

Senate Bill No. 134

(By Senator M. Hall)

[Introduced January 14, 2015; referred to the Committee on the Judiciary; and then to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter,
designated §55A-1-1, §55A-1-2, §55A-1-3, §55A-1-4, §55A-2-1, §55A-2-2, §55A-2-3,
§55A-2-4, §55A-2-5, §55A-2-6, §55A-2-7, §55A-2-8, §55A-2-9, §55A-3-1, §55A-3-2,
§55A-4-1, §55A-4-2, §55A-4-3, §55A-4-4, §55A-4-5, §55A-4-6, §55A-5-1, §55A-5-2,
§55A-5-3, §55A-5-4, §55A-5-5, §55A-5-6, §55A-5-7, §55A-5-8, §55A-6-1, §55A-6-2,
§55A-6-3, §55A-6-4, §55A-6-5, §55A-7-1, §55A-7-2, §55A-7-3, §55A-7-4, §55A-7-5,
§55A-7-6, §55A-7-7, §55A-7-8, §55A-8-1, §55A-8-2, §55A-9-1, §55A-9-2, §55A-10-1,
§55A-10-2, §55A-10-3, §55A-11-1, §55A-11-2, §55A-11-3, §55A-11-4, §55A-11-5,
§55A-11-6, §55A-11-7, §55A-11-8, §55A-11-9, §55A-11-10, §55A-11-11, §55A-11-12,
§55A-12-1, §55A-12-2, §55A-12-3, §55A-12-4, §55A-12-5 and §55A-12-6, all relating to
reforming the civil justice system; limiting amount of recoverable damages; authorizing a
new court to be known as the Intermediate Court of Appeals; requiring court to be

1 operational by January 1, 2017; establishing northern and southern districts; providing three
2 judges for each district; providing short title; stating legislative findings; excepting certain
3 actions; defining terms; establishing qualifications for judges; establishing jurisdiction of
4 court; providing for review; providing that Supreme Court will either keep the appeal or
5 transfer it to Intermediate Court; providing that appeals in certain administrative cases are
6 discretionary; authorizing appeals from Intermediate Court to the Supreme Court; authorizing
7 Governor to make initial appointments by July 1, 2016; creating staggered terms; providing
8 for elections for ten-year terms after initial appointments; authorizing a Chief Judge of the
9 Intermediate Court; authorizing staff for court and judges; providing for compensation and
10 expenses of judges and staff; providing for temporary assignment of circuit court judges;
11 authorizing Supreme Court to provide facilities, furniture, fixtures and equipment for
12 Intermediate Court; establishing precedential effect of Intermediate Court orders and
13 decisions; providing that budget of Intermediate Court will be part of Supreme Court budget;
14 prohibiting medical monitoring relief absent manifest present injury or disease caused by
15 defendant; providing for venue reform; relating to application of doctrine of *forum non*
16 *conveniens* when civil actions have both resident and nonresident plaintiff; providing for
17 parties to make a motion that a case would more properly be heard in a forum outside this
18 state; providing for statute of limitations expiring in alternative forum while claim is pending
19 in this state; providing for proper dismissal of an action for *forum non conveniens* purposes;
20 providing for application to class representatives; requiring courts granting motions to stay
21 or dismissal actions for *forum non conveniens* purposes to set forth specific findings of fact

1 and conclusions of law; providing standards to determine competency of expert witnesses;
2 providing standards for opinion testimony by lay witnesses; providing standards of admission
3 for expert witness testimony; requiring basis for expert witness testimony; barring certain
4 types of expert witness testimony; mandating pretrial hearings and disclosures of expert
5 testimony; providing for interpretation of competency of expert witnesses; establishing
6 standard of review; establishing when punitive damages may be recovered; providing
7 maximum amounts which may be awarded on multiple punitive damages awards for same
8 course of conduct; providing for bifurcation of a civil action in which punitive damages are
9 sought when requested by defendant; stating conditions under which punitive damages may
10 be assessed against a principal or employer for an act of an agent or employee and against
11 an association, limited liability entity or partnership for the acts of a member or partner;
12 predicating actions for damages upon principles of comparative fault; establishing
13 comparative fault standard; abolishing joint liability and implementing several liability;
14 establishing how to consider fault of nonparties; establishing how to consider fault of, and
15 amounts paid by, settling parties; providing for use of special interrogatories; clarifying fault
16 may be imputed to another person who was acting as an agent or servant of another; allowing
17 assessment of a percentage of fault for failing to take reasonable precautionary measures that
18 were available; precluding allocation of fault to a person such as a seller, distributor or
19 installer on a strict product liability theory where that person did not contribute to alleged
20 defect; providing for burden of proof and limitations; providing for immunity of premises
21 owners from civil liability in certain circumstances; reducing damage awards by collateral

1 source payments; providing how damage reductions shall be determined; stating effects of
2 such determinations upon trial; providing losers-pay provision; providing statute of repose;
3 establishing general eighteen-year warranty for products' liability actions and an exception
4 for cases where there is an express warranty for more than eighteen years; providing that
5 noneconomic damages are recoverable in actions where damages were authorized at the time
6 this bill became law; providing maximum amounts that may be recovered for noneconomic
7 losses based on physical injury and nonphysical injury; providing for costs by nonprevailing
8 party; establishing procedure for recovery of attorney's fees; providing courts may take
9 judicial notice of the usual and customary attorney's fees; providing for liability of attorneys;
10 providing for applicability of other law; requiring the West Virginia Supreme Court adopt
11 rules to implement this chapter; providing for repeal of conflicting laws; providing for
12 applicability and severability of this chapter; clarifying no additional cause of action is
13 created by this chapter; and providing this chapter becomes effective immediately upon
14 passage by the Legislature and approval by the Governor.

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

16 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
17 chapter, designated §55A-1-1, §55A-1-2, §55A-1-3, §55A-1-4, §55A-2-1, §55A-2-2, §55A-2-3,
18 §55A-2-4, §55A-2-5, §55A-2-6, §55A-2-7, §55A-2-8, §55A-2-9, §55A-3-1, §55A-3-2, §55A-4-1,
19 §55A-4-2, §55A-4-3, §55A-4-4, §55A-4-5, §55A-4-6, §55A-5-1, §55A-5-2, §55A-5-3, §55A-5-4,
20 §55A-5-5, §55A-5-6, §55A-5-7, §55A-5-8, §55A-6-1, §55A-6-2, §55A-6-3, §55A-6-4, §55A-6-5,
21 §55A-7-1, §55A-7-2, §55A-7-3, §55A-7-4, §55A-7-5, §55A-7-6, §55A-7-7, §55A-7-8, §55A-8-1,

1 §55A-8-2, §55A-9-1, §55A-9-2, §55A-10-1, §55A-10-2, §55A-10-3, §55A-11-1, §55A-11-2,
2 §55A-11-3, §55A-11-4, §55A-11-5, §55A-11-6, §55A-11-7, §55A-11-8, §55A-11-9, §55A-11-10,
3 §55A-11-11, §55A-11-12, §55A-12-1, §55A-12-2, §55A-12-3, §55A-12-4, §55A-12-5 and
4 §55A-12-6, all to read as follows:

5 **CHAPTER 55A. CIVIL JUSTICE REFORM.**

6 **ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS AND DECLARATION OF**
7 **PURPOSES; CHAPTER NOT APPLICABLE TO CERTAIN**
8 **ACTIONS; AND DEFINITIONS.**

9 **§55A-1-1. Short title.**

10 This chapter shall be known as and may be cited as the “Civil Justice Reform Act of 2015.”

11 **§55A-1-2. Legislative findings and declaration of purposes.**

12 (a) The Legislature finds and declares that:

13 (1) The citizens of this state are entitled to a fair civil justice system which provides adequate
14 and reasonable compensation for those persons suffering injury under the state’s civil liability law;

15 (2) It is the duty and responsibility of the Legislature to also ensure that the state’s civil
16 liability law is not abusive or unfair to those it is supposed to serve;

17 (3) In recent years, West Virginia’s civil liability system has regularly ranked as one of the
18 worst in the nation for legal fairness;

19 (4) Since 2007, West Virginia has been home to several of the nation’s largest lawsuit
20 verdicts, despite the state’s relatively small population;

21 (5) The current civil liability law of the state has actually resulted, and may continue to result,

1 in excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability that:

2 (A) Adversely affect the ability of the state to retain jobs and attract new employers;

3 (B) Cause the withdrawal of products, producers, services, and service providers from the
4 marketplace and result in excessive liability costs that are passed on to consumers through higher
5 prices;

6 (C) Cause defendants, including boards of education and other governmental agencies, to
7 settle cases out of fear of large verdicts rendered pursuant to the civil liability laws and in order to
8 avoid the high costs, inconvenience and uncertainty of litigation;

9 (D) Jeopardize the financial well-being and security of many individuals, small businesses,
10 and even entire industries, and adversely affect government and taxpayers;

11 (E) Undermine the ability of companies in West Virginia to compete nationally and
12 internationally, and decrease the number of jobs and the amount of production capital in the state's
13 economy;

14 (F) Cause citizens and small businesses to live in fear of lawsuits against them where they
15 may be bankrupted or driven out of business by legal fees and expenses in defending them and by
16 exorbitant settlements extorted by threat of trials that have taken on the characteristics of a lottery;
17 and

18 (G) Add to the high cost of liability insurance, making it difficult for individuals, producers,
19 consumers, volunteers and nonprofit organizations to protect themselves with any degree of
20 confidence at a reasonable cost.

21 (b) The Legislature, therefore, declares it to be in the best interests of its citizens to reform

1 the civil liability law of the state in order to curtail or eliminate clear social and economic problems

2 that:

3 (1) Deny citizens a meaningful right of appeal;

4 (2) Allow plaintiffs to recover damages in cases where there is no actual proof of injury;

5 (3) Allow out-of-state plaintiffs to take advantage of West Virginia courts when a more
6 convenient venue exists elsewhere;

7 (4) Allow the admission of expert testimony from witnesses who are not properly qualified
8 as experts;

9 (5) Allow excessive amounts to be awarded in punitive damages;

10 (6) Can unjustly and unfairly hold one defendant jointly liable for the total damages assessed
11 against multiple defendants even though that one defendant may have been as little as one percent
12 at fault in causing plaintiff's injuries;

13 (7) Deny any reduction in damage awards for compensatory payments received from
14 collateral sources, such as workers' compensation and employer disability programs;

15 (8) Allow lawsuits to be brought for a claimed defective product made twenty, thirty or more
16 years ago;

17 (9) Allow excessive amounts to be awarded for noneconomic losses based on physical injury
18 and actions other than those based on physical injury; and

19 (10) Require prevailing parties to bear substantial legal fees defending against meritless
20 filings.

21 (c) The Legislature further finds and declares that there exists, for the foregoing reasons, clear

1 social and economic problems associated with our civil justice system and a need to correct those
2 problems by restoring rationality, certainty, and fairness to the civil justice system through the
3 enactment of the Civil Justice Reform Act of 2015.

4 **§55A-1-3. Chapter not applicable to certain actions.**

5 This chapter is not applicable to:

6 (1) Those causes of action where a defendant's conduct constitutes driving a vehicle under
7 the influence of alcohol, a controlled substance, or any other drug, or any combination thereof, as
8 described in section two, article five, chapter seventeen-c of this code and is the proximate cause of
9 the damages suffered by the plaintiff;

10 (2) Those causes of action where a defendant's actions constitute criminal conduct which is
11 the proximate cause of the damages suffered by the plaintiff;

12 (3) Those causes of action where a defendant's conduct constitutes an illegal disposal of
13 hazardous waste, as described in section three, article eighteen, chapter twenty-two of this code and
14 is the proximate cause of the damages suffered by the plaintiff.

15 **§55A-1-4. Definitions.**

16 As used in this chapter:

17 (1) "Abusive civil action" means a civil action that a reasonable person would conclude is
18 a misuse of the civil justice process.

19 (2) "Actual malice" means specific intent to cause personal injury, death, or damage to the
20 property or the reputation of another.

21 (3) "Agent" means a person who is authorized to act for another through employment by

1 contract or apparent authority.

2 (4) "Claim" means a request for monetary damages filed in a civil action, other than a request
3 for reimbursement of attorney's fees or other costs of litigation in a civil action, if the request is for:

4 (A) Damages for alleged personal injury, property damage, breach of contract, or death,
5 regardless of the legal theories or statutes on the basis of which recovery is sought; or

6 (B) Damages other than for alleged personal injury, property damage, or death allegedly
7 resulting from any tortious conduct, regardless of the legal theories or statutes on the basis of which
8 recovery is sought.

9 (5) "Clear and convincing evidence" means that the evidence presented by a party during the
10 trial is more highly probable to be true than not and the jury or judge has a firm belief or conviction
11 the evidence proves the issue for which it is asserted.

12 (6) "Collateral source" means the United States Social Security Act; any state or federal
13 disability, workers' compensation, or other act designed to provide income replacement, medical,
14 or other benefits; any accident, health or sickness, income or wage replacement insurance, income
15 disability insurance, casualty or property insurance including automobile and homeowners'
16 insurance, or any other insurance except life insurance; any contract or agreement of any group,
17 organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical,
18 hospital, dental, or other health care services or provide similar benefits; or any contractual or
19 voluntary wage continuation plan provided by an employer or otherwise, or any other system
20 intended to provide wages during a period of disability.

21 (7) "Collateral source payments" means money paid or payable by collateral sources for

1 losses or expenses, including, but not limited to, property damage, wage loss, medical costs,
2 rehabilitation costs, services, and other costs incurred by or on behalf of a plaintiff for which that
3 plaintiff is claiming recovery through a tort action commenced in any of the courts in this state.

4 (8) “Comparative fault” means the degree to which the fault of a person was a proximate
5 cause of an alleged personal injury or death or damage to property, expressed as a percentage.

6 (9) “Compensatory damages” means money awarded to compensate a plaintiff for economic
7 and noneconomic loss.

8 (10) “Conscious, reckless, and outrageous indifference to the health, safety, and welfare of
9 others” means an act or omission which when viewed objectively from the standpoint of the
10 defendant at the time of its occurrence involves an extreme degree of risk, considering the
11 probability and magnitude of the potential harm to others, and of which the defendant has actual,
12 subjective awareness of the risk involved, but nevertheless proceeds with conscious disregard of the
13 rights, safety or welfare of others.

14 (11) “Damage” or “damages” means all claims under common law or statutory and equitable
15 causes of action for actual damages, including economic and noneconomic damages, and additional
16 damages, including knowing damages, punitive damages, treble damages, penalties, prejudgment
17 interest, postjudgment interest, attorney's fees, litigation costs, costs of court, and all other damages
18 of any kind.

19 (12) “Defendant” means, for purposes of determining an obligation to pay money to another
20 under this chapter, any person against whom a claim is asserted by a plaintiff including a
21 counterdefendant, cross-defendant or third-party defendant.

1 (13) “Durable good” means any product, or any component of any such product, which:

2 (A) Either has a normal life expectancy of three or more years, or is of a character subject to
3 allowance for depreciation under the Internal Revenue Code of 1986;

4 (B) Is either used in a trade or business, held for the production of income, or sold or donated
5 to a governmental or private entity for the production of goods, training, demonstration or any other
6 similar purpose; and

7 (C) Is used in a workplace, and is alleged to have caused harm that is covered under chapter
8 twenty-three of this code.

9 (14) “Economic loss” means objectively verifiable monetary losses, such as medical
10 expenses, loss of earnings and earning capacity, cost of replacement services, loss of income stream
11 due to death, burial costs, loss of business or employment opportunities, lost profits, and loss due
12 to property destruction or damage, to the extent recovery for that monetary loss is allowed under any
13 present applicable state law.

14 (15) “Employer” means a person who controls and directs a worker under an express or
15 implied contract of employment and pays, or is obligated to pay, him or her salary or wages in
16 compensation. Employer includes, but is not limited to, a parent, subsidiary, affiliate, division, or
17 department of the employer. If the employer is an individual, the individual shall be considered an
18 employer under this chapter only if the subject of the tort action is related to the individual's capacity
19 as an employer.

20 (16) “Fault” means an act or omission of a person which is a proximate cause of injury or
21 death to another person or persons, damage to property, or economic injury, including, but not

1 limited to, negligence, malpractice, medical professional liability, strict product liability, absolute
2 liability, liability under section two, article four, chapter twenty-three of this code, or assumption of
3 the risk.

4 (17) "Financial interest" means a financial interest held by an attorney under an agreement
5 between the attorney and a plaintiff or defendant in which the amount or the payment of the fee for
6 the attorney's legal services is contingent wholly or partly on the outcome of the civil action.

7 (18) "Large employer" means an employer who employs more than twenty-five persons on
8 a full-time permanent basis, or its equivalent, or has annual revenues of more than \$5 million.

9 (19) "Legal resident" means an individual who is a resident of West Virginia at the time the
10 cause of action arose or at the time the action is filed without regard to the individual's country of
11 citizenship or national origin. The term does not include an individual who adopts a residence in
12 this state in bad faith for purposes of avoiding the application of this chapter.

13 (20) "Natural person" means a human being that has the capacity for rights and duties.

14 (21) "Noneconomic loss" means subjective, nonmonetary losses, such as pain, suffering,
15 inconvenience, mental anguish, emotional distress, loss of enjoyment of life, loss of society and
16 companionship, loss of consortium, injury to reputation, and humiliation, to the extent recovery for
17 any nonmonetary loss is allowed under any present, applicable state law.

18 (22) "Person" means any individual, corporation, trust, company, incorporated or
19 unincorporated association, firm, partnership, society, joint stock company, business entity, and any
20 agency, unit or instrumentality of federal, state or local government.

21 (23) "Physical injury" means an actual injury to the body proximately caused by the act

1 complained of and does not include physical symptoms of the mental anguish or emotional distress
2 for which recovery is sought when the symptoms are caused by, rather than the cause of, the pain,
3 distress, or other mental suffering.

4 (24) “Plaintiff” means, for purposes of determining a right to recover under this chapter, any
5 person asserting a claim.

6 (25) “Product” means any object, substance, mixture, or raw material in a gaseous, liquid,
7 or solid state: (A) Which is capable of delivery itself or as an assembled whole, in a mixed or
8 combined state, or as a component part or ingredient; (B) which is produced for introduction into
9 trade or commerce; (C) which has intrinsic economic value; and (D) which is intended for sale or
10 lease for commercial or personal use.

11 (26) The term “product” does not include: (A) Human tissue, human organs, human blood,
12 and human blood products; (B) electricity, water delivered by a utility, natural gas or steam; or (C)
13 intellectual property, including computer software.

14 (27) “Product liability action” means a civil action brought against any defendant, including
15 defendants who did not manufacture or sell a product, on any theory for damage caused by a product.

16 **ARTICLE 2. THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS.**

17 **§55A-2-1. The West Virginia Intermediate Court of Appeals established; location.**

18 (a) In accordance with section one, article VIII of the West Virginia Constitution, the “West
19 Virginia Intermediate Court of Appeals” is created. The court shall be established and operable on
20 or before January 1, 2017. The West Virginia Intermediate Court of Appeals “Intermediate Court”
21 shall be divided into two districts. The two intermediate courts of appeals shall be designated as

1 "Intermediate Court, Northern District" or "Northern District" and "Intermediate Court, Southern
2 District" or "Southern District." Each court shall be located in the district it serves. The
3 Intermediate Court is a court of record and shall issue, as appropriate in each appeal, written
4 opinions, orders and decisions.

5 (b) The Northern District is comprised of the following judicial circuits: First, second, third,
6 fourth, fifth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first,
7 twenty-second, twenty-third, and twenty-sixth.

8 (c) The Southern District is comprised of the following judicial circuits: Sixth, seventh,
9 eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, twenty-fourth, twenty-fifth,
10 twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, and thirty-first.

11 (d) The Intermediate Court may be located in the seat of state government, any county seat
12 for the purpose of hearing oral argument, or may be located in a fixed location.

13 **§55A-2-2. Judges; qualifications.**

14 (a) The Intermediate Court shall consist of six judges, three judges in each district, initially
15 appointed by the Governor in accordance with section four of this article.

16 (b) An Intermediate Court judge must be a resident of the district where he or she will
17 preside, a member in good standing of the West Virginia State Bar and admitted to practice law in
18 this state for at least ten years prior to appointment or election.

19 (c) An Intermediate Court judge may not engage in any other business, occupation or
20 employment inconsistent with the expeditious, proper and impartial performance of his or her duties
21 as a judicial officer. An Intermediate Court justice is not permitted to engage in the outside practice

1 of law and shall devote full time to his or her duties as a judicial officer.

2 **§55A-2-3. Jurisdiction; deflected rights of the West Virginia Supreme Court of Appeals;**
3 **discretionary appeals.**

4 (a) The Intermediate Court shall not have original jurisdiction.

5 (b) Petitions for appeal shall be filed with the West Virginia Supreme Court of Appeals
6 (“Supreme Court”). Those cases for which the Supreme Court elects not to grant petitions for appeal
7 shall be transferred to the Intermediate Court.

8 (c) The Intermediate Court has jurisdiction to hear appeals from final judgments or orders
9 entered by a circuit court in any civil or criminal case, appeals from the Workers’ Compensation
10 Board of Review and the Public Service Commission.

11 (d) All appeals shall be reviewed and a written decision on the merits issued by either the
12 Supreme Court or Intermediate Court as a matter of right except for the following appeals, which
13 shall be discretionary with the courts:

14 (1) Appeals from the Workers’ Compensation Board of Review established by section
15 eleven, article five, chapter twenty-three of this code;

16 (2) Appeals from orders of the Public Service Commission established by article one, chapter
17 twenty-four of this code;

18 (3) Appeals from decisions of circuit courts of administrative appeals of an agency as defined
19 in article one, chapter twenty-nine-a of this code; and

20 (4) Appeals of misdemeanor convictions.

21 (e) Within thirty days after a decision by the Intermediate Court, any aggrieved party may

1 petition the Supreme Court by petition for writ of certiorari as provided by the West Virginia Rules
2 of Appellate Procedure.

3 **§55A-2-4. Number of Intermediate Court judges; initial appointment; election; term of office;**
4 **vacancy; chief judge.**

5 (a) There shall be three judges for each district of the Intermediate Court. The Governor
6 shall, on or before July 1, 2016, appoint the initial judges from names submitted by the Judicial
7 Vacancy Advisory Committee established pursuant to section three-a, article ten, chapter three of
8 the West Virginia Code. The committee shall recommend three qualified nominees for each position
9 for Intermediate Court judge. If the Governor does not select a nominee for the position of judge
10 from the names provided by the committee, he or she shall notify the committee of that circumstance
11 and the committee shall provide additional names for consideration by the Governor.

12 (b) The committee is responsible for reviewing and evaluating candidates for possible
13 appointment to the Intermediate Court by the Governor. In reviewing candidates, the committee may
14 accept applications from any attorney who believes himself or herself qualified for the judgeships.
15 The committee may accept comments from and request information from any person or source.

16 (c) Of the initial appointments for each district, one judge shall be appointed for a term of
17 four years, one judge shall be appointed for a term of six years and one judge shall be appointed for
18 a term of eight years. Upon the expiration of each term, the judge's position shall be filled by
19 election, for a ten-year term, in the same manner as with the Supreme Court.

20 (d) After the initial appointments are made, vacancies in office shall be filled in the same
21 manner as vacancies on the Supreme Court.

1 (e) One judge of the Intermediate Court shall be chosen chief judge of the Intermediate Court.
2 The manner of choosing the chief judge and providing for periodic rotation of the position of chief
3 judge shall be determined by rules to be established by the Supreme Court.

4 **§55A-2-5. Compensation and expenses of Intermediate Court judges and staffs.**

5 (a) The annual salary of an Intermediate Court judge shall be \$118,000. Reimbursement
6 for expenses shall be at a rate established by the Supreme Court.

7 (b) Each judge of the Intermediate Court may employ two law clerks and one secretary. The
8 Intermediate Court may employ a clerk and the necessary staff to carry out the administrative duties
9 of the court or, with the permission of the Supreme Court, the administrative and other support staff
10 of the Supreme Court may carry out the administrative duties of both courts. The compensation of
11 the staff of the Intermediate Court shall be established by the judges of the Intermediate Court with
12 the approval of the Supreme Court.

13 **§55A-2-6. Temporary assignment of circuit court judges.**

14 Upon the occurrence of a vacancy in the office of Intermediate Court judge, the
15 disqualification of an Intermediate Court judge or the inability of an Intermediate Court judge to
16 attend to his or her duties because of illness, temporary absence, or any other reason, the Chief
17 Justice of the Supreme Court may assign any senior status circuit judge or circuit judge of any
18 judicial circuit that is not from the same circuit as the appeal before the Intermediate Court to hear
19 and determine any and all matters then or thereafter pending in the Intermediate Court to which the
20 absent Intermediate Court judge is assigned.

21 **§55A-2-7. Facilities.**

1 (a) The Administrative Director of the Supreme Court shall provide the necessary physical
2 facilities, furniture, fixtures and equipment necessary for the efficient operation of the Intermediate
3 Court.

4 (b) In order to minimize costs, the director may: (1) Contract with the Department of
5 Administration, county commissions and private parties to provide for space that is suitable for the
6 Intermediate Court; and (2) shall make existing courtrooms throughout the state available for use by
7 the Intermediate Court at times convenient both to the Intermediate Court and the local court.

8 **§55A-2-8. Precedential effect of court and decisions.**

9 Unless stated by the court to be *per curiam* or unpublished, all court orders and decisions
10 shall have precedential effect.

11 **§55A-2-9. Budget.**

12 The budget for the payment of the salaries and benefits for the Intermediate Court judges and
13 staff, facilities, furniture, fixtures and equipment shall be included in the appropriation for the
14 Supreme Court. To the extent possible, the Supreme Court shall designate existing facilities and
15 existing staff members for use by the Intermediate Court to minimize costs for establishing and
16 operating the Intermediate Court.

17 **ARTICLE 3. MEDICAL MONITORING.**

18 **§55A-3-1. Claims for medical monitoring.**

19 Notwithstanding the decision of the Supreme Court in *Bower v. Westinghouse*, 522 S.E.2d
20 424 (W. Va. 1999), in any civil action in which an individual seeks relief of any kind including
21 damages and equitable relief for the wrongful or tortious acts of any person, relief may not include

1 future medical monitoring, testing, treatment, services, surveillance, or procedures of any kind,
2 including the costs and expenses associated therewith, unless the future medical monitoring, testing,
3 examination, treatment, services, surveillance or procedures are directly related to a present manifest
4 physical injury or disease which was caused by or directly related to tortious or wrongful acts and
5 which was found to have caused present physical impairment.

6 **§55A-3-2. Overruling *Bower v. Westinghouse*, 522 S.E. 2d 424 (W.Va. 1999).**

7 It is the intent of the Legislature that this legislation overrules the decision of the Supreme
8 Court in *Bower v. Westinghouse*, 522 S.E.2d 424 (W. Va. 1999).

9 **ARTICLE 4. VENUE.**

10 **§55A-4-1. *Forum nonconveniens*.**

11 In any civil action if a court of this state, upon a timely written motion of a party, finds that
12 in the interest of justice and for the convenience of the parties a claim or action would be more
13 properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the
14 doctrine of *forum non conveniens* and shall stay or dismiss the claim or action or dismiss any
15 plaintiff. The plaintiff's choice of a forum is entitled to great deference but this preference may be
16 diminished when the plaintiff is a nonresident and the cause of action did not arise in this state. In
17 determining whether to grant a motion to stay or dismiss an action or dismiss a plaintiff under the
18 doctrine of *forum nonconveniens*, the court shall consider:

19 (1) Whether an alternate forum exists in which the claim or action may be tried;

20 (2) Whether maintenance of the claim or action in the courts of this state would work a
21 substantial injustice to the moving party;

1 (3) Whether the alternate forum, as a result of the submission of the parties or otherwise, can
2 exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

3 (4) The state in which the plaintiff(s) reside;

4 (5) The state in which the cause of action accrued;

5 (6) Whether the balance of the private interests of the parties and the public interest of the
6 state predominate in favor of the claim or action being brought in an alternate forum, which shall
7 include consideration of the extent to which an injury or death resulted from acts or omissions that
8 occurred in this state. Factors relevant to the private interests of the parties include, but are not
9 limited to, the relative ease of access to sources of proof; availability of compulsory process for
10 attendance of unwilling witnesses; the cost of obtaining attendance of willing witnesses; possibility
11 of a view of the premises, if a view would be appropriate to the action; and all other practical
12 problems that make trial of a case easy, expeditious and inexpensive. Factors relevant to the public
13 interest of the state include, but are not limited to, the administrative difficulties flowing from court
14 congestion; the interest in having localized controversies decided within the state; the avoidance of
15 unnecessary problems in conflict of laws or in the application of foreign law; and the unfairness of
16 burdening citizens in an unrelated forum with jury duty;

17 (7) Whether not granting the stay or dismissal would result in unreasonable duplication or
18 proliferation of litigation; and

19 (8) Whether the alternate forum provides a remedy.

20 **§55A-4-2. Timely motion.**

21 A motion pursuant to section one of this article is timely if it is filed either concurrently or

1 prior to the filing of either a motion pursuant to Rule 12 of the West Virginia Rules of Civil
2 Procedure or a responsive pleading to the first complaint that gives rise to the grounds for such a
3 motion. A court may, for good cause shown, extend the period for the filing of such a motion.

4 **§55A-4-3. Statute of limitations.**

5 If the statute of limitations in the alternative forum expires while the claim is pending in a
6 court of this state, the court shall grant a dismissal under this article only if each defendant waives
7 the right to assert a statute of limitation defense in the alternative forum. The court may further
8 condition a dismissal under this article to allow for the reinstatement of the same cause of action in
9 the same forum in the event a suit on the same cause of action or on any cause of action arising out
10 of the same transaction or occurrence is commenced in an appropriate alternative forum within sixty
11 days after the dismissal under this article and such alternative forum declines jurisdiction.

12 **§55A-4-4. Proper dismissal.**

13 Except as provided in section two of this article, if an action involves both legal resident and
14 nonresident plaintiffs, the court may not stay or dismiss the action under section one of this article
15 if the plaintiffs who are legal residents of this state are properly joined in the action and the action
16 arose out of a single occurrence. The court shall dismiss a claim under section one of this article if
17 the court finds by a preponderance of the evidence that a party was joined solely for the purpose of
18 obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard
19 in a forum outside this state.

20 **§55A-4-5. Class representative(s).**

21 In class actions filed pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, this

1 article applies only to the class representative(s).

2 **§55A-4-6. Stay or dismissal specific findings of fact and conclusions of law.**

3 A court that grants a motion to stay or dismiss an action pursuant to this article shall set forth
4 specific findings of fact and conclusions of law.

5 **ARTICLE 5. COMPETENCY OF EXPERT WITNESSES.**

6 **§55A-5-1. Opinion testimony by lay witnesses.**

7 If a witness is not testifying as an expert, the testimony of that witness in the forms of
8 opinions or inferences is limited to those opinions or inferences that are: (1) Rationally based on the
9 perception of the witness; (2) helpful to a clear understanding of the witness' testimony or the
10 determination of a fact in issue; and (3) not based on scientific, technical or other specialized
11 knowledge within the scope of section two of this article.

12 **§55A-5-2. Testimony by experts.**

13 If scientific, technical or other specialized knowledge will assist the trier of fact to understand
14 the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill,
15 experience, training or education may testify in the form of an opinion or otherwise, if: (1) The
16 testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles
17 and methods; and (3) the witness has applied the principles and methods reliably to the facts of the
18 case.

19 **§55A-5-3. Basis of expert opinion testimony.**

20 The facts or data in the particular case upon which an expert bases an opinion or inference
21 may be those perceived by or made known to the expert at or before the hearing. If of a type

1 reasonably relied upon by experts in the particular field in forming opinions or inferences upon the
2 subject, the facts or data need not be admissible in evidence in order for the opinion or inference to
3 be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the
4 proponent of the opinion or inference unless the court determines that their probative value in
5 assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

6 **§55A-5-4. Bars to expert testimony.**

7 (a) A witness qualified as an expert by knowledge, skill, experience, training or education
8 may only offer expert testimony with respect to a particular field in which the expert is qualified.

9 (b) An expert witness may receive a reasonable and customary fee for the rendering of
10 professional services provided that the testimony of an expert witness may not be admitted if any of
11 the compensation is contingent on the outcome of any claim or case with respect to which the
12 testimony is being offered.

13 **§55A-5-5. Mandatory pretrial hearing.**

14 If the witness is testifying as an expert, then upon motion of a party, the court shall hold a
15 pretrial hearing to determine whether the witness qualifies as an expert and whether the expert's
16 testimony satisfies the requirements of sections two, three and four of this article. The court shall
17 allow sufficient time for a hearing and shall rule on the qualifications of the witness to testify as an
18 expert and whether or not the testimony satisfies the requirements of sections two, three and four of
19 this article. The hearing and ruling shall be completed no later than the final pretrial conference
20 pursuant to Rule 16(d) of the West Virginia Rules of Civil Procedure. The trial court's ruling shall
21 set forth the findings of fact and conclusions of law upon which the order to admit or exclude expert

1 evidence is based.

2 **§55A-5-6. Mandatory pretrial disclosure of expert testimony.**

3 (a) Whether or not any party elects to request a pretrial hearing contemplated in section five
4 of this article, all parties shall disclose to other parties the identity of any person who may be used
5 at trial to present expert evidence.

6 (b) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect
7 to a witness who is retained or specially employed to provide expert testimony in the case or whose
8 duties as an employee of the party regularly involve giving expert testimony, be accompanied by a
9 written report prepared and signed by the witness. The report shall contain: A complete statement
10 of all opinions to be expressed and the basis and reasons; the data or other information considered
11 by the witness in forming the opinions; any exhibits to be used as a summary of or support for the
12 opinions; the qualifications of the witness, including a list of all publications authored by the witness
13 within the preceding ten years; the compensation to be paid for the study and testimony; and a listing
14 of any other cases in which the witness has testified as an expert at trial or by deposition within the
15 preceding four years.

16 (c) These disclosures shall be made at the times and in the sequence directed by the court.
17 In the absence of other directions from the court or stipulation by the parties, disclosures shall be
18 made at least ninety days before the trial date or the date the case is to be ready for trial, or if the
19 evidence is intended solely to contradict or rebut evidence on the same subject matter identified by
20 another party under subsection (b) of this section, within thirty days after the disclosure made by the
21 other party.

1 (d) A party may depose any person who has been identified as an expert whose opinions may
2 be presented at trial. If a report from the expert is required under subsection (b) of this section, the
3 deposition may not be conducted until after the report is provided.

4 **§55A-5-7. Interpretation.**

5 In interpreting and applying this article, the courts of this state shall follow the opinions of
6 the Supreme Court of the United States in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S.
7 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), *Kumho Tire Co. Ltd. v.*
8 *Carmichael*, 526 U.S. 137 (1999), *Weisgram v. Marley*, 528 U.S. 440 (2000), and cases citing them
9 as precedents. Additionally, the courts of this state may draw from other precedents binding in the
10 federal courts of this state applying the standards announced by the Supreme Court of the United
11 States in those cases.

12 **§55A-5-8. Standard of review.**

13 (a) As the proper construction of the expert evidence admissibility framework prescribed by
14 this section is a question of law, the Supreme Court and Intermediate Court shall apply a *de novo*
15 standard of review in determining whether the circuit court fully applied the proper legal standard
16 in considering the admissibility of expert evidence.

17 (b) As the application of this section to determine the admissibility of expert testimony is a
18 question of fact, the Supreme Court and Intermediate Court shall apply an abuse of discretion
19 standard in determining whether the circuit court properly admitted or excluded particular expert
20 evidence.

21 **ARTICLE 6. PUNITIVE DAMAGES.**

1 **§55A-6-1. General rules.**

2 (a) Punitive damages may be awarded in a civil action against a defendant only if the plaintiff
3 establishes by clear and convincing evidence that the damages suffered were the result of conduct
4 that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless,
5 and outrageous indifference to the health, safety, and welfare of others.

6 (b) Punitive damages may only be awarded in civil actions seeking money for damages.

7 (c) Punitive damages may be awarded in a civil action against a defendant only if
8 compensatory damages have been awarded against a defendant to the plaintiff for the same course
9 of conduct of the defendant.

10 (d) Punitive damages may not be awarded on a claim for breach of contract.

11 (e) A defendant may not be held liable for punitive damages unless the trier of fact finds that
12 its award of compensatory damages alone is not sufficient to punish the defendant for the conduct
13 and to deter the defendant from like conduct in the future.

14 **§55A-6-2. Proportional awards.**

15 (a) The amount of punitive damages that may be awarded for a claim in a civil action shall
16 not exceed the greater of three times the amount of compensatory damages or \$250,000 where the
17 punitive damages are recoverable from large employers.

18 (b) The amount of punitive damages that may be awarded for a claim in a civil action shall
19 not exceed the lesser of three times compensatory damages or \$100,000 where the punitive damages
20 are recoverable from a defendant who is not a large employer.

21 (c) This section shall be applied by the circuit court and shall not be disclosed to the jury.

1 (d) If a jury returns a verdict for punitive damages against the defendant in excess of these
2 amounts, the circuit court shall reduce the award so that it will not exceed the applicable amount set
3 forth in this section.

4 **§55A-6-3. Multiple awards.**

5 (a) If the jury returns a verdict of punitive damages against a defendant in the case at bar and
6 if the total amount of any prior punitive damages awards obtained by the same or other plaintiffs in
7 any state or federal court against that defendant for the same course of conduct as alleged in the case
8 at bar exceeds the applicable amount set forth in section two of this article no further punitive
9 damages may be awarded against that defendant in that specific case.

10 (b) If the total amount of any prior punitive damages awards is less than the applicable
11 amount set forth in section two of this article, the amount of any punitive damages awarded in that
12 specific case shall be reduced if necessary so that the combined total amount of punitive damages
13 awarded in the case at bar and the prior actions shall not exceed the applicable amount set forth in
14 section two of this article.

15 (c) This section shall be applied by the circuit court and shall not be disclosed to the jury.

16 **§55A-6-4. Bifurcation.**

17 (a) In a civil action in which punitive damages are sought, the court shall bifurcate the trial
18 of the action if requested by a defendant.

19 (b) In the first stage of a bifurcated trial, the trier of fact shall determine liability for
20 compensatory damages, and the amount of compensatory damages. If the trier of fact determines
21 during the first stage of a bifurcated trial that a defendant is liable for compensatory damages, then

1 the court shall determine whether the evidence was sufficient to permit the jury to consider punitive
2 damages.

3 (c) If determined sufficient, that same trier of fact shall determine, in a second stage of the
4 trial, whether the defendant is liable for punitive damages and, if applicable, the amount of punitive
5 damages that should be awarded.

6 (d) If a bifurcated proceeding is requested, evidence relevant only to the claim of punitive
7 damages is inadmissible in the first stage of the trial.

8 **§55A-6-5. Complicity rule.**

9 (a) A principal or employer who is a natural person may be liable for punitive damages as
10 a result of conduct of his or her agent or employee only when the plaintiff proves by clear and
11 convincing evidence that the damages suffered were the result of conduct that was carried out by the
12 principal or employer with actual malice toward the plaintiff or with a conscious, reckless and
13 outrageous indifference to the health, safety and welfare of others.

14 (b) A principal or employer that is other than a natural person may be liable for punitive
15 damages as a result of the conduct of its agent or employee only when the plaintiff proves by clear
16 and convincing evidence that the damages suffered were the result of conduct that was carried out
17 by a senior manager of the principal or employer with actual malice toward the plaintiff or with
18 conscious, reckless and outrageous indifference to the health, safety and welfare of others.

19 (c) A person may be liable for punitive damages as a result of the conduct of members or
20 partners only when the plaintiff proves by clear and convincing evidence that the damages suffered
21 were the result of conduct that was carried out by a senior manager in the employment of a person

1 with actual malice toward the plaintiff or with a conscious, reckless and outrageous indifference to
2 the health, safety, and welfare of others.

3 **ARTICLE 7. COMPARATIVE FAULT.**

4 **§55A-7-1. Comparative fault standard established.**

5 (a) In any action for damages, recovery shall be predicated upon principles of comparative
6 fault and the liability of each person, including plaintiffs, defendants, and nonparties who caused the
7 damages shall be allocated to each person in direct proportion to that person's percentage of fault.

8 (b) The total of the percentages of comparative fault allocated by the trier of fact with respect
9 to a particular incident or injury must equal either zero percent or one hundred percent.

10 **§55A-7-2. Several liability.**

11 (a) In any action for damages, the liability of each defendant for compensatory damages is
12 several only and is not joint. Each defendant shall be liable only for the amount of compensatory
13 damages allocated to that defendant in direct proportion to that defendant's percentage of fault and
14 a separate judgment shall be rendered against the defendant for that amount. The fault allocated
15 under this subsection to an immune defendant or a defendant whose liability is limited by law may
16 not be allocated to any other defendant.

17 (b) To determine the amount of judgment to be entered against each defendant, the court,
18 with regard to each defendant, shall multiply the total amount of compensatory damages recoverable
19 by the plaintiff by the percentage of each defendant's fault and that amount shall be the maximum
20 recoverable against that defendant.

21 **§55A-7-3. Fault of nonparties.**

1 (a) In assessing percentages of fault, the trier of fact shall consider the fault of all persons
2 who contributed to the alleged damages regardless of whether the person was or could have been
3 named as a party to the suit. The fault shall include the fault imputed or attributed to a person by
4 operation of law, if any.

5 (1) Fault of a nonparty may be considered if the plaintiff entered into a settlement agreement
6 with the nonparty or if a defending party gives notice no later than sixty days before the date of trial
7 that a nonparty was wholly or partially at fault.

8 (2) The notice shall be given by filing a pleading or discovery response in the action
9 designating a nonparty and setting forth the nonparty's:

10 (A) Name and last-known address; or

11 (B) The best identification of the nonparty which is possible under the circumstances; and

12 (C) A brief statement of the basis for believing the nonparty to be at fault.

13 (3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a
14 plaintiff shall be reduced in proportion to the percentage of fault chargeable to the nonparty.

15 (4) Where a plaintiff has settled with a party or nonparty before verdict, that plaintiff's
16 recovery will be reduced by the amount of the settlement or in proportion to the percentage of fault
17 assigned to the settling party or nonparty, whichever is greater.

18 (5) The plaintiff shall promptly and fully inform all other persons against whom liability is
19 asserted of the terms of any settlement.

20 (b) Nothing in this article is meant to eliminate or diminish any defenses or immunities which
21 exist as of the effective date of this article, except as expressly noted herein.

1 (c) Assessments of percentages of fault for nonparties are used only as a vehicle for
2 accurately determining the fault of named parties. Where fault is assessed against nonparties,
3 findings of fault shall not subject any nonparty to liability in that or any other action, or be
4 introduced as evidence of liability or for any other purpose in any other action.

5 (d) In all actions involving fault of more than one person, unless otherwise agreed by all
6 parties to the action, the court shall instruct the jury to answer special interrogatories or, if there is
7 no jury, shall make findings, indicating the percentage of the total fault that is allocated to each party
8 and nonparty pursuant to this article. For this purpose, the court may determine that two or more
9 persons are to be treated as a single person.

10 **§55A-7-4. Imputed fault.**

11 Nothing in this article may be construed as precluding a person from being held responsible
12 for the portion of comparative fault assessed against another person who was acting as an agent or
13 servant of that person, or if the fault of the other person is otherwise imputed or attributed to that
14 person by statute or common law.

15 **§55A-7-5. Failure to take reasonable precautionary measures.**

16 In any civil action, the finder of fact may assess a percentage of fault against a plaintiff who
17 is injured as a proximate result of that plaintiff's failure to take reasonable precautionary measures
18 that were available.

19 **§55A-7-6. Fault of person not a manufacturer.**

20 A person who is not the manufacturer of a product but is merely in the chain of its
21 distribution, such as a seller, distributor or installer, and who did not alter, change, or modify the

1 product in a way that created or contributed to the alleged defect, may not be assessed a percentage
2 of comparative fault under the theory of strict product liability for accidents, injuries or damages
3 proximately caused, in whole or in part, by the product.

4 **§55A-7-7. Burden of proof.**

5 The burden of alleging and proving comparative fault shall be upon the person who seeks to
6 establish such fault.

7 **§55A-7-8. Immunity of premise owners from civil liability.**

8 No owner, occupant, lessee or managing agent of property shall be liable for the death or
9 injury of an independent contractor's employees resulting from dangers of which the contractor knew
10 or reasonably should have known.

11 **ARTICLE 8. COLLATERAL SOURCES.**

12 **§55A-8-1. Reduction in compensatory damages for collateral sources payments.**

13 Notwithstanding any other provision of this code, in all tort actions, regardless of the theory
14 of liability under which they are commenced, the total amount of compensatory damages awarded
15 to a plaintiff under the action shall be reduced, in accordance with section two of this article, by any
16 collateral source payments made or to be made to the plaintiff, except insurance for which the
17 plaintiff, spouse of the plaintiff or parent of the plaintiff, has paid a premium, insurance that is
18 subject to a right of subrogation, workers' compensation benefits that are subject to a right of
19 subrogation, or insurance that has any other obligation or repayment.

20 **§55A-8-2. Postverdict determination of reduction in compensatory damages.**

21 (a) The reduction in compensatory damages required under section one of this article shall

1 be determined by the court after the verdict and before judgment is entered. Reduction may be made
2 only if the collateral source payments are compensation for the same damages for which recovery
3 is sought in the action. At trial no evidence shall be admitted as to the amount of any charges,
4 payments, or losses for which a plaintiff has received payment from a collateral source or the
5 obligation for which has been assumed by a collateral source, or is, or with reasonable certainty will
6 be, eligible to receive payment from a collateral source or the obligation for which will, with
7 reasonable certainty, be assumed by a collateral source.

8 (b) A plaintiff who has received, or is to receive, collateral source payments may introduce
9 evidence before the court, but not at trial, of any amount which the plaintiff has paid or contributed
10 to secure his or her right to any such collateral source payments, any recovery by the plaintiff is
11 subject to a lien by a collateral source, that a provider of the collateral source payments has a
12 statutory right of recovery against the plaintiff for reimbursement of the payments or that the
13 provider of the collateral source payments has a right of subrogation to the rights of the plaintiff.
14 After considering the evidence of collateral source introduced by any party, the court shall make a
15 determination as to the amount by which a plaintiff's compensatory damages will be reduced by any
16 such collateral source payments.

17 **ARTICLE 9. STATUTE OF REPOSE.**

18 **§55A-9-1. Eighteen-year warranty.**

19 No product liability action concerning a durable good as defined in section four, article one
20 of this chapter may be filed after the eighteen-year period beginning at the time of delivery of the
21 product to the first purchaser or lessee.

1 **§55A-9-2. Extended express warranty.**

2 Section one of this article does not bar a product liability action against a defendant who
3 made an express warranty in writing as to the safety or life expectancy of the specific product
4 involved which is for a period of time exceeding eighteen years, except that section one of this article
5 shall apply at the expiration of that warranty.

6 **ARTICLE 10. DAMAGES FOR NONECONOMIC LOSS.**

7 **§55A-10-1. Causes of action where damages were authorized upon this legislation's effective**
8 **date.**

9 Damages for noneconomic loss shall be recoverable for cases where causes of action for
10 those damages are authorized at the time this chapter becomes effective.

11 **§55A-10-2. Civil actions based on physical injury.**

12 (a) Damages for noneconomic loss shall be recoverable in civil actions based on physical
13 injury.

14 (b) The plaintiff who experienced the physical injury on which the action is based and all
15 plaintiffs who derive their claims from or through such plaintiff may recover damages for
16 noneconomic loss in a total amount for those plaintiffs not to exceed the greater of \$250,000 or three
17 times economic damages, up to a maximum of \$500,000.

18 (c) In the event that the physical injury is permanent and severe physical deformity, loss of
19 use of limb or loss of a major bodily organ system or permanent physical functional injury that
20 permanently prevents the injured person from being able to independently care for himself or herself
21 and perform life sustaining activities, then the plaintiff who experienced the physical injury and all

1 other plaintiffs who derive their claims from or through the plaintiff may recover damages for
2 noneconomic loss in a total amount for all such plaintiffs not to exceed the greater of \$1 million or
3 the product of the amount calculated on an annual basis pursuant to article four, chapter twenty-three
4 of this code, which represents the maximum average weekly wage, annualized, for a worker
5 employed in this state times the number of years remaining in the plaintiff's expected life, regardless
6 of the number of parties against whom the action is brought or could have been brought or the
7 number of claims asserted or actions brought or that could have been asserted or brought with respect
8 to the injury.

9 **§55A-10-3. Civil actions not based on physical injury.**

10 (a) Damages for noneconomic loss shall be recoverable in all actions other than those based
11 on physical injury.

12 (b) The plaintiff who experienced the economic loss on which the action is based and all
13 plaintiffs who derive their claims from or through the plaintiff may recover damages for
14 noneconomic loss in a total amount for all such plaintiffs no greater than the award of damages for
15 economic loss or \$1 million, whichever is less, regardless of the number of parties against whom the
16 action is brought or could have been brought or the number of claims asserted or actions brought or
17 that could have been asserted or brought with respect to the economic loss.

18 **ARTICLE 11. LOSER PAYS.**

19 **§55A-11-1. Recovery of attorney's fees by prevailing party; applicability to causes of action**
20 **and parties.**

21 (a) The prevailing party with respect to a claim may recover reasonable attorney's fees from

1 an individual, corporation or other legal entity if the claim is for:

- 2 (1) Rendered services;
- 3 (2) Performed labor;
- 4 (3) Furnished material;
- 5 (4) Freight or express overcharges;
- 6 (5) Lost or damaged freight or express;
- 7 (6) Killed or injured stock;
- 8 (7) A sworn account; or
- 9 (8) An oral or written contract.

10 (b) The prevailing party with respect to a claim may not recover reasonable attorney's fees
11 from an individual, corporation or other legal entity if the claim is for:

- 12 (1) Any civil action primarily governed by the family law chapters of this code;
- 13 (2) A class action;
- 14 (3) A shareholder's derivative action;
- 15 (4) An action filed in magistrate court; or
- 16 (5) A civil action in which the amount in controversy, including all requests for damages,
17 reimbursement of attorney's fees, and litigation costs, is less than \$100,000 and the plaintiff has
18 made an election to proceed.

19 (c) This article applies to any party who is a claimant or defendant, including, but not limited
20 to:

- 21 (1) A county;

- 1 (2) A municipality;
- 2 (3) A public school district;
- 3 (4) A public junior college district;
- 4 (5) A charitable organization;
- 5 (6) A nonprofit organization;
- 6 (7) A hospital district;
- 7 (8) A hospital authority;
- 8 (9) Any other political subdivision of the state; and
- 9 (10) The State of West Virginia.

10 **§55A-11-2. Procedure for recovery of attorney's fees.**

11 Attorney's fees may be recovered under this article if:

- 12 (1) The person seeking to recover attorney's fees is represented by an attorney;
- 13 (2) The plaintiff presents the claim to the opposing party or to a duly authorized agent of the
- 14 opposing party; and
- 15 (3) Payment for the just amount owed is not tendered before the expiration of the thirtieth
- 16 day after the claim is presented.

17 **§55A-11-3. Presumption.**

18 It is presumed that the usual and customary attorney's fees for a claim of the type described

19 in section one of this article are reasonable. The presumption may be rebutted.

20 **§55A-11-4. Judicial notice.**

21 The court may take judicial notice of the usual and customary attorney's fees and of the

1 contents of the case file without receiving further evidence in:

2 (1) A proceeding before the court; or

3 (2) A jury case in which the amount of attorney's fees is submitted to the court by agreement.

4 **§55A-11-5. Liberal construction.**

5 This article shall be liberally construed to promote its underlying purposes.

6 **§55A-11-6. Defendant election.**

7 (a) A defendant may elect to apply this article to any civil action in which a plaintiff has
8 asserted a claim against the defendant.

9 (b) An election under this section must identify each plaintiff against whom the election is
10 made.

11 (c) An election may not be made before the sixtieth day after the date the defendant filed an
12 answer to the plaintiff's civil action or within sixty days of the date of trial.

13 (d) The election must be:

14 (1) In writing;

15 (2) Signed by the attorneys of record of the defendant;

16 (3) Filed with the papers as part of the record; and

17 (4) Served on all plaintiffs against whom the election is made.

18 (e) A deadline under this section may be amended or modified by agreement of the parties
19 or by order of the court in a discovery control plan as provided by Rule 26, West Virginia Rules of
20 Civil Procedure.

21 **§55A-11-7. Plaintiff election.**

1 (a) Plaintiffs may elect to apply the provisions of this article in a civil actions which:

2 (1) The total amount of damages the plaintiff seeks to recover for all claims is not less than
3 \$10,000 and not more than \$100,000; and

4 (2) The plaintiff files and serves a written election.

5 (b) A plaintiff election must be made at the time the electing plaintiff first files a claim in the
6 action.

7 (c) A plaintiff may make an election not later than the sixtieth day after the date the last
8 defendant has filed an answer.

9 (d) An election made by a plaintiff under this section is binding on all parties to the expedited
10 civil action unless a defendant files a claim more than sixty days before trial and in that claim makes
11 a good faith claim that the recovery of monetary damages might be in excess of \$100,000.

12 **§55A-11-8. Revocation of election.**

13 (a) An election made under sections six and seven of this article may be revoked wholly or
14 partly by agreement of the parties.

15 (b) A revocation under this section must identify the plaintiffs and defendants for whom the
16 revocation is made. A revocation may be made at any time before an award is made under section
17 ten of this article based on the election. The revocation must be:

18 (1) In writing;

19 (2) Signed by the attorneys of record of all parties to whom the revocation applies; and

20 (3) Filed as part of the record.

21 **§55A-11-9. Dismissal or nonsuit of action.**

1 If a plaintiff against whom an election is made by a defendant under section six of this article
2 nonsuits or voluntarily dismisses with prejudice the civil action for which the election is made not
3 later than the fifteenth day after the date the plaintiff was served with the election, the election does
4 not apply to the nonsuited or dismissed civil action.

5 **§55A-11-10. Award of litigation costs.**

6 (a) If an election is made under this article, the prevailing party may recover the prevailing
7 party's litigation costs.

8 (b) The determination of which party is the prevailing party is a question of law for the court.

9 (c) Litigation costs under this article are costs directly related to the civil action between the
10 plaintiff and the defendant. Litigation costs include:

11 (1) Reasonable and necessary attorney's fees;

12 (2) Reasonable and necessary travel expenses;

13 (3) Reasonable fees for not more than two testifying expert witnesses; and

14 (4) Court costs.

15 (d) A fee agreement that results in a fee that is fixed or contingent on results obtained or
16 uncertainty of collection before the legal services have been rendered may not be considered in the
17 determination of the amount of reasonable and necessary attorney's fees.

18 **§55A-11-11. Liability of attorney.**

19 (a) This section applies to a civil action if:

20 (1) A party is entitled to recover litigation costs under section ten of this article;

21 (2) The election under sections six and seven of this article states that the party making the

1 election will seek litigation costs under section ten; and

2 (3) An attorney of record for the party against whom litigation costs are recoverable has a
3 financial interest in the civil action.

4 (b) If the trier of fact determines that a civil action is an abusive civil action, an attorney of
5 record for the party against whom litigation costs are recoverable is liable to the prevailing party,
6 jointly and severally, for the amount of the litigation costs awarded.

7 (c) The determination of whether an attorney has a financial interest in a civil action is a
8 question of law for the court. An attorney is not an attorney of record for the purposes of this section
9 if the attorney withdraws as attorney of record and relinquishes any financial interest in the civil
10 action more than sixty days before trial.

11 (d) The determination of whether a civil action is an abusive civil action is a question of fact.
12 In a case in which the determination of whether a civil action is an abusive civil action is submitted
13 to a jury, the charge to the jury must ask whether the civil action filed by the plaintiff was an abusive
14 civil action. The following instruction must be included in the charge: "You are instructed that an
15 abusive civil action is a civil action that a reasonable person would conclude is a misuse of the civil
16 justice process."

17 **§55A-11-12. Applicability of other law.**

18 If an election is made under sections six or seven of this article, this article controls over any
19 other law to the extent the other law requires, authorizes, prohibits or otherwise governs the award
20 of attorney's fees or other costs of litigation in connection with the civil action.

21 **ARTICLE 12. THE SUPREME COURT ADOPTION OF RULES, CONFLICTING LAWS**

1 **REPEALED, APPLICABILITY, SEVERABILITY, NO ADDITIONAL**
2 **CAUSE OF ACTION CREATED BY THIS CHAPTER AND**
3 **EFFECTIVE DATE.**

4 **§55A-12-1. Supreme Court adoption of rules.**

5 (a) The Supreme Court shall adopt rules to implement this chapter not later than January 1,
6 2016.

7 (b) The rules shall at a minimum:

8 (1) Require documents filed in all courts of this state to be filed electronically;

9 (2) Require all courts of this state to electronically file and publish orders and decisions;

10 (3) Require the prompt, efficient, and cost-effective resolution of an expedited civil action,
11 including the discovery between the parties and early dismissals of actions;

12 (4) Provide for pleading, practice and procedure in matters before the Intermediate Court;

13 (5) Allow interlocutory appeals to the Supreme Court and the Intermediate Court.

14 **§55A-12-2. Conflicting laws repealed.**

15 This chapter supersedes, invalidates and repeals all other state laws that are in conflict with
16 its provisions.

17 **§55A-12-3. Applicability.**

18 This chapter applies to all causes of action arising on or after the effective date of this
19 chapter.

20 **§55A-12-4. Severability clause.**

21 The provisions of this chapter and each article, section, subsection, subdivision, paragraph,

1 and subparagraph thereof shall be severable from the provisions of each other subparagraph,
2 paragraph, subdivision, subsection, section, article, or chapter of this code so that if any provision
3 of this chapter be held void, the remaining provisions of this chapter and this code shall remain valid.

4 **§55A-12-5. No additional cause of action created by this chapter.**

5 Nothing in this chapter may be construed to create a cause of action.

6 **§55A-12-6. Effective date.**

7 This chapter shall become effective immediately upon passage by the Legislature and
8 approval by the Governor.

NOTE: The purpose of this bill is to reform the civil justice system and create an intermediate court of appeals.

This chapter is new; therefore, strike-throughs and underscoring have been omitted.