

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### House Bill 5688

FISCAL  
NOTE

By Delegates Westfall, W. Hall, Ferrell, Shamblin,

Foster, and Cannon

[Introduced February 13, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §55-7H-2, §55-7H-3 and §55-7H-4 of the Code of West Virginia,  
 2 1931, as amended, all relating to providing immunity from civil liability for accredited  
 3 academic hospitals.

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

**ARTICLE 7H. IMMUNITY FROM CIVIL LIABILITY FOR CLINICAL PRACTICE PLANS,  
ACCREDITED ACADEMIC HOSPITALS AND PERSONNEL ASSOCIATED  
 WITH MEDICAL AND DENTAL SCHOOLS.**

**§55-7H-2. Definitions.**

1 For purposes of this article:

2 (1) "Accredited academic hospital" means any nonprofit hospital organized and operating  
 3 under the laws of the state of West Virginia that sponsors four or more approved medical  
 4 education programs.

5 (4) ~~(2)~~ "Clinical practice plan" means any of the nonprofit corporations that are operated to  
 6 assist the state medical school and state's medical and dental schools in providing clinical  
 7 services to patients and which are controlled by governing boards all the voting members of which  
 8 are faculty members or university officials. Clinical practice plans as defined herein shall be  
 9 considered agents of the state.

10 (2) ~~(3)~~ "Contractor" means an independent ~~(3)~~ contractor, whether compensated or not, who is  
 11 licensed as a health care professional under chapter thirty of this code, who is acting within the  
 12 scope of his or her authority for a state medical school, state's medical and dental schools, or a  
 13 clinical practice plan, or an accredited academic hospital ~~and is a member of the faculty of a state's~~  
 14 ~~medical and dental schools or state medical school.~~

15 (3) ~~(4)~~ "Employee" means a director, officer, employee, agent or servant, whether  
 16 compensated or not, who is licensed as a health care professional under chapter thirty of this code  
 17 and who is acting within the scope of his or her authority or employment for a state's medical and

18 dental schools, a state medical school, ~~or~~ a clinical practice plan, or an accredited academic  
19 hospital.

20 (4) ~~(5)~~ "Health care" means any act or treatment performed or furnished, or which should  
21 have been performed or furnished, by any director, officer, employee, agent or contractor of a state  
22 medical school, state's medical and dental schools, ~~or~~ a clinical practice plan, or an accredited  
23 academic hospital for, to or on behalf of a patient during the patient's medical care, treatment or  
24 confinement.

25 ~~(5)~~ ~~(6)~~ "Medical injury" means injury or death to a patient arising or resulting from the  
26 rendering or failure to render health care.

27 ~~(6)~~ ~~(7)~~ "Medical professional liability insurance" means a contract of insurance, or any self-  
28 insurance retention program established under the provisions of §18B-5-10 of this code, or §55-  
29 7H-4 of this code that pays for the legal liability arising from a medical injury.

30 ~~(7)~~ ~~(8)~~ "Patient" means a natural person who receives or should have received health care  
31 from a director, officer, employee, agent or contractor of a state medical school, state's medical  
32 and dental schools, ~~or~~ a clinical practice plan, or an accredited academic hospital under a contract,  
33 express or implied.

34 ~~(8)~~ ~~(9)~~ "Scope of authority or employment" means performance by a director, officer,  
35 employee, agent or contractor acting in good faith within the duties of his or her office, employment  
36 or contract with a state medical school, state's medical and dental schools, ~~or~~ a clinical practice  
37 plan, or accredited academic hospital, but does not include corruption or fraud.

38 ~~(9)~~ ~~(10)~~ "State's medical and dental schools" or "state medical school" means the Marshall  
39 University School of Medicine, the West Virginia School of Osteopathic Medicine, the West  
40 Virginia University School of Medicine and the West Virginia University School of Dentistry.

**§55-7H-3. Immunity for clinical practice plans, accredited academic hospitals, and their  
directors, officers, employees, agents and contractors.**

1 Notwithstanding any other provision of this code, all clinical practice plans and accredited

2 academic hospitals, and all employees and contractors of a state's medical and dental schools,  
3 state medical school or a clinical practice plan, or accredited academic hospitals are only liable up  
4 to the limits of insurance coverage procured through the State Board of Risk and Insurance  
5 Management in accordance with §55-7E-4 of this code, arising from a medical injury to a patient,  
6 including death resulting, in whole or in part, from the medical injury, either through act or  
7 omission, or whether actual or imputed, while acting within the scope of their authority or  
8 employment for a state's medical and dental schools, state medical school, ~~or a clinical practice~~  
9 plan, or accredited academic hospital. The provisions of this article apply to the acts and  
10 omissions of all full-time, part-time, visiting and volunteer directors, officers, faculty members,  
11 residents, fellows, students, employees, agents and contractors of a state's medical and dental  
12 schools, state medical school, ~~or a clinical practice plan, or accredited academic hospital~~,  
13 regardless of whether the persons are engaged in teaching, research, clinical, administrative or  
14 other duties giving rise to the medical injury, regardless of whether the activities were being  
15 performed on behalf of a state's medical and dental schools, state medical school or on behalf of a  
16 clinical practice plan, or accredited academic hospital and regardless of where the duties were  
17 being carried out at the time of the medical injury.

**§55-7H-4. Medical professional liability insurance for state's medical and dental schools,  
and state medical schools, clinical practice plans, and accredited academic  
hospitals.**

1 The State Board of Risk and Insurance Management shall provide medical professional  
2 liability insurance to all of the state's medical and dental schools, state medical school, all of their  
3 clinical practice plans, accredited academic hospitals, and all of their directors, officers,  
4 employees, agents and contractors in an amount to be determined by the State Board of Risk and  
5 Insurance Management, but in no event less than \$1.5 million for each occurrence after July 1,  
6 2015, to increase to account for inflation by an amount equal to the Consumer Price Index  
7 published by the United States Department of Labor, up to \$2 million for each occurrence. The

8 clinical practice plans and accredited academic hospitals shall pay for this insurance. The  
9 provision of professional liability insurance is not a waiver of immunity that any of the foregoing  
10 entities or persons may have pursuant to this article or under any other law. Any judgment  
11 obtained for a medical injury to a patient as a result of health care performed or furnished, or which  
12 should have been performed or furnished, by any employee or contractor of a state's medical and  
13 dental school, state medical school, ~~or~~ clinical practice plan, or accredited academic hospital shall  
14 not exceed the limits of medical professional liability insurance coverage provided by the State  
15 Board of Risk and Insurance Management pursuant to this section.

NOTE: The purpose of this bill is to provide immunity from civil liability for accredited academic hospitals.

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