

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 319

BY SENATOR TRUMP

[Introduced January 16, 2019; 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; and to amend and reenact §55-7B-10 of said code, all relating to
 3 attorney contingency fee contracts and collections in causes of action alleging medical
 4 professional liability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§ 55-7B-9e. Contingency fee agreements in medical professional liability actions.

1 (a) An attorney shall not contract for or collect a contingency fee for representing any
 2 person seeking damages in connection with an action for injury or damage against a health care
 3 provider or health care facility for medical professional liability in excess of the following limits:

- 4 (1) Forty percent of the first \$50,000 recovered.
- 5 (2) Thirty-three and one-third percent of the next \$50,000 recovered.
- 6 (3) Twenty-five percent of the next \$500,000 recovered.
- 7 (4) Fifteen percent of any amount on which the recovery exceeds \$600,000.

8 The limitations shall apply regardless of whether the recovery is by settlement, arbitration,
 9 or judgment, or whether the person for whom the recovery is made is a responsible adult, an
 10 infant, or a person of unsound mind.

11 (b) For purposes of this section:

12 “Recovered” means the net sum recovered after deducting any disbursements or costs
 13 incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred
 14 by the plaintiff and the attorney’s office-overhead costs or charges are not deductible
 15 disbursements or costs for such purpose.

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

1 (a) The provisions of House Bill 149, enacted during the first extraordinary session of the
 2 Legislature, 1986, shall be effective at the same time that the provisions of Enrolled Senate Bill
 3 714, enacted during the regular session of the Legislature, 1986, become effective, and the

4 provisions of said House Bill 149 shall be deemed to amend the provisions of Enrolled Senate Bill
5 714. The provisions of this article shall not apply to injuries which occur before the effective date
6 of said Enrolled Senate Bill 714.

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

10 The amendments to this article provided in Enrolled Committee Substitute for House Bill
11 2122 during the regular session of the Legislature, 2003, apply to all causes of action alleging
12 medical professional liability which are filed on or after July 1, 2003.

13 (b) The amendments to this article provided in Enrolled Committee Substitute for Senate
14 Bill 6 during the regular session of the Legislature, 2015, apply to all causes of action alleging
15 medical professional liability which are filed on or after July 1, 2015.

16 (c) The amendments to this article provided in Enrolled Committee Substitute for Senate
17 Bill 338 during the regular session of the Legislature, 2017, apply to all causes of action alleging
18 medical professional liability which arise or accrue on or after July 1, 2017.

19 (d) The amendments to this article provided by §55-7B-9e of this code during the regular
20 session of the Legislature, 2019, shall apply to any contract entered into for representation upon
21 a claim arising on or after July 1, 2019.

NOTE: The purpose of this bill is to limit attorney contingency fee agreements in medical professional liability actions.

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