WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 454

SENATORS TRUMP, WELD, MILLER AND GAUNCH, original sponsors

[Passed April 6, 2017; in effect 90 days from passage]
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Enr. CS for SB 454

AN ACT to repeal §38-5B-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-12D-1a of said code; to amend and reenact §38-5B-5 and §38-5B-9 of said code; to amend and reenact §49-4-716 of said code; and to amend and reenact §51-2A-8 of said code, all relating to providing more efficient collection and submission of state moneys received as a result of certain court transactions or court services; eliminating certain fees generated by suggestee executions; providing for monthly remittance of moneys collected by clerk of court from assessments on claims filed under Medical Professional Liability Act; directing clerk of court to remit certain assessments on claims filed under Medical Professional Liability Act to State Treasury; directing payment of certain sums collected pursuant to execution of judgment to be paid to judgment creditor; directing clerk of court of conviction to collect any fees collected for teen court program and remit monthly to sheriff for deposit in appropriate account; directing circuit clerk to remit moneys received for duplication of family court records to remit amounts received to State Treasury for deposit in West Virginia Supreme Court of Appeals Fund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §38-5B-8 of the Code of West Virginia, 1931, as amended, be repealed; that §29-12D-1a of said code be amended and reenacted; that §38-5B-5 and §38-5B-9 of said code be amended and reenacted; that §49-4-716 of said code be amended and reenacted; and that §51-2A-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

§29-12D-1a. Additional funding for Patient Injury Compensation Fund; assessment on licensed physicians; assessment on hospitals; assessment on certain awards.

(a) Annual assessment on licensed physicians. —
(1) The Board of Medicine and the Board of Osteopathic Medicine shall collect a biennial assessment in the amount of $125 from every physician licensed by each board for the privilege of practicing medicine in this state. The assessment is to be imposed and collected on forms prescribed by each licensing board. The assessment shall be collected as part of licensure or license renewal beginning July 1, 2016, for licenses issued or renewed in calendar year 2016 through calendar year 2019: Provided, That the following physicians shall be exempt from the assessment:

(A) A resident physician who is a graduate of a medical school or college of osteopathic medicine enrolled and who is participating in an accredited full-time program of post-graduate medical education in this state;

(B) A physician who has presented suitable proof that he or she is on active duty in the armed forces of the United States and who will not be reimbursed by the armed forces for the assessment;

(C) A physician who practices solely under a special volunteer medical license authorized by section ten-a, article three, chapter thirty of this code or section twelve-b, article fourteen of said chapter;

(D) A physician who holds an inactive license pursuant to subsection (j), section twelve, article three, chapter thirty of this code or section ten, article fourteen of said chapter, or a physician who voluntarily surrenders his or her license: Provided, That a retired osteopathic physician who submits to the Board of Osteopathic Medicine an affidavit asserting that he or she receives no monetary remuneration for any medical services provided, executed under the penalty of perjury and if executed outside the State of West Virginia, verified, may be considered to be licensed on an inactive basis: Provided, however, That if a physician or osteopathic physician elects to resume an active license to practice in the state and the physician or osteopathic physician has not paid the assessments during his or her inactive status, then as a condition of receiving an active status license, the physician or osteopathic physician shall pay
the assessment due in the year in which physicians or the osteopathic physician resumes an
active license; and

(E) A physician who practices less than forty hours a year providing medical genetic
services to patients within this state.

(2) The entire proceeds of the annual assessment collected pursuant to subsection (a) of
this section shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine
and the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance
Management all amounts collected pursuant to this subsection for deposit in the fund.

(3) Notwithstanding any provision of the code to the contrary, a physician required to pay
the annual assessment who fails to do so shall not be granted a license or renewal of an existing
license by the Board of Medicine or the Board of Osteopathic Medicine. Any license which expires
as a result of a failure to pay the required assessment shall not be reinstated or reactivated until
the assessment is paid in full.

(b) Assessment on trauma centers. — From July 1, 2016 through June 30, 2020, an
assessment of $25 shall be levied by the Board of Risk and Insurance Management on trauma
centers for each trauma patient treated at a health care facility designated by the Office of
Emergency Medical Services as a trauma center, as reported to the West Virginia Trauma
Registry. Beginning July 1, 2016, and annually thereafter until June 30, 2020, the Board of Risk
and Insurance Management shall assess each trauma center for trauma patients treated from
January 1 to December 31 of the previous year: Provided, That the assessment to be collected
by the Board of Risk and Insurance Management on June 30, 2017, shall be based on each
trauma patient treated from January 1, 2016, to December 31, 2016.

(c) Assessment on claims filed under the Medical Professional Liability Act. — From July
1, 2016, through June 30, 2020, an assessment of one percent of the gross amount of any
settlement or judgment in a qualifying claim shall be levied.
(1) For purposes of this subsection, a qualifying claim is any claim for which a screening certificate of merit, as that term is defined in section six, article seven-b, chapter fifty-five of this code, is required.

(2) For any assessment levied pursuant to this subsection for which a judgment is entered by a court, the date of the entry of judgment shall be used to determine applicability of this provision. The defendant or defendants shall remit the assessment to the clerk of the court in which the qualified claim was filed. The clerk of the court shall then remit the assessment monthly to the State Treasury to be deposited in the fund.

(3) For any assessment levied pursuant to this subsection on a settlement entered into by the parties, the date on which the agreement is formalized in writing by the parties shall be used to determine applicability of this provision. At the time that an action alleging a qualified claim is dismissed by the parties, the assessment shall be paid to the clerk of the court, who shall then remit the assessment to the State Treasury to be deposited in the fund. Collected assessments shall be remitted no less often than monthly. If a qualifying claim is settled prior to the filing of an action, the claimant, or his or her counsel, shall remit the payment to the Board of Risk and Insurance Management within sixty days of the date of the settlement agreement to be paid into the fund.

(d) Termination of assessments. — The requirements of this section shall terminate on the dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund has been paid or has been funded in its entirety. The Board of Risk and Insurance Management shall submit a report to the Joint Committee of Government and Finance each year beginning January 1, 2018, giving recommendations based on actuarial analysis of the fund’s liability. The recommendations shall include, but not be limited to, discontinuance of the assessments provided for in this section, closure of the fund and transfer of the fund’s liability.
CHAPTER 38. LIENS.

ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUBDIVISIONS; GARNISHMENT AND SUGGESTION OF PUBLIC OFFICERS.

§38-5B-5. Service of suggestee execution and vacating or modifying order.

An execution issued under this article against money due and owing or to become due and owing from the state, or a state agency which shall be payable on the warrant of the State Auditor for the payment thereof directed to the judgment debtor must be served upon the State Auditor at his or her office in Charleston. In the case of money payable directly by any state agency the execution shall be served upon the auditor of such agency or, lacking such, upon the officer thereof whose duty it is to audit and/or to issue warrants, checks or orders for the payment of such claims. Such service shall be made by exhibiting and at the same time delivering a true copy of the original execution, to the proper officer, or to a person in his or her office designated and authorized by the State Auditor or head of such department, institution or agency, as the case may be, by writing filed in such office to receive it. Service of such an execution may be made by mail by the court or the clerk of the court who issued the execution or by the officer to whom the same is delivered or by any credible person, by enclosing the original suggestee execution in a postpaid wrapper addressed to the proper officer and agency together with a true copy of the suggestee execution. Service by mail shall not be deemed to be complete until duly admitted and until the original execution shall have been returned to the court or the clerk of the court who issued said execution. Such admission shall be made as soon as may be in the regular course of administration after receipt of the execution. The admission may be subscribed by the officer upon whom the service is required by this section to be made or by a person in his or her office designated and authorized by the State Auditor or the head of a state agency, as the case may be, by writing filed in such office to admit service of suggestee executions.
A suggestee execution against a political subdivision of the state shall be served upon the auditor thereof or the officer who, or the clerk of the board or any body which is charged with the duty of auditing and/or issuing warrants, checks or orders for the payment of such claims, in like manner as service hereunder upon state officers, except that service by mail shall not be sufficient or binding.

Service of a vacating or modifying order issued pursuant to section six of this article shall be made in the manner herein prescribed for the service of a suggestee execution.

§38-5B-9. Payments in satisfaction of execution; liability of officer for payment or failure to pay; action against political subdivision failing to pay; declaratory judgment as to right against state.

It shall be the duty of the proper officer, after service of an execution under this article, bearing the notation required by section four of this article if directed against salary or wages, to pay to the judgment creditor such sums as may be or shall thereafter become due to the judgment debtor from the suggestee, or the amount thereof prescribed in section three of this article in the case of salary or wages, during the life of the execution until it shall be wholly satisfied. The proper officer or suggestee upon whom the execution or any renewal execution is served shall once every ninety days during the life of such execution and any renewal execution pay over as aforesaid the full amount of money payable, held or retained pursuant to such execution or renewal execution during the preceding ninety days.

A public officer who shall either pay over or fail or refuse to pay over, in satisfaction of such execution, money due the judgment debtor shall be personally liable therefor only if he or she shall have acted in bad faith, even though such payment or failure or refusal to pay shall have been in violation of the rights of one or more parties in interest.

If a political subdivision be the suggestee and shall fail or refuse to pay over to the judgment creditor the amount due the judgment debtor or the required percentage thereof in the case of salary or wages, it shall be liable to an action therefor by the judgment creditor named in
the execution and the amount recovered in the action shall be applied toward the payment of the
execution.

No judgment may be recovered against the state as suggestee but a judgment creditor
may bring an action against the proper officer for a declaratory judgment establishing his or her
right to have sums due or to become due to his or her judgment debtor or from the state or a state
agency applied in satisfaction of a suggestee execution issued on his or her judgment pursuant
to this article. Such an action may be brought against the State Auditor only in the circuit court of
Kanawha County. Costs shall be in the discretion of the court.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation;
requirements; fees.

(a) Notwithstanding any provision of this article to the contrary, any county or municipality
may choose to institute a teen court program in accordance with this section.

(b) A juvenile may be given the option of proceeding in a teen court program as an
alternative to the filing of a formal proceeding pursuant to section seven hundred four or section
seven hundred fourteen of this article if:

(1) The juvenile is alleged to have committed a status offense or an act of delinquency
that would be a misdemeanor if committed by an adult;

(2) The juvenile is alleged to have violated a municipal ordinance over which municipal
court and state court have concurrent jurisdiction; or

(3) The juvenile is otherwise subject to the provisions of this article.

(c) If the circuit court or municipal court finds that the offender is a suitable candidate for
the teen court program, it may extend the option to enter the program as an alternative procedure.
A juvenile may not enter the teen court program unless he or she and his or her parent or guardian
consent to participating in the program.
(d) Any juvenile who does not successfully cooperate in, and complete, the teen court program and any disposition imposed during the juvenile’s participation shall be returned to the circuit court for further disposition as provided by section seven hundred twelve or seven hundred fourteen of this article, as the case may be, or returned to the municipal court for further disposition for cases originating in municipal court consistent with any applicable ordinance.

(e) The following provisions apply to all teen court programs:

(1) The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia State Bar, who serves on a voluntary basis.

(2) Any juvenile who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.

(3) Volunteer students from grades seven through twelve of the schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform sixteen to forty hours of community service, the duration and type of which shall be determined by the teen court jury from a standard list of available community service programs provided by the county juvenile probation system and a standard list of alternative consequences that are consistent with the purposes of this article. The performance of the juvenile shall be monitored by the county juvenile probation system for cases originating in the circuit court’s jurisdiction, or municipal teen court coordinator or other designee for cases originating in the municipal court’s jurisdiction. The juvenile shall also perform at least two sessions of teen court jury service and, if considered appropriate by the circuit court judge or teen court judge, participate in an education program. Nothing in this section may be construed so as to deny availability of the services provided under section seven hundred twelve of this article to juveniles who are otherwise eligible for the service.
(f) The rules for administration, procedure and admission of evidence shall be determined
by the chief circuit judge or teen court judge, but in no case may the court require a juvenile to
admit the allegation against him or her as a prerequisite to participation in the teen court program.
A copy of these rules shall be provided to every teen court participant.

(g) Each county or municipality that operates, or wishes to operate, a teen court program
as provided in this section is hereby authorized to adopt a mandatory fee of up to $5 to be
assessed as provided in this subsection. Municipal courts may assess a fee pursuant to this
section upon authorization by the city council of the municipality. The clerk of the court of
conviction shall collect the fees established in this subsection. Assessments collected by the clerk
of the court pursuant to this subsection shall be deposited into an account specifically for the
operation and administration of the municipal teen court program. Assessments collected by the
clerk of the circuit court or magistrate court pursuant to this subsection shall be remitted monthly
to the sheriff for deposit into an account specifically for the operation and administration of the
county teen court program.

(h) Any mandatory fee established by a county commission or city council in accordance
with this subsection shall be paid by the defendant on a judgment of guilty or a plea of nolo
contendere for each violation committed in the county or municipality of any felony, misdemeanor
or any local ordinance, including traffic violations and moving violations but excluding municipal
parking ordinances. Municipalities operating teen courts are authorized to use fees assessed in
municipal court pursuant to this subsection for operation of a teen court in their municipality.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-8. Rules of practice and procedure; applicability of rules of evidence; record of
hearings; duties of clerk of circuit court.

(a) Pleading, practice and procedure in matters before a family court judge are governed
by rules of practice and procedure for family law promulgated by the Supreme Court of Appeals.
(b) The West Virginia Rules of Evidence apply to proceedings before a family court judge.

(c) Hearings before a family court shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family court judge and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family court judge, the magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family court judge shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-clerk shall be a “writing” or “recording” as those terms are defined in rule 1001 of the West Virginia Rules of Evidence and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an original under such rule. The party requesting the copy shall pay the circuit clerk an amount equal to the actual cost of the tape or other medium or the sum of $5, whichever is greater. Unless otherwise ordered by the court, the preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript. The circuit clerk shall remit those amounts received monthly to the State Treasury for deposit in the West Virginia Supreme Court of Appeals fund designated for receipt of such moneys.

(d) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all documents filed in the proceeding, constitute the exclusive record and, on payment of lawfully prescribed costs, shall be made available to the parties.

(e) In any proceeding in which a party has filed an affidavit that he or she is financially unable to pay the fees and costs, the family court judge shall determine whether either party is financially able to pay the fees and costs based on the information set forth in the affidavit or on any evidence submitted at the hearing. If a family court judge determines that either party is financially able to pay the fees and costs, the family court judge shall assess the payment of such
fees and costs accordingly as part of an order. The provisions of this subsection do not alter or
diminish the provisions of section one, article two, chapter fifty-nine of this code.

(f) The clerks of the circuit court shall have, within the scope of the jurisdiction of family
courts, all the duties and powers prescribed by law that clerks exercise on behalf of circuit courts:

Provided, That a family court judge may not require the presence or attendance of a circuit clerk
or deputy circuit clerk at any hearing before the family court.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 18th Day of April, 2017.

Governor