the  
4 special revenue fund shall be upon requisition of the executive director and in accordance with  
5 the provisions of chapter five-a of this code. Disbursements shall pay operating expenses of the  
6 board attributed to these programs and the board's share of any judgments or settlements of  
7 medical malpractice claims. Funds shall be invested with the consolidated fund managed by the  
8 West Virginia Investment Management Board and interest earned shall be used for purposes of  
9 this article.

10 (b) Start-up operating expenses of the medical liability fund, not to exceed \$500,000, may  
11 be transferred to the medical liability fund pursuant to an appropriation by the Legislature from  
12 any special revenue funds available. The medical liability fund shall reimburse the board within  
13 twenty-four months of the date of the transfer.

14 (c) For purposes of establishing a pool from which settlements and judgments may be  
15 paid, notwithstanding any other provision of this code to the contrary, a portion of the initial  
16 capitalization of the pool may be provided through a transfer of no greater than \$4,000,000 from  
17 the State Special Insurance Fund established in section five, article twelve of this chapter. All  
18 funds transferred pursuant to this section are to be repaid by transfer from the Medical Liability  
19 Fund to the State Special Insurance Fund, together with interest that would have accrued in the  
20 State Special Insurance Fund, by July 1, 2006. Funds are to be transferred only as needed for  
21 expenditures from the Medical Liability Fund created in this section. The Treasurer shall effect  
22 these transfers pursuant to this section upon written request of the Director of the Board of Risk  
23 and Insurance Management.

24 (d) On July 1, 2016, all funds in the Medical Liability Fund, including all funds currently  
25 invested pursuant to the terms of subsection (a) of this section, shall be transferred to the West  
26 Virginia Patient Injury Compensation Fund established by section one, article twelve-d of this  
27 chapter. Thereafter, the Medical Liability Fund established pursuant to this section shall be  
28 closed.

**ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.**

**§29-12D-1. Creation of the Patient Injury Compensation Fund; purpose; initial funding of  
Patient Injury Compensation Fund.**

1 (a) There is created the West Virginia Patient Injury Compensation Fund, for the purpose  
2 of providing fair and reasonable compensation to claimants in medical malpractice actions for any  
3 portion of economic damages awarded that is uncollectible as a result of limitations on economic  
4 damage awards for trauma care, or as a result of the operation of the joint and several liability

5 principles and standards, set forth in article seven-b, chapter fifty-five of this code enacted during  
6 the 2003 regular session of the Legislature. The fund shall consist of all contributions, revenues  
7 and moneys which may be paid into the fund, from time to time, by the State of West Virginia or  
8 from any other source whatsoever, together with any and all interest, earnings, dividends,  
9 distributions, moneys or revenues of any nature whatsoever accruing to the fund.

10 (b) (1) Initial funding for the fund shall be provided as follows: During fiscal year 2005,  
11 \$2,200,000 of the revenues that would otherwise be transferred to the tobacco account  
12 established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to  
13 the provisions of section fourteen, article three, chapter thirty-three of this code shall be  
14 transferred to the fund; during fiscal year 2006, \$2,200,000 of the revenues that would otherwise  
15 be transferred to the tobacco account established in subsection (b), section two, article eleven-a,  
16 chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-  
17 three of this code shall be transferred to the fund; and during fiscal year 2007, \$2,200,000 of the  
18 revenues that would otherwise be transferred to the tobacco account established in subsection  
19 (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section  
20 fourteen, article three, chapter thirty-three of this code shall be transferred to the fund.

21 (2) Beginning fiscal year 2008, if and to the extent additional funding for the fund is  
22 required, from time to time, to maintain the actuarial soundness of the fund, the additional funding  
23 may be provided by further act of the Legislature, either from the revenue stream identified in this  
24 subsection or otherwise. Payments to the tobacco fund shall be extended until the tobacco fund  
25 is repaid in full.

26 (c) The fund is not and shall not be considered a defendant in any civil action arising under  
27 article seven-b, chapter fifty-five of this code.

28 (d) The fund is not and shall not be considered an insurance company or insurer for any  
29 purpose under this code.

30 (e) Legal fees of claimants may not be recovered directly from the fund.

31 (f) The fund shall not provide compensation to claimants who file a claim with the Patient  
32 Injury Compensation Fund on or after July 1, 2016.

**§29-12D-1a. Additional funding for Patient Injury Compensation Fund; assessment on  
licensed physicians; assessment on hospitals; assessment on certain  
awards.**

1 (a) Annual assessment on licensed physicians. —

2 (1) The Board of Medicine and the Board of Osteopathic Medicine shall collect a biennial  
3 assessment in the amount of \$125 from every physician licensed by each board for the privilege  
4 of practicing medicine in this state. The assessment is to be imposed and collected on forms  
5 prescribed by each licensing board. The annual assessment shall be collected as part of licensing  
6 or license renewal beginning in calendar year 2016 and continuing through calendar year 2019:  
7 Provided, That the following physicians shall be exempt from the assessment:

8 (A) A resident physician who is a graduate of a medical school or college of osteopathic  
9 medicine enrolled and who is participating in an accredited full-time program of post-graduate  
10 medical education in this state:

11 (B) A physician who has presented suitable proof that he or she is on active duty in the  
12 armed forces of the United States and who will not be reimbursed by the armed forces for the  
13 assessment;

14 (C) A physician who practices solely under a special volunteer medical license authorized  
15 by section ten-a, article three or section twelve-b, article fourteen, chapter thirty of this code;

16 (D) A physician who is licensed on an inactive basis pursuant to subsection (j), section  
17 twelve, article three, chapter thirty of this code or section ten, article fourteen of said chapter or a  
18 physician who voluntarily surrenders his or her license: *Provided, That a retired osteopathic*  
19 physician who submits to the Board of Osteopathic Medicine an affidavit asserting that he or she  
20 receives no monetary remuneration for any medical services provided, executed under the  
21 penalty of perjury and if executed outside the State of West Virginia, verified, may be considered

22 to be licensed on an inactive basis: *Provided, however,* That if a physician or osteopathic  
23 physician elects to resume an active license to practice in the state and the physician has not  
24 paid the assessments during his or her inactive status, then as a condition of receiving an active  
25 status license, the physician or osteopathic physician must pay the assessment due in the year  
26 in which the osteopathic physician resumes an active license; and

27 (E) A physician who practices less than forty hours a year providing medical genetic  
28 services to patients within this state.

29 (2) The entire proceeds of the annual assessment collected pursuant to subsection (a) of  
30 this section shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine  
31 and the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance  
32 Management all amounts collected pursuant to this subsection for deposit in the fund.

33 (3) Notwithstanding any provision of the code to the contrary, no physician required to pay  
34 the annual assessment and who fails to do so shall be granted a license or renewal of an existing  
35 license by the Board of Medicine or the Board of Osteopathic Medicine. Any license which expires  
36 as a result of a failure to pay the required assessment shall not be reinstated or reactivated until  
37 the assessment is paid in full.

38 (b) *Assessment on trauma centers.* — From July 1, 2016, through June 30, 2020, an  
39 assessment in the amount of \$25 shall be levied on each trauma patient treated at a health care  
40 facility designated by the Office of Emergency Medical Services as a trauma center, as reported  
41 to the West Virginia Trauma Registry. The health care facility shall remit the assessment  
42 periodically, but in no event less frequently than once each year, with the first assessment being  
43 remitted no later than June 30, 2017. The assessment shall be remitted to the Board of Risk and  
44 Insurance Management to be deposited in the fund thereafter.

45 (c) *Assessment on claims filed under the Medical Professional Liability Act.* — From July  
46 1, 2016, through June 30, 2020, an assessment of one percent of the gross amount of any  
47 settlement or judgment in a qualifying claim shall be levied.



48           (1) For purposes of this subsection, a qualifying claim shall be any claim for which a  
49 screening certificate of merit, as that term is defined in section six, article seven-b, chapter fifty-  
50 five of this code, is required.

51           (2) For any assessment levied pursuant to this subsection for which a judgment is entered  
52 by a court, the date of the entry of judgment shall be used to determine applicability of this  
53 provision. The defendant or defendants shall remit the assessment to the clerk of the court in  
54 which the qualified claim was filed. The clerk of the court shall then remit the assessment  
55 quarterly to the Board of Risk and Insurance Management to be deposited in the fund.

56           (3) For any assessment levied pursuant to this subsection on a settlement pursuant to this  
57 subsection for which a settlement is entered into by the parties, the date on which the agreement  
58 is formalized in writing by the parties shall be used to determine applicability of this provision. At  
59 the time that an action alleging a qualified claim is dismissed by the parties, the assessment shall  
60 be paid to the clerk of the court, who shall then remit the assessment quarterly to the Board of  
61 Risk and Insurance Management to be deposited in the fund. If a qualifying claim is settled prior  
62 to the filing of an action, the plaintiff, or his or her counsel, shall be responsible for remitting the  
63 payment to the Board of Risk and Insurance Management within sixty days of the date of the  
64 settlement agreement.

65           (d) Termination of assessments. — The requirements of this section shall terminate upon  
66 the sooner of the deadlines set forth in this section or when the liability of the Patient Injury  
67 Compensation Fund has been paid or has been provided in its entirety. The Board of Risk and  
68 Insurance Management is directed to submit a report to the Joint Committee of Government and  
69 Finance each year beginning January 1, 2018, giving recommendations based on actuarial  
70 analysis of the fund liability. The recommendations shall include, but may not be limited to, the  
71 discontinuance of the assessments as provided in this section, closure of the fund or transfer of  
72 fund liability.

**§29-12D-3. Payments from the Patient Injury Compensation Fund.**

1 (a) Other than payments in connection with the ongoing operation and administration of  
2 the fund, no payments may be made from the fund other than in satisfaction of claims for  
3 economic damages to qualified claimants who would have collected economic damages but for  
4 the operation of the limits on economic damages set forth in article seven-b, chapter fifty-five of  
5 this code.

6 (b) For purposes of this article, a qualified claimant must be both a “patient” and a “plaintiff”  
7 as those terms are defined in article seven-b, chapter fifty-five of this code.

8 (c) Any qualified claimant seeking payment from the fund must establish to the satisfaction  
9 of the board that he or she has exhausted all reasonable means to recover from all applicable  
10 liability insurance an award of economic damages, following procedures prescribed by the board  
11 by legislative rule.

12 (d) Upon a determination by the board that a qualified claimant to the fund for  
13 compensation has exhausted all reasonable means to recover from all applicable liability  
14 insurance an award of economic damages arising under article seven-b, chapter fifty-five of this  
15 code, the board shall make a payment or payments to the claimant for economic damages. The  
16 economic damages must have been awarded but be uncollectible after the exhaustion of all  
17 reasonable means of recovery of applicable insurance proceeds. In no event shall the amount  
18 paid by the board in respect to any one occurrence exceed \$1 million or the maximum amount of  
19 money that could have been collected from all applicable insurance prior to the creation of the  
20 patient injury compensation fund under this article, regardless of the number of plaintiffs or the  
21 number of defendants or, in the case of wrongful death, regardless of the number of distributees.

22 (e) The board, in its discretion, may make payments to a qualified claimant in a lump sum  
23 amount or in the form of periodic payments. Periodic payments are to be based upon the present  
24 value of the total amount to be paid by the fund to the claimant by using federally approved  
25 qualified assignments.

26 (f) In its discretion, the board may make a payment or payments out of the fund to a  
27 qualified claimant in connection with the settlement of claims arising under article seven-b,  
28 chapter fifty-five of this code all according to rules promulgated by the board. The board shall prior  
29 to making payment determine that payment from the fund to a qualified claimant is in the best  
30 interests of the fund. When the claimant and the board agree upon a settlement amount, the  
31 following procedure shall be followed:

32 (1) A petition shall be filed by the claimant with the court in which the action is pending, or  
33 if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between  
34 the claimant and the board.

35 (2) The court shall set the petition for hearing as soon as the court's calendar permits.  
36 Notice of the time, date and place of hearing shall be given to the claimant and to the board.

37 (3) ~~At the hearing the court shall approve the proposed settlement~~ The jurisdiction of the  
38 court is limited to approval of the final award if the court finds it to be valid, just and equitable.

39 (g) If and to the extent that any payment to one or more qualified claimants under this  
40 section would deplete the fund during any fiscal year, payments to and among qualified claimant's  
41 shall, at the discretion of the board, be prorated or made in periodic installments during the fiscal  
42 year according to the rules promulgated by the board, or may be placed in a nonpayment status  
43 until such time as sufficient moneys are received by the fund to initiate or resume payments. Any  
44 amounts due and unpaid to qualified claimants in any fiscal year shall be paid in subsequent fiscal  
45 years from available funds, but only to the extent funds are available in any fiscal year, according  
46 to the board's rules.

47 ~~(h) Payments out of the fund may be used to pay reasonable attorney fees of attorneys~~  
48 ~~representing qualified claimants receiving compensation in respect of economic damages as~~  
49 ~~established by the board of Risk and Insurance Management.~~

50 (†) (h) The claimant may appeal a final decision made by the board pursuant to the  
51 provisions of article five, chapter twenty-nine-a of this code.

## CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

### ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

#### §55-7B-9. Several liability.

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

6 (1) The total amount of compensatory damages recoverable by the plaintiff;

7 (2) The portion of the damages that represents damages for noneconomic loss;

8 (3) The portion of the damages that represents damages for each category of economic  
9 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~~  
13 ~~parties in the litigation at the time the verdict is rendered and may not consider the fault of any~~  
14 ~~other person who has settled a claim with the plaintiff arising out of the same medical injury:~~  
15 ~~Provided, That, upon the creation of the Patient Injury Compensation Fund provided for in article~~  
16 ~~twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a~~  
17 ~~plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has~~  
18 ~~been unable to collect, the~~ The trier of fact shall, in assessing percentages of fault, consider the  
19 fault of all alleged parties, including the fault of any person who has settled a claim with the plaintiff  
20 arising out of the 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  
23 attributed to the defendant by the trier of fact.

24 (d) To determine the amount of judgment to be entered against each defendant, the court  
25 shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the  
26 adjusted verdict by the amount of any pre-verdict settlement arising out of the same medical  
27 injury. The court shall then, with regard to each defendant, multiply the total amount of damages  
28 remaining, with prejudgment interest recoverable by the plaintiff, by the percentage of fault  
29 attributed to each defendant by the trier of fact. The resulting amount of damages, together with  
30 any post-judgment interest accrued, shall be the maximum recoverable against the defendant.  
31 To determine the amount of judgment to be entered against each defendant when there is no pre-  
32 verdict settlement, the court shall first, after adjusting the verdict as provided in section nine-a of  
33 this article, multiply the total amount of damages remaining with any prejudgment interest  
34 recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of  
35 fact. The resulting amount of damages, together with any post-judgment interest accrued, shall  
36 be the maximum amount recoverable damages against said defendant.

37 ~~(e) Upon the creation of the Patient Injury Compensation Fund provided for in article~~  
38 ~~twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a~~  
39 ~~plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has~~  
40 ~~been unable to collect, the court shall, in determining the amount of judgment to be entered~~  
41 ~~against each defendant, first multiply the total amount of damages, with interest, recoverable by~~  
42 ~~the plaintiff by the percentage of each defendant's fault and that amount, together with any post-~~  
43 ~~judgment interest accrued, is the maximum recoverable against said defendant. Prior to the~~  
44 ~~court's entry of the final judgment order as to each defendant against whom a verdict was~~  
45 ~~rendered, the court shall reduce the total jury verdict by any amounts received by a plaintiff in~~  
46 ~~settlement of the action. When any defendant's percentage of the verdict exceeds the remaining~~  
47 ~~amounts due the plaintiff after the mandatory reductions, each defendant shall be liable only for~~  
48 ~~the defendant's pro rata share of the remainder of the verdict as calculated by the court from the~~  
49 ~~remaining defendants to the action. The plaintiff's total award may never exceed the jury's verdict~~  
50 ~~less any statutory or court-ordered reductions.~~

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

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

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

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

11 (b) On January 1, 2016, and in each year thereafter, the limitation on the total amount of  
12 civil damages contained in subsection (a) of this section shall increase to account for inflation by  
13 an amount equal to the Consumer Price Index published by the United States Department of  
14 Labor, not to exceed one hundred fifty percent of the amounts specified in said subsection.

15            (c) Beginning July 1, 2016, a plaintiff who suffers economic damages, as determined by  
16 the trier of fact or the agreement of the parties, in excess of the limitation of liability in section (a)  
17 of this section and for whom recovery from the Patient Injury Compensation Fund is precluded  
18 pursuant to section one, article twelve-d, chapter twenty-nine of this code is permitted to recover  
19 additional economic damages of up to \$1 million. This amount shall not be subject to the  
20 adjustment for inflation set forth in subsection (b) of this section.

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

25            ~~(e)~~(e) The limitation on liability provided under subsection (a) of this section does not apply  
26 to any act or omission in rendering care or assistance which:

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

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

30            ~~(d)~~(f) In the event that: (1) A physician provides follow-up care to a patient to whom the  
31 physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical  
32 condition arises during the course of the follow-up care that is directly related to the original  
33 emergency condition for which care or assistance was rendered pursuant to said subsection,  
34 there is rebuttable presumption that the medical condition was the result of the original emergency  
35 condition and that the limitation on liability provided by said subsection applies with respect to that  
36 medical condition.

37            ~~(e)~~(g) There is a rebuttable presumption that a medical condition which arises in the course  
38 of follow-up care provided by the designated trauma center health care provider who rendered  
39 good faith care or assistance for the original emergency condition is directly related to the original

40 emergency condition where the follow-up care is provided within a reasonable time after the  
41 patient's admission to the designated trauma center.

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

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

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

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

56 ~~(h)~~(j) In its discretion, the Office of Emergency Medical Services may grant provisional  
57 trauma center status for a period of up to one year to a health care facility applying for designated  
58 trauma center status. A facility given provisional trauma center status is eligible for the limitation  
59 on liability provided in subsection (a) of this section. If, at the end of the provisional period, the  
60 facility has not been approved by the Office of Emergency Medical Services as a designated  
61 trauma center, the facility is no longer eligible for the limitation on liability provided in subsection  
62 (a) of this section.

63 ~~(i)~~(k) The Commissioner of the Bureau for Public Health may grant an applicant for  
64 designated trauma center status a one-time only extension of provisional trauma center status,  
65 upon submission by the facility of a written request for extension, accompanied by a detailed



66 explanation and plan of action to fulfill the requirements for a designated trauma center. If, at the  
67 end of the six-month period, the facility has not been approved by the Office of Emergency  
68 Medical Services as a designated trauma center, the facility no longer has the protection of the  
69 limitation on liability provided in subsection (a) of this section.

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

74 ~~(k)~~(m) The Legislature hereby finds that an emergency exists compelling promulgation of  
75 an emergency rule, consistent with the provisions of this section, governing the criteria for  
76 designation of a facility as a trauma center or provisional trauma center and implementation of a  
77 statewide trauma/emergency care system. The Legislature therefore directs the Secretary of the  
78 Department of Health and Human Resources to file, on or before July 1, 2003, emergency rules  
79 specifying the criteria for designation of a facility as a trauma center or provisional trauma center  
80 in accordance with nationally accepted and recognized standards and governing the  
81 implementation of a statewide trauma/emergency care system. The rules governing the statewide  
82 trauma/emergency care system shall include, but not be limited to:

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

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

87 (3) System accountability, including medical review and audit to assure system quality.

88 Any medical review committees established to assure system quality shall include all levels of  
89 care, including emergency medical service providers, and both the review committees and the  
90 providers shall qualify for all the rights and protections established in article three-c, chapter thirty  
91 of this code.

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

**CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS;  
LEGAL ADVERTISEMENTS.**

**ARTICLE 1. FEES AND ALLOWANCES.**

**§59-1-11. Fees to be charged by clerk of circuit court.**

1           (a) The clerk of a circuit court shall charge and collect for services rendered by the clerk  
2 the following fees which shall be paid in advance by the parties for whom services are to be  
3 rendered:

4           (1) Except as provided in subdivisions (2) and (3) of this subsection, for instituting any civil  
5 action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary  
6 remedy, the docketing of civil appeals or removals of civil cases from magistrate court, or any  
7 other action, cause, suit or proceeding, \$200, of which \$30 shall be deposited in the Courthouse  
8 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
9 code and \$45 shall be deposited in the special revenue account designated the Fund for Civil  
10 Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection  
11 (c), section ten of this article, and \$20 deposited in the special revenue account created in section  
12 six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for  
13 domestic violence victims;

14           (2) For instituting an action for medical professional liability, ~~\$280~~ \$400, of which \$10 shall  
15 be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-  
16 six, chapter twenty-nine of this code;

17 (3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate  
18 maintenance or annulment, \$135;

19 (4) For petitioning for the modification of an order involving child custody, child visitation,  
20 child support or spousal support, \$85;

21 (5) For petitioning for an expedited modification of a child support order, \$35; and

22 (6) For filing any pleading that includes a counterclaim, cross claim, third-party complaint  
23 or motion to intervene, \$200, which shall be deposited in the special revenue account designated  
24 the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B),  
25 subdivision (4), subsection (c), section ten of this article: *Provided*, That this subdivision and the  
26 fee it imposes does not apply in family court cases nor may more than one such fee be imposed  
27 on any one party in any one civil action.

28 (b) In addition to the foregoing fees, the following fees shall be charged and collected:

29 (1) For preparing an abstract of judgment, \$5;

30 (2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise  
31 to go out of the office, for each page, \$1;

32 (3) For issuing a suggestion and serving notice to the debtor by certified mail, \$25;

33 (4) For issuing an execution, \$25;

34 (5) For issuing or renewing a suggestee execution and serving notice to the debtor by  
35 certified mail, \$25;

36 (6) For vacation or modification of a suggestee execution, \$1;

37 (7) For docketing and issuing an execution on a transcript of judgment from magistrate  
38 court, \$3;

39 (8) For arranging the papers in a certified question, writ of error, appeal or removal to any  
40 other court, \$10, of which \$5 shall be deposited in the Courthouse Facilities Improvement Fund  
41 created by section six, article twenty-six, chapter twenty-nine of this code;

42 (9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party  
43 requesting the same, 50 cents;

44 (10) For additional service, plaintiff or appellant, where any case remains on the docket  
45 longer than three years, for each additional year or part year, \$20; and

46 (11) For administering funds deposited into a federally insured interest-bearing account or  
47 interest-bearing instrument pursuant to a court order, \$50, to be collected from the party making  
48 the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

49 (c) In addition to the foregoing fees, a fee for the actual amount of the postage and express  
50 may be charged and collected for sending decrees, orders or records that have not been ordered  
51 by the court to be sent by mail or express.

52 (d) The clerk shall tax the following fees for services in a criminal case against a defendant  
53 convicted in such court:

54 (1) In the case of a misdemeanor, \$85; and

55 (2) In the case of a felony, \$105, of which \$10 shall be deposited in the Courthouse  
56 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
57 code.

58 (e) The clerk of a circuit court shall charge and collect a fee of \$25 per bond for services  
59 rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of  
60 issuance by the person or entity set forth below:

61 (1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

62 (2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of  
63 the real estate serving as surety;

64 (3) For recognizance bonds secured by a surety company, the fee shall be paid by the  
65 surety company;

66 (4) For ten percent recognizance bonds with surety, the fee shall be paid by the person  
67 serving as surety; and

68 (5) For ten percent recognizance bonds without surety, the fee shall be paid by the person  
69 tendering ten percent of the bail amount.

70 In instances in which the total of the bond is posted by more than one bond instrument,  
71 the above fee shall be collected at the time of issuance of each bond instrument processed by  
72 the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse  
73 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
74 code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for  
75 the processing of a personal recognizance bond.

76 (f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered  
77 by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of  
78 issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse  
79 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
80 code.

81 (g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of  
82 any other officer or party not payable into the county treasury except on written order of the court  
83 or in compliance with the provisions of law governing such fees, costs or accounts.

84 (h) Fees for removal of civil cases from magistrate court shall be collected by the  
85 magistrate court when the case is still properly before the magistrate court. The magistrate court  
86 clerk shall forward the fees collected to the circuit court clerk.

**§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from amounts equaling filing fees received for  
2 the institution of divorce actions as prescribed in subsection (b) of this section, and except for  
3 those payments to be made from amounts equaling filing fees received for the institution of actions  
4 for divorce, separate maintenance and annulment as prescribed in said subsection, for each civil  
5 action instituted under the rules of civil procedure, any statutory summary proceeding, any  
6 extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding

7 in the circuit court the clerk of the court shall, at the end of each month, pay into the funds or  
8 accounts described in this subsection an amount equal to the amount set forth in this subsection  
9 of every filing fee received for instituting the action as follows:

10 (1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury  
11 established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code  
12 the amount of \$60;

13 (2) Into the Court Security Fund in the State Treasury established pursuant to the  
14 provisions of section fourteen, article three, chapter fifty-one of this code the amount of \$5; and

15 (3) Into the Regional Jail Operations Partial Reimbursement Fund established pursuant to  
16 the provisions of section ten-b, article twenty, chapter thirty-one of this code the amount of \$20.

17 (b) For each action for divorce, separate maintenance or annulment instituted in the circuit  
18 court, the clerk of the court shall, at the end of each month, report to the Supreme Court of Appeals  
19 the number of actions filed by persons unable to pay and pay into the funds or accounts in this  
20 subsection an amount equal to the amount set forth in this subsection of every filing fee received  
21 for instituting the divorce action as follows:

22 (1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury  
23 established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code  
24 the amount of \$10;

25 (2) Into the special revenue account of the State Treasury, established pursuant to section  
26 six hundred four, article two, chapter forty-eight of this code an amount of \$30;

27 (3) Into the Family Court Fund established under section twenty-two, article two-a, chapter  
28 fifty-one of this code an amount of \$70; and

29 (4) Into the Court Security Fund in the State Treasury, established pursuant to the  
30 provisions of section fourteen, article three, chapter fifty-one of this code the amount of \$5.

31 (c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary,  
32 the clerk of the court shall, at the end of each month, pay into the Family Court Fund established

33 under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the  
34 amount of every fee received for petitioning for the modification of an order involving child custody,  
35 child visitation, child support or spousal support as determined by subdivision (3), subsection (a),  
36 section eleven of this article and for petitioning for an expedited modification of a child support  
37 order as provided in subdivision (4) of said subsection.

38 (d) The clerk of the court from which a protective order is issued shall, at the end of each  
39 month, pay into the Family Court Fund established under section twenty-two, article two-a,  
40 chapter fifty-one of this code an amount equal to every fee received pursuant to the provisions of  
41 section five hundred eight, article twenty-seven, chapter forty-eight of this code.

42 (e) Of every fee for service received in any criminal case against any respondent convicted  
43 in circuit court, the clerk of each circuit court shall, at the end of each month, pay into the Regional  
44 Jail and Correctional Facility Authority Fund in the State Treasury an amount equal to \$40, into  
45 the Court Security Fund in the State Treasury established pursuant to the provisions of section  
46 fourteen, article three, chapter fifty-one of this code an amount equal to \$5 and into the Regional  
47 Jail Operations Partial Reimbursement Fund established pursuant to the provisions of section  
48 ten-b, article twenty, chapter thirty-one of this code an amount equal to \$30.

49 (f) The clerk of the circuit court shall, at the end of each month, pay into the ~~Medical Liability~~  
50 ~~Fund established under article twelve-b, chapter twenty-nine of this code~~ Patient Injury  
51 Compensation Fund created by article twelve-d, chapter twenty-nine of this code an amount equal  
52 to ~~\$165~~ \$285 of every filing fee received for instituting a medical professional liability action.

53 (g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse  
54 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
55 code those amounts received by the clerk which are dedicated for deposit in the fund.

56 (h) The clerk of each circuit court shall, at the end of each month, pay into the Regional  
57 Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the

- 58 provisions of section ten-b, article twenty, chapter thirty-one of this code those amounts received  
59 by the clerk which are dedicated for deposit in the fund.

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