

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 795

By Senator Nelson

[Introduced February 15, 2024; referred
to the Committee on Banking and Insurance]

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 limiting liability for accredited academic hospitals to only
 3 the amount of insurance covered by State Board of Risk and Insurance Management, to
 4 provide medical professional liability insurance to accredited academic hospitals, and
 5 providing updated definitions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 7H. IMMUNITY FROM CIVIL LIABILITY FOR CLINICAL PRACTICE PLANS
 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 ~~(1)~~ (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 contractor, whether compensated or not, who is
 11 licensed as a health care professional under §30-1-1, *et seq.* 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, ~~and is a member of the faculty of a state's medical and dental schools or~~
 14 ~~state medical school, or an accredited academic hospital.~~

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 or §55-7H-4 of this
29 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 an 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 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
4 up to the limits of insurance coverage procured through the State Board of Risk and Insurance
5 Management in accordance with §55-7H-4 of the 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. The provisions of this article apply to the acts and omissions of all full-time, part-time, visiting
10 and volunteer directors, officers, faculty members, residents, fellows, students, employees,
11 agents and contractors of a state's medical and dental schools, state medical school or a clinical
12 practice plan, or accredited academic hospital, regardless of whether the persons are engaged in
13 teaching, research, clinical, administrative or other duties giving rise to the medical injury,
14 regardless of whether the activities were being performed on behalf of a state's medical and dental
15 schools, state medical school or on behalf of a clinical practice plan, or accredited academic
16 hospital and regardless of where the duties were 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 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 limit liability for accredited academic hospitals to only the amount of insurance covered by State Board of Risk and Insurance Management, to provide medical professional liability insurance to accredited academic hospitals, and to provide updated definitions.

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