

FILED

2015 MAR 18 P 6:56

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-SECOND LEGISLATURE**  
**REGULAR SESSION, 2015**

OFFICE OF THE  
SECRETARY OF STATE

—●—  
**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 6**

(SENATORS FERNS, BOLEY, CARMICHAEL, GAUNCH, LEONHARDT,  
MULLINS, NOHE, TRUMP, BLAIR, PLYMALE, STOLLINGS,  
COLE (MR. PRESIDENT) AND TAKUBO, *ORIGINAL SPONSORS*)

[PASSED MARCH 10, 2015; IN EFFECT FROM PASSAGE.]

SB6

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FOR

## Senate Bill No. 6

(SENATORS FERNS, BOLEY, CARMICHAEL, GAUNCH, LEONHARDT,  
MULLINS, NOHE, TRUMP, BLAIR, PLYMALE, STOLLINGS,  
COLE (MR. PRESIDENT) AND TAKUBO, *ORIGINAL SPONSORS*)

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[Passed March 10, 2015; in effect from passage.]

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AN ACT to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all relating to medical professional liability generally; providing additional legislative findings and purposes related to medical professional liability; amending existing definitions of “collateral source”, “health care”, “health care facility”, “health care provider” and “medical professional liability” and creating a new definition for “related entity” all of which expand the scope of the Medical Professional Liability Act; modifying the qualifications for the competency of experts who testify in medical professional liability actions; providing rebuttable presumptions and evidentiary requirements relating to state and federal reports, disciplinary actions, accreditation reports, assessments and staffing; modifying the maximum amount of recovery for, and availability of, noneconomic damages;

clarifying amounts of medical professional liability insurance coverage that must exist to receive noneconomic damages limitations; clarifying that a health care provider is not vicariously liable unless the alleged agent does not maintain certain insurance; clarifying eligibility for, and application of, emergency medical services caps; providing a methodology for determining the amount of trauma care caps to account for inflation; providing certain limitations of verdicts for past medical expenses of the plaintiff; establishing effective date; and providing for severability.

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

That §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all to read as follows:

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

**§55-7B-1. Legislative findings and declaration of purpose.**

1           The Legislature finds and declares that:

2           The citizens of this state are entitled to the best medical  
3           care and facilities available and that health care providers  
4           offer an essential and basic service which requires that the  
5           public policy of this state encourage and facilitate the  
6           provision of such service to our citizens;

7           As in every human endeavor the possibility of injury or  
8           death from negligent conduct commands that protection of  
9           the public served by health care providers be recognized as  
10          an important state interest;

11 Our system of litigation is an essential component of this  
12 state's interest in providing adequate and reasonable  
13 compensation to those persons who suffer from injury or  
14 death as a result of professional negligence, and any  
15 limitation placed on this system must be balanced with and  
16 considerate of the need to fairly compensate patients who  
17 have been injured as a result of negligent and incompetent  
18 acts by health care providers;

19 Liability insurance is a key part of our system of  
20 litigation, affording compensation to the injured while  
21 fulfilling the need and fairness of spreading the cost of the  
22 risks of injury;

23 A further important component of these protections is the  
24 capacity and willingness of health care providers to monitor  
25 and effectively control their professional competency, so as  
26 to protect the public and ensure to the extent possible the  
27 highest quality of care;

28 It is the duty and responsibility of the Legislature to  
29 balance the rights of our individual citizens to adequate and  
30 reasonable compensation with the broad public interest in the  
31 provision of services by qualified health care providers and  
32 health care facilities who can themselves obtain the  
33 protection of reasonably priced and extensive liability  
34 coverage;

35 In recent years, the cost of insurance coverage has risen  
36 dramatically while the nature and extent of coverage has  
37 diminished, leaving the health care providers, the health care  
38 facilities and the injured without the full benefit of  
39 professional liability insurance coverage;

40 Many of the factors and reasons contributing to the  
41 increased cost and diminished availability of professional

42 liability insurance arise from the historic inability of this state  
43 to effectively and fairly regulate the insurance industry so as  
44 to guarantee our citizens that rates are appropriate, that  
45 purchasers of insurance coverage are not treated arbitrarily  
46 and that rates reflect the competency and experience of the  
47 insured health care providers and health care facilities;

48 The unpredictable nature of traumatic injury health care  
49 services often results in a greater likelihood of unsatisfactory  
50 patient outcomes, a higher degree of patient and patient  
51 family dissatisfaction and frequent malpractice claims,  
52 creating a financial strain on the trauma care system of our  
53 state, increasing costs for all users of the trauma care system  
54 and impacting the availability of these services, requires  
55 appropriate and balanced limitations on the rights of persons  
56 asserting claims against trauma care health care providers,  
57 this balance must guarantee availability of trauma care  
58 services while mandating that these services meet all national  
59 standards of care, to assure that our health care resources are  
60 being directed towards providing the best trauma care  
61 available;

62 The cost of liability insurance coverage has continued to  
63 rise dramatically, resulting in the state's loss and threatened  
64 loss of physicians, which, together with other costs and  
65 taxation incurred by health care providers in this state, have  
66 created a competitive disadvantage in attracting and retaining  
67 qualified physicians and other health care providers;

68 Medical liability issues have reached critical proportions  
69 for the state's long-term health care facilities, as: (1) Medical  
70 liability insurance premiums for nursing homes in West  
71 Virginia continue to increase and the number of claims per  
72 bed has increased significantly; (2) the cost to the state  
73 Medicaid program as a result of such higher premiums has  
74 grown considerably in this period; (3) current medical

75 liability premium costs for some nursing homes constitute a  
76 significant percentage of the amount of coverage; (4) these  
77 high costs are leading some facilities to consider dropping  
78 medical liability insurance coverage altogether; and (5) the  
79 medical liability insurance crisis for nursing homes may soon  
80 result in a reduction of the number of beds available to  
81 citizens in need of long-term care; and

82 The modernization and structure of the health care  
83 delivery system necessitate an update of provisions of this  
84 article in order to facilitate and continue the objectives of this  
85 article which are to control the increase in the cost of liability  
86 insurance and to maintain access to affordable health care  
87 services for our citizens.

88 Therefore, the purpose of this article is to provide a  
89 comprehensive resolution of the matters and factors which  
90 the Legislature finds must be addressed to accomplish the  
91 goals set forth in this section. In so doing, the Legislature has  
92 determined that reforms in the common law and statutory  
93 rights of our citizens must be enacted together as necessary  
94 and mutual ingredients of the appropriate legislative response  
95 relating to:

96 (1) Compensation for injury and death;

97 (2) The regulation of rate making and other practices by  
98 the liability insurance industry, including the formation of a  
99 physicians' mutual insurance company and establishment of  
100 a fund to assure adequate compensation to victims of  
101 malpractice; and

102 (3) The authority of medical licensing boards to  
103 effectively regulate and discipline the health care providers  
104 under such board.

**§55-7B-2. Definitions.**

1           (a) "Board" means the State Board of Risk and Insurance  
2           Management.

3           (b) "Collateral source" means a source of benefits or  
4           advantages for economic loss that the claimant has received  
5           from:

6           (1) Any federal or state act, public program or insurance  
7           which provides payments for medical expenses, disability  
8           benefits, including workers' compensation benefits, or other  
9           similar benefits. Benefits payable under the Social Security  
10          Act and Medicare are not considered payments from  
11          collateral sources except for Social Security disability  
12          benefits directly attributable to the medical injury in  
13          question;

14          (2) Any contract or agreement of any group,  
15          organization, partnership or corporation to provide, pay for  
16          or reimburse the cost of medical, hospital, dental, nursing,  
17          rehabilitation, therapy or other health care services or  
18          provide similar benefits, but excluding any amount that a  
19          group, organization, partnership, corporation or health care  
20          provider agrees to reduce, discount or write off of a medical  
21          bill;

22          (3) Any group accident, sickness or income disability  
23          insurance, any casualty or property insurance, including  
24          automobile and homeowners' insurance, which provides  
25          medical benefits, income replacement or disability  
26          coverage, or any other similar insurance benefits, except life  
27          insurance, to the extent that someone other than the insured,  
28          including the insured's employer, has paid all or part of the  
29          premium or made an economic contribution on behalf of the  
30          plaintiff; or

31 (4) Any contractual or voluntary wage continuation plan  
32 provided by an employer or otherwise or any other system  
33 intended to provide wages during a period of disability.

34 (c) "Consumer Price Index" means the most recent  
35 Consumer Price Index for All Consumers published by the  
36 United States Department of Labor.

37 (d) "Emergency condition" means any acute traumatic  
38 injury or acute medical condition which, according to  
39 standardized criteria for triage, involves a significant risk of  
40 death or the precipitation of significant complications or  
41 disabilities, impairment of bodily functions or, with respect  
42 to a pregnant woman, a significant risk to the health of the  
43 unborn child.

44 (e) "Health care" means:

45 (1) Any act, service or treatment provided under, pursuant  
46 to or in the furtherance of a physician's plan of care, a health  
47 care facility's plan of care, medical diagnosis or treatment;

48 (2) Any act, service or treatment performed or furnished,  
49 or which should have been performed or furnished, by any  
50 health care provider or person supervised by or acting under  
51 the direction of a health care provider or licensed professional  
52 for, to or on behalf of a patient during the patient's medical  
53 care, treatment or confinement, including, but not limited to,  
54 staffing, medical transport, custodial care or basic care,  
55 infection control, positioning, hydration, nutrition and similar  
56 patient services; and

57 (3) The process employed by health care providers and  
58 health care facilities for the appointment, employment,  
59 contracting, credentialing, privileging and supervision of  
60 health care providers.



61 (f) "Health care facility" means any clinic, hospital,  
62 pharmacy, nursing home, assisted living facility, residential  
63 care community, end-stage renal disease facility, home health  
64 agency, child welfare agency, group residential facility,  
65 behavioral health care facility or comprehensive community  
66 mental health center, intellectual/developmental disability  
67 center or program, or other ambulatory health care facility, in  
68 and licensed, regulated or certified by the State of West  
69 Virginia under state or federal law and any state-operated  
70 institution or clinic providing health care and any related  
71 entity to the health care facility.

72 (g) "Health care provider" means a person, partnership,  
73 corporation, professional limited liability company, health  
74 care facility, entity or institution licensed by, or certified in,  
75 this state or another state, to provide health care or  
76 professional health care services, including, but not limited  
77 to, a physician, osteopathic physician, physician assistant,  
78 advanced practice registered nurse, hospital, health care  
79 facility, dentist, registered or licensed practical nurse,  
80 optometrist, podiatrist, chiropractor, physical therapist,  
81 speech-language pathologist and audiologist, occupational  
82 therapist, psychologist, pharmacist, technician, certified  
83 nursing assistant, emergency medical service personnel,  
84 emergency medical services authority or agency, any person  
85 supervised by or acting under the direction of a licensed  
86 professional, any person taking actions or providing service  
87 or treatment pursuant to or in furtherance of a physician's  
88 plan of care, a health care facility's plan of care, medical  
89 diagnosis or treatment; or an officer, employee or agent of a  
90 health care provider acting in the course and scope of the  
91 officer's, employee's or agent's employment.

92 (h) "Medical injury" means injury or death to a patient  
93 arising or resulting from the rendering of or failure to render  
94 health care.

95 (i) "Medical professional liability" means any liability for  
96 damages resulting from the death or injury of a person for  
97 any tort or breach of contract based on health care services  
98 rendered, or which should have been rendered, by a health  
99 care provider or health care facility to a patient. It also means  
100 other claims that may be contemporaneous to or related to the  
101 alleged tort or breach of contract or otherwise provided, all in  
102 the context of rendering health care services.

103 (j) "Medical professional liability insurance" means a  
104 contract of insurance or any actuarially sound self-funding  
105 program that pays for the legal liability of a health care  
106 facility or health care provider arising from a claim of  
107 medical professional liability. In order to qualify as medical  
108 professional liability insurance for purposes of this article, a  
109 self-funding program for an individual physician must meet  
110 the requirements and minimum standards set forth in section  
111 twelve of this article.

112 (k) "Noneconomic loss" means losses, including, but not  
113 limited to, pain, suffering, mental anguish and grief.

114 (l) "Patient" means a natural person who receives or  
115 should have received health care from a licensed health care  
116 provider under a contract, expressed or implied.

117 (m) "Plaintiff" means a patient or representative of a  
118 patient who brings an action for medical professional liability  
119 under this article.

120 (n) "Related entity" means any corporation, foundation,  
121 partnership, joint venture, professional limited liability  
122 company, limited liability company, trust, affiliate or other  
123 entity under common control or ownership, whether directly  
124 or indirectly, partially or completely, legally, beneficially or  
125 constructively, with a health care provider or health care

126 facility; or which owns directly, indirectly, beneficially or  
127 constructively any part of a health care provider or health  
128 care facility.

129 (o) "Representative" means the spouse, parent, guardian,  
130 trustee, attorney or other legal agent of another.

**§55-7B-7. Testimony of expert witness on standard of care.**

1 (a) The applicable standard of care and a defendant's  
2 failure to meet the standard of care, if at issue, shall be  
3 established in medical professional liability cases by the  
4 plaintiff by testimony of one or more knowledgeable,  
5 competent expert witnesses if required by the court. A  
6 proposed expert witness may only be found competent to  
7 testify if the foundation for his or her testimony is first laid  
8 establishing that: (1) The opinion is actually held by the  
9 expert witness; (2) the opinion can be testified to with  
10 reasonable medical probability; (3) the expert witness  
11 possesses professional knowledge and expertise coupled with  
12 knowledge of the applicable standard of care to which his or  
13 her expert opinion testimony is addressed; (4) the expert  
14 witness's opinion is grounded on scientifically valid peer-  
15 reviewed studies if available; (5) the expert witness maintains  
16 a current license to practice medicine with the appropriate  
17 licensing authority of any state of the United States:  
18 *Provided*, That the expert witness's license has not been  
19 revoked or suspended in the past year in any state; and (6) the  
20 expert witness is engaged or qualified in a medical field in  
21 which the practitioner has experience and/or training in  
22 diagnosing or treating injuries or conditions similar to those  
23 of the patient. If the witness meets all of these qualifications  
24 and devoted, at the time of the medical injury, sixty percent  
25 of his or her professional time annually to the active clinical  
26 practice in his or her medical field or specialty, or to teaching  
27 in his or her medical field or specialty in an accredited

28 university, there shall be a rebuttable presumption that the  
29 witness is qualified as an expert. The parties shall have the  
30 opportunity to impeach any witness's qualifications as an  
31 expert. Financial records of an expert witness are not  
32 discoverable or relevant to prove the amount of time the  
33 expert witness spends in active practice or teaching in his or  
34 her medical field unless good cause can be shown to the  
35 court.

36 (b) Nothing contained in this section limits a trial court's  
37 discretion to determine the competency or lack of  
38 competency of a witness on a ground not specifically  
39 enumerated in this section.

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

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

6 (1) A state or federal survey, audit, review or other report  
7 of a health care provider or health care facility;

8 (2) Disciplinary actions against a health care provider's  
9 license, registration or certification;

10 (3) An accreditation report of a health care provider or  
11 health care facility; and

12 (4) An assessment of a civil or criminal penalty.

13 (b) In any action brought, if the health care facility or  
14 health care provider demonstrates compliance with the  
15 minimum staffing requirements under state law, the health

16 care facility or health care provider is entitled to a rebuttable  
17 presumption that appropriate staffing was provided.

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

**§55-7B-8. Limit on liability for noneconomic loss.**

1 (a) In any professional liability action brought against a  
2 health care provider pursuant to this article, the maximum  
3 amount recoverable as compensatory damages for  
4 noneconomic loss may not exceed \$250,000 for each  
5 occurrence, regardless of the number of plaintiffs or the  
6 number of defendants or, in the case of wrongful death,  
7 regardless of the number of distributees, except as provided  
8 in subsection (b) of this section.

9 (b) The plaintiff may recover compensatory damages for  
10 noneconomic loss in excess of the limitation described in  
11 subsection (a) of this section, but not in excess of \$500,000  
12 for each occurrence, regardless of the number of plaintiffs or  
13 the number of defendants or, in the case of wrongful death,  
14 regardless of the number of distributees, where the damages  
15 for noneconomic losses suffered by the plaintiff were for: (1)  
16 Wrongful death; (2) permanent and substantial physical  
17 deformity, loss of use of a limb or loss of a bodily organ  
18 system; or (3) permanent physical or mental functional injury  
19 that permanently prevents the injured person from being able  
20 to independently care for himself or herself and perform life-  
21 sustaining activities.

22 (c) On January 1, 2004, and in each year thereafter, the  
23 limitation for compensatory damages contained in  
24 subsections (a) and (b) of this section shall increase to  
25 account for inflation by an amount equal to the Consumer

26 Price Index published by the United States Department of  
27 Labor, not to exceed one hundred fifty percent of the amounts  
28 specified in said subsections.

29 (d) The limitations on noneconomic damages contained  
30 in subsections (a), (b), (c) and (e) of this section are not  
31 available to any defendant in an action pursuant to this article  
32 which does not have medical professional liability insurance  
33 in the aggregate amount of at least \$1 million for each  
34 occurrence covering the medical injury which is the subject  
35 of the action.

36 (e) If subsection (a) or (b) of this section, as enacted during  
37 the 2003 regular session of the Legislature, or the application  
38 thereof to any person or circumstance, is found by a court of  
39 law to be unconstitutional or otherwise invalid, the maximum  
40 amount recoverable as damages for noneconomic loss in a  
41 professional liability action brought against a health care  
42 provider under this article shall thereafter not exceed \$1  
43 million.

**§55-7B-9. Several liability.**

1 (a) In the trial of a medical professional liability action  
2 under this article involving multiple defendants, the trier of fact  
3 shall report its findings on a form provided by the court which  
4 contains each of the possible verdicts as determined by the  
5 court. Unless otherwise agreed by all the parties to the action,  
6 the jury shall be instructed to answer special interrogatories, or  
7 the court, acting without a jury, shall make findings as to:

8 (1) The total amount of compensatory damages recoverable  
9 by the plaintiff;

10 (2) The portion of the damages that represents damages  
11 for noneconomic loss;

12           (3) The portion of the damages that represents damages  
13       for each category of economic loss;

14           (4) The percentage of fault, if any, attributable to each  
15       plaintiff; and

16           (5) The percentage of fault, if any, attributable to each of  
17       the defendants.

18           (b) In assessing percentages of fault, the trier of fact shall  
19       consider only the fault of the parties in the litigation at the  
20       time the verdict is rendered and may not consider the fault of  
21       any other person who has settled a claim with the plaintiff  
22       arising out of the same medical injury: *Provided*, That, upon  
23       the creation of the Patient Injury Compensation Fund  
24       provided for in article twelve-c, chapter twenty-nine of this  
25       code, or of some other mechanism for compensating a  
26       plaintiff for any amount of economic damages awarded by  
27       the trier of fact which the plaintiff has been unable to collect,  
28       the trier of fact shall, in assessing percentages of fault,  
29       consider the fault of all alleged parties, including the fault of  
30       any person who has settled a claim with the plaintiff arising  
31       out of the same medical injury.

32           (c) If the trier of fact renders a verdict for the plaintiff, the  
33       court shall enter judgment of several, but not joint, liability  
34       against each defendant in accordance with the percentage of  
35       fault attributed to the defendant by the trier of fact.

36           (d) To determine the amount of judgment to be entered  
37       against each defendant, the court shall first, after adjusting  
38       the verdict as provided in section nine-a of this article, reduce  
39       the adjusted verdict by the amount of any preverdict  
40       settlement arising out of the same medical injury. The court  
41       shall then, with regard to each defendant, multiply the total  
42       amount of damages remaining, with interest, by the

43 percentage of fault attributed to each defendant by the trier of  
44 fact. The resulting amount of damages, together with any  
45 post-judgment interest accrued, shall be the maximum  
46 recoverable against the defendant.

47 (e) Upon the creation of the Patient Injury Compensation  
48 Fund provided for in article twelve-c, chapter twenty-nine of  
49 this code, or of some other mechanism for compensating a  
50 plaintiff for any amount of economic damages awarded by  
51 the trier of fact which the plaintiff has been unable to collect,  
52 the court shall, in determining the amount of judgment to be  
53 entered against each defendant, first multiply the total amount  
54 of damages, with interest, recoverable by the plaintiff by the  
55 percentage of each defendant's fault and that amount,  
56 together with any post-judgment interest accrued, is the  
57 maximum recoverable against said defendant. Prior to the  
58 court's entry of the final judgment order as to each defendant  
59 against whom a verdict was rendered, the court shall reduce  
60 the total jury verdict by any amounts received by a plaintiff  
61 in settlement of the action. When any defendant's percentage  
62 of the verdict exceeds the remaining amounts due the plaintiff  
63 after the mandatory reductions, each defendant shall be liable  
64 only for the defendant's pro rata share of the remainder of the  
65 verdict as calculated by the court from the remaining  
66 defendants to the action. The plaintiff's total award may  
67 never exceed the jury's verdict less any statutory or court-  
68 ordered reductions.

69 (f) Nothing in this section is meant to eliminate or diminish  
70 any defenses or immunities which exist as of the effective date  
71 of this section, except as expressly noted in this section.

72 (g) Nothing in this article is meant to preclude a health  
73 care provider from being held responsible for the portion of  
74 fault attributed by the trier of fact to any person acting as the  
75 health care provider's agent or servant or to preclude



76 imposition of fault otherwise imputable or attributable to the  
77 health care provider under claims of vicarious liability. A  
78 health care provider may not be held vicariously liable for the  
79 acts of a nonemployee pursuant to a theory of ostensible  
80 agency unless the alleged agent does not maintain  
81 professional liability insurance covering the medical injury  
82 which is the subject of the action in the aggregate amount of  
83 at least \$1 million for each occurrence.

**§55-7B-9a. Reduction in compensatory damages for economic losses for  
payments from collateral sources for the same injury.**

1 (a) In any action arising after the effective date of this  
2 section, a defendant who has been found liable to the plaintiff  
3 for damages for medical care, rehabilitation services, lost  
4 earnings or other economic losses may present to the court,  
5 after the trier of fact has rendered a verdict, but before entry  
6 of judgment, evidence of payments the plaintiff has received  
7 for the same injury from collateral sources.

8 (b) In a hearing held pursuant to subsection (a) of this  
9 section, the defendant may present evidence of future  
10 payments from collateral sources if the court determines that:

11 (1) There is a preexisting contractual or statutory  
12 obligation on the collateral source to pay the benefits;

13 (2) The benefits, to a reasonable degree of certainty, will  
14 be paid to the plaintiff for expenses the trier of fact has  
15 determined the plaintiff will incur in the future; and

16 (3) The amount of the future expenses is readily reducible  
17 to a sum certain.

18 (c) In a hearing held pursuant to subsection (a) of this  
19 section, the plaintiff may present evidence of the value of

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20 payments or contributions he or she has made to secure the  
21 right to the benefits paid by the collateral source.

22 (d) After hearing the evidence presented by the parties,  
23 the court shall make the following findings of fact:

24 (1) The total amount of damages for economic loss found  
25 by the trier of fact;

26 (2) The total amount of damages for each category of  
27 economic loss found by the trier of fact;

28 (3) The total amount of allowable collateral source  
29 payments received or to be received by the plaintiff for the  
30 medical injury which was the subject of the verdict in each  
31 category of economic loss; and

32 (4) The total amount of any premiums or contributions  
33 paid by the plaintiff in exchange for the collateral source  
34 payments in each category of economic loss found by the  
35 trier of fact.

36 (e) The court shall subtract the total premiums the  
37 plaintiff was found to have paid in each category of economic  
38 loss from the total collateral source benefits the plaintiff  
39 received with regard to that category of economic loss to  
40 arrive at the net amount of collateral source payments.

41 (f) The court shall then subtract the net amount of collateral  
42 source payments received or to be received by the plaintiff in  
43 each category of economic loss from the total amount of  
44 damages awarded the plaintiff by the trier of fact for that  
45 category of economic loss to arrive at the adjusted verdict.

46 (g) The court may not reduce the verdict rendered by the  
47 trier of fact in any category of economic loss to reflect:

48           (1) Amounts paid to or on behalf of the plaintiff which  
49       the collateral source has a right to recover from the plaintiff  
50       through subrogation, lien or reimbursement;

51           (2) Amounts in excess of benefits actually paid or to be  
52       paid on behalf of the plaintiff by a collateral source in a  
53       category of economic loss;

54           (3) The proceeds of any individual disability or income  
55       replacement insurance paid for entirely by the plaintiff;

56           (4) The assets of the plaintiff or the members of the  
57       plaintiff's immediate family; or

58           (5) A settlement between the plaintiff and another  
59       tortfeasor.

60           (h) After determining the amount of the adjusted verdict,  
61       the court shall enter judgment in accordance with the  
62       provisions of section nine of this article.

**§55-7B-9c. Limit on liability for treatment of emergency conditions for  
which patient is admitted to a designated trauma center;  
exceptions; emergency rules.**

1           (a) In any action brought under this article for injury to or  
2       death of a patient as a result of health care services or  
3       assistance rendered in good faith and necessitated by an  
4       emergency condition for which the patient enters a health  
5       care facility designated by the Office of Emergency Medical  
6       Services as a trauma center, including health care services or  
7       assistance rendered in good faith by a licensed emergency  
8       medical services authority or agency, certified emergency  
9       medical service personnel or an employee of a licensed  
10      emergency medical services authority or agency, the total  
11      amount of civil damages recoverable may not exceed

12 \$500,000 for each occurrence, exclusive of interest computed  
13 from the date of judgment, and regardless of the number of  
14 plaintiffs or the number of defendants or, in the case of  
15 wrongful death, regardless of the number of distributees.

16 (b) The limitation of liability in subsection (a) of this  
17 section also applies to any act or omission of a health care  
18 provider in rendering continued care or assistance in the  
19 event that surgery is required as a result of the emergency  
20 condition within a reasonable time after the patient's  
21 condition is stabilized.

22 (c) The limitation on liability provided under subsection  
23 (a) of this section does not apply to any act or omission in  
24 rendering care or assistance which:

25 (1) Occurs after the patient's condition is stabilized and  
26 the patient is capable of receiving medical treatment as a  
27 nonemergency patient; or

28 (2) Is unrelated to the original emergency condition.

29 (d) In the event that: (1) A physician provides follow-up  
30 care to a patient to whom the physician rendered care or  
31 assistance pursuant to subsection (a) of this section; and (2)  
32 a medical condition arises during the course of the follow-up  
33 care that is directly related to the original emergency  
34 condition for which care or assistance was rendered pursuant  
35 to said subsection, there is rebuttable presumption that the  
36 medical condition was the result of the original emergency  
37 condition and that the limitation on liability provided by said  
38 subsection applies with respect to that medical condition.

39 (e) There is a rebuttable presumption that a medical  
40 condition which arises in the course of follow-up care  
41 provided by the designated trauma center health care provider

42 who rendered good faith care or assistance for the original  
43 emergency condition is directly related to the original  
44 emergency condition where the follow-up care is provided  
45 within a reasonable time after the patient's admission to the  
46 designated trauma center.

47 (f) The limitation on liability provided under subsection  
48 (a) of this section does not apply where health care or  
49 assistance for the emergency condition is rendered:

50 (1) In willful and wanton or reckless disregard of a risk  
51 of harm to the patient; or

52 (2) In clear violation of established written protocols for  
53 triage and emergency health care procedures developed by  
54 the Office of Emergency Medical Services in accordance  
55 with subsection (e) of this section. In the event that the Office  
56 of Emergency Medical Services has not developed a written  
57 triage or emergency medical protocol by the effective date of  
58 this section, the limitation on liability provided under  
59 subsection (a) of this section does not apply where health  
60 care or assistance is rendered under this section in violation  
61 of nationally recognized standards for triage and emergency  
62 health care procedures.

63 (g) The Office of Emergency Medical Services shall,  
64 prior to the effective date of this section, develop a written  
65 protocol specifying recognized and accepted standards for  
66 triage and emergency health care procedures for treatment of  
67 emergency conditions necessitating admission of the patient  
68 to a designated trauma center.

69 (h) In its discretion, the Office of Emergency Medical  
70 Services may grant provisional trauma center status for a  
71 period of up to one year to a health care facility applying for  
72 designated trauma center status. A facility given provisional

73 trauma center status is eligible for the limitation on liability  
74 provided in subsection (a) of this section. If, at the end of the  
75 provisional period, the facility has not been approved by the  
76 Office of Emergency Medical Services as a designated  
77 trauma center, the facility is no longer eligible for the  
78 limitation on liability provided in subsection (a) of this  
79 section.

80 (i) The Commissioner of the Bureau for Public Health  
81 may grant an applicant for designated trauma center status a  
82 one-time only extension of provisional trauma center status,  
83 upon submission by the facility of a written request for  
84 extension, accompanied by a detailed explanation and plan of  
85 action to fulfill the requirements for a designated trauma  
86 center. If, at the end of the six-month period, the facility has  
87 not been approved by the Office of Emergency Medical  
88 Services as a designated trauma center, the facility no longer  
89 has the protection of the limitation on liability provided in  
90 subsection (a) of this section.

91 (j) If the Office of Emergency Medical Services  
92 determines that a health care facility no longer meets the  
93 requirements for a designated trauma center, it shall revoke  
94 the designation, at which time the limitation on liability  
95 established by subsection (a) of this section ceases to apply  
96 to that health care facility for services or treatment rendered  
97 thereafter.

98 (k) The Legislature hereby finds that an emergency exists  
99 compelling promulgation of an emergency rule, consistent  
100 with the provisions of this section, governing the criteria for  
101 designation of a facility as a trauma center or provisional  
102 trauma center and implementation of a statewide  
103 trauma/emergency care system. The Legislature therefore  
104 directs the Secretary of the Department of Health and Human  
105 Resources to file, on or before July 1, 2003, emergency rules

106 specifying the criteria for designation of a facility as a trauma  
107 center or provisional trauma center in accordance with  
108 nationally accepted and recognized standards and governing  
109 the implementation of a statewide trauma/emergency care  
110 system. The rules governing the statewide trauma/emergency  
111 care system shall include, but not be limited to:

112 (1) System design, organizational structure and operation,  
113 including integration with the existing emergency medical  
114 services system;

115 (2) Regulation of facility designation, categorization and  
116 credentialing, including the establishment and collection of  
117 reasonable fees for designation; and

118 (3) System accountability, including medical review and  
119 audit to assure system quality. Any medical review  
120 committees established to assure system quality shall include  
121 all levels of care, including emergency medical service  
122 providers, and both the review committees and the providers  
123 shall qualify for all the rights and protections established in  
124 article three-c, chapter thirty of this code.

125 (1) On January 1, 2016, and in each year after that, the  
126 limitation for civil damages contained in subsection (a) of  
127 this section shall increase to account for inflation by an  
128 amount equal to the Consumer Price Index published by the  
129 United States Department of Labor, not to exceed one  
130 hundred fifty percent of said subsection.

**§55-7B-9d. Adjustment of verdict for past medical expenses.**

1 A verdict for past medical expenses is limited to:

2 (1) The total amount of past medical expenses paid by or  
3 on behalf of the plaintiff; and

4           (2) The total amount of past medical expenses incurred  
5 but not paid by or on behalf of the plaintiff for which the  
6 plaintiff or another person on behalf of the plaintiff is  
7 obligated to pay.

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

1           (a) The provisions of House Bill 149, enacted during the  
2 first extraordinary session of the Legislature, 1986, shall be  
3 effective at the same time that the provisions of Enrolled  
4 Senate Bill 714, enacted during the Regular session, 1986,  
5 become effective, and the provisions of said House Bill 149  
6 shall be deemed to amend the provisions of Enrolled Senate  
7 Bill 714. The provisions of this article shall not apply to  
8 injuries which occur before the effective date of this said  
9 Enrolled Senate Bill 714.

10          The amendments to this article as provided in House Bill  
11 601, enacted during the sixth extraordinary session of the  
12 Legislature, 2001, apply to all causes of action alleging  
13 medical professional liability which are filed on or after  
14 March 1, 2002.

15          The amendments to this article provided in Enrolled  
16 Committee Substitute for House Bill No. 2122 during the  
17 regular session of the Legislature, 2003, apply to all causes of  
18 action alleging medical professional liability which are filed  
19 on or after July 1, 2003.

20          (b) The amendments to this article provided in Enrolled  
21 Committee Substitute for Senate Bill No. 6 during the regular  
22 session of the Legislature, 2015, apply to all causes of action  
23 alleging medical professional liability which are filed on or  
24 after July 1, 2015.

**§55-7B-11. Severability.**



1           (a) If any provision of this article as enacted during the  
2 first extraordinary session of the Legislature, 1986, in House  
3 Bill 149, or as enacted during the regular session of the  
4 Legislature, 1986, in Senate Bill 714, or as enacted during the  
5 regular session of the Legislature, 2015, or the application  
6 thereof to any person or circumstance is held invalid, the  
7 invalidity does not affect other provisions or applications of  
8 this article, and to this end, the provisions of this article are  
9 declared to be severable.

10           (b) If any provision of the amendments to section five of  
11 this article, any provision of section six-d of this article or  
12 any provision of the amendments to section eleven, article  
13 six, chapter fifty-six of this code as provided in House Bill  
14 601, enacted during the sixth extraordinary session of the  
15 Legislature, 2001, is held invalid, or the application thereof  
16 to any person is held invalid, then, notwithstanding any other  
17 provision of law, every other provision of said House Bill  
18 601 shall be deemed invalid and of no further force and  
19 effect.

20           (c) If any provision of the amendments to section six or  
21 ten of this article or any provision of section six-a, six-b or  
22 six-c of this article as provided in House Bill 601, enacted  
23 during the sixth extraordinary session of the Legislature,  
24 2001, is held invalid, the invalidity does not affect other  
25 provisions or applications of this article, and to this end, such  
26 provisions are deemed severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Mark R. Raymond*  
.....  
Chairman Senate Committee

*John B. Hall*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Mark A. Barnes*  
.....  
Clerk of the Senate

*Stephen D. Barnes*  
.....  
Clerk of the House of Delegates

*Phillip P. Hall*  
.....  
President of the Senate

*Andy Bell*  
.....  
Speaker of the House of Delegates

The within *is approved* this the *18<sup>th</sup>*  
Day of *March*, 2015.

*Earl Ray Tomblin*  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

**MAR 16 2015**

**TIME** 10:46 AM