

**WEST VIRGINIA LEGISLATURE**  
**2019 FIRST EXTRAORDINARY SESSION**

**Introduced**

**Senate Bill 1022**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced May 20, 2019]

1 A BILL to amend and reenact §55-7B-7a of the Code of West Virginia, 1931, as amended, relating  
 2 to the admissibility of health care staffing requirements in medical professional liability  
 3 litigation; providing that compliance with minimum staffing requirements under state law  
 4 creates rebuttable presumptions that appropriate staffing and adequate supervision of  
 5 patients to prevent accidents were provided; requiring that if staffing is less than  
 6 requirements dictated by state law then there is a rebuttable presumption that there was  
 7 inadequate supervision of patients and that inadequate staffing or inadequate supervision  
 8 was a contributing cause of the patient's fall and resulting injuries or death; and requiring  
 9 the jury be instructed accordingly.

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

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

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

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

- 4 (1) A state or federal survey, audit, review or other report of a health care provider or  
 5 health care facility;
- 6 (2) Disciplinary actions against a health care provider's license, registration or certification;
- 7 (3) An accreditation report of a health care provider or health care facility; and
- 8 (4) An assessment of a civil or criminal penalty.

9 (b) In any action brought alleging inappropriate staffing or inadequate supervision, if the  
 10 health care facility or health care provider demonstrates compliance with the minimum staffing  
 11 requirements under state law, the health care facility or health care provider is entitled to a  
 12 rebuttable presumption that appropriate staffing ~~was provided~~ and adequate supervision of  
 13 patients to prevent accidents were provided, and the jury shall be instructed accordingly.

14 (c) In any action brought alleging inappropriate staffing or inadequate supervision, if

15 staffing is less than the minimum staffing requirements under state law, then there is a rebuttable  
16 presumption that there was inadequate supervision of patients and that inadequate staffing or  
17 inadequate supervision was a contributing cause of the patient's fall and injuries or death arising  
18 therefrom, and the jury shall be instructed accordingly.

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

NOTE: The purpose of this bill is to clarify that meeting minimum staffing requirements in a health care facility includes the provision of adequate supervision.

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