

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 616

BY SENATORS STOLLINGS, PLYMALE, TAKUBO AND

MARONEY

[Introduced March 15, 2017; Referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §55-7B-9e, relating to limiting recoverable damages when a patient has been
 3 transferred from a health care facility to another health care facility; and providing an
 4 exception.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §55-7B-9e, to read as follows:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-9e. Limitation of recoverable civil damages; exception.

1 (a) The damages limitations set forth in this section are in effect in any civil action brought
 2 under this article on or after the effective date of this section for injury to or death of a patient who
 3 has been transferred from health care facility as a result of the patient having been determined
 4 by a licensed health care professional at a transferring health care facility to be in a condition such
 5 that the patient is in need of health care services or a level of health care services not available
 6 at the transferring facility, when such injury or death is alleged or determined by the trier of fact to
 7 have been a result of health care services rendered at or while en route to a receiving hospital for
 8 the condition or conditions that precipitated the transfer, or for any related conditions, or when
 9 such injury or death is alleged or determined by the trier of fact to be a result of failure to render
 10 such services.

11 (b) In any civil action subject to this section, the total amount of damages recoverable
 12 against a receiving hospital, health care providers who provided services at a receiving hospital,
 13 any entity that provided transport of the patient to a receiving hospital, and persons who provided
 14 services to the patient during transport to a receiving hospital, may not exceed \$500,000 for each
 15 occurrence, exclusive of interest computed from the date of judgment, and regardless of the
 16 number of plaintiffs or the number of defendants and, in the case of wrongful death, regardless of
 17 the number of distributees.

18 (c) On January 1, 2018, and in each year thereafter, the amount of recoverable damages
19 set forth in subsection (b) of this section shall increase to account for inflation as determined by
20 the Consumer Price Index published by the United States Department of Labor: *Provided*, That
21 the amount of such recoverable damages shall not be more than \$1,500,000, regardless of
22 inflation or deflation.

23 (d) The limitation of liability in subsection (b) of this section also applies to any act or
24 omission of a health care provider in rendering continued care or assistance in the event that
25 surgery is required as a result of a condition described in subsection (a) of this section.

26 (e) There is a rebuttable presumption in civil actions that are subject to this section that a
27 medical condition which arises in the course of follow-up care provided by a health care provider
28 at a receiving hospital where care for the original condition that precipitated the transfer is related
29 to that original condition.

30 (f) The limitations of liability provided under subsection (b) of this section do not apply to
31 any act or omission in rendering care for a condition that is unrelated to the condition or conditions
32 that precipitated the transfer or to any act or omission that is done or omitted in willful and wanton
33 disregard of a risk of serious harm to the patient.

NOTE: The purpose of this bill is to limit recoverable damages when a patient has been transferred from health care facility to another health care facility. The bill provides an exception.

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