

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 470**

BY SENATORS TAKUBO, MARONEY, STOLLINGS, AND TARR

[Introduced January 30, 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, relating to providing for the periodic payment of verdict awards  
3 under the Medical Professional Liability Act; computing those periodic payments;  
4 appropriate forms of security necessary to satisfy the periodic payment order; settlements;  
5 and assigning periodic payments.

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

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

### **§55-7B-9e. Periodic Payment of Judgments.**

1 In order to determine what judgment is to be entered on a verdict in a medical professional  
2 liability action to recover damages for medical injury or damages for wrongful death as a result of  
3 medical injury, after limits, reductions, set-offs and computations in the preceding sections have  
4 been conducted, the court shall proceed as follows:

5 (a) Awards for all past damages, all damages for future loss of services, all damages for  
6 future loss of consortium, all damages in wrongful death actions, and damages for future pain and  
7 suffering of \$250,000 or less shall be paid in a lump sum. In any case in which all damages are  
8 to be paid in lump sums, the judgment shall be entered on the total of the lump sums, without  
9 further regard to this section.

10 (b) Awards for all past medical expenses to be paid by or on behalf of the plaintiff to third  
11 parties in the form of satisfaction of liens shall be paid in a lump sum. In any case in which all  
12 damages are to be paid in lump sums, the judgment shall be entered on the total of the lump  
13 sums, without further regard to this section.

14 (c) Awards for all past damages, all damages for future loss of services, all damages for  
15 future loss of consortium, all damages in wrongful death actions, damages for future pain and  
16 suffering, and punitive damages of more than \$250,000, the court shall determine the greater of  
17 35 percent of such damages or \$250,000 and such amount shall be paid in a lump sum. The  
18 remaining amount of the award for damages shall be paid in a stream of payments over the period

19 of time determined by either the trier of fact as necessary to meet the plaintiff's future medical  
20 needs or five years whichever is greater, except that:

21 (1) Awards for lost earnings shall be paid for the full term of the award determined by the  
22 trier of fact; and

23 (2) Awards for items of economic pecuniary damages as to which the trier of fact found  
24 that the loss or item of damage is permanent, the payments for that item shall be made for the  
25 duration of the life of the plaintiff.

26 (3) Awards for specific future medical needs shall be set-aside and accounted for in the  
27 design of the annuity.

28 (4) Amounts claimed and awarded for immediate needs of the plaintiff, to be procured  
29 within the 60 days immediately following the verdict, shall be set-aside and paid in a lump sum  
30 only upon an affirmative showing of immediate need such that the plaintiff would not be able to  
31 maintain a minimal standard of living unless the amount is paid and spent immediately.

32 (d) The stream of payments is to be calculated as follows:

33 (1) The court will determine the appropriate amounts necessary to satisfy the reasonable  
34 attorney's fees and expenses and, if this amount is greater than the amount of the lump sum to  
35 be paid under subsection (c) of this section, the amounts will be subtracted from the amount to  
36 be paid out periodically.

37 (2) The amount remaining shall be summed and divided equally over the term as  
38 determined in subsection (c) of this section.

39 (e) The defendants and their insurance carriers shall be required to offer and to guarantee  
40 the purchase and payment of an annuity contract to make annual payments in equal monthly  
41 installments of the remaining streams of payments specified in such subsections (c) and (d) of  
42 this section. The plaintiffs may obtain their own annuity quotes or have their own expert review  
43 the annuity. The annuity contract shall provide that the payments shall run from the date of the  
44 verdict (unless some other date is specified in the verdict) for the period of time determined by

45 subsection (c) of this section.

46 (f) After the verdict has been rendered and upon procurement of annuity quotes, a hearing  
47 shall be conducted to assess the financial security and soundness of the annuity provider based  
48 on testimony from the annuity expert providing the annuity quotes. In such a hearing, each side  
49 must be given proper opportunity to inquire of the annuity expert the financial security of the  
50 annuity provider.

51 (g) The judgment shall be entered on the lump sum payment and the present value of the  
52 streams of payments required to be made by the defendants under this section.

53 (h) Security authorized or required for payment of a judgment for periodic installments  
54 entered in accordance with this section must be in the form of an annuity contract, executed by  
55 an insurer admitted to conduct business in the state under W. Va. Code § 33-1-1 et seq. and  
56 approved by the court.

57 (i) If the court enters a judgment for periodic installments, each party liable for all or a  
58 portion of such judgment shall separately or jointly with one or more others post security in an  
59 amount necessary to secure payment for the amount of the judgment for future periodic  
60 installments within 30 days after the date the judgment is entered. A liability insurer having a  
61 contractual obligation and any other person adjudged to have an obligation to pay all or part of a  
62 judgment for periodic installments on behalf of a judgment debtor is obliged to post security if the  
63 judgment debtor has not done so.

64 (j) Nothing in this section shall be construed to limit the right of a plaintiff, defendant, or  
65 defendants and any insurer to settle medical professional liability claims as they consider  
66 appropriate and in their complete discretion.

67 (k) An assignment of or an agreement to assign any right to periodic installments for future  
68 damages contained in a judgment entered under this section is enforceable only as to amounts:

69 (1) To secure payments of alimony or child support; or

70 (2) For the cost or products, services, or accommodations provided or to be provided by

71 the assignee for medical or other health care.

NOTE: The purpose of this bill is to allow for the periodic payment of judgments in medical malpractice cases.

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