

FILED

2015 MAR 24 P 5:07

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

OFFICE WEST VIRGINIA  
SECRETARY OF STATE



**ENROLLED**

**Senate Bill No. 532**

(BY SENATORS TRUMP, WOELFEL, PLYMALE, STOLLINGS,  
TAKUBO, PREZIOSO, CARMICHAEL, FERNS AND BEACH)

[PASSED MARCH 12, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 532

FILED

2015 MAR 24 P 5:07

ENROLLED

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## Senate Bill No. 532

(BY SENATORS TRUMP, WOELFEL, PLYMALE, STOLLINGS,  
TAKUBO, PREZIOSO, CARMICHAEL, FERNS AND BEACH)

---

[Passed March 12, 2015; in effect ninety days from passage.]

---

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7E-1, §55-7E-2, §55-7E-3, §55-7E-4, §55-7E-5 and §55-7E-6, all relating to immunity from civil liability for clinical practice plans and personnel associated with medical and dental schools; providing legislative findings and declarations of public purpose; defining terms; limiting civil liability for clinical practice plans and their directors, officers, employees, agents and contractors; providing for minimum medical professional liability insurance requirements; and determining the applicability and construction of the immunity from civil liability.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7E-1, §55-7E-2, §55-7E-3, §55-7E-4, §55-7E-5 and §55-7E-6, all to read as follows:

**ARTICLE 7E. IMMUNITY FROM CIVIL LIABILITY FOR  
CLINICAL PRACTICE PLANS AND  
PERSONNEL ASSOCIATED WITH MEDICAL  
AND DENTAL SCHOOLS.**

**§55-7E-1. Findings and declaration of public purpose.**

1           **The Legislature finds and declares:**

2           **That the citizens of this state have been and should**  
3           **continue to be well served by physicians and dentists**  
4           **educated and trained at the Marshall University School of**  
5           **Medicine, the West Virginia School of Osteopathic Medicine,**  
6           **the West Virginia University School of Medicine and the**  
7           **West Virginia University School of Dentistry;**

8           **That the state's medical and dental schools play a vital**  
9           **role in ensuring an adequate supply of qualified and trained**  
10          **physicians throughout the state;**

11          **That the education, training and research provided at the**  
12          **state's medical and dental schools and state medical school**  
13          **are an essential governmental function in which the state has**  
14          **a substantial and compelling interest;**

15          **That the provision of clinical services to patients by**  
16          **faculty members, residents, fellows and students of the state's**  
17          **medical and dental schools and state medical school, is an**  
18          **inseparable component of the aforementioned education,**  
19          **training and research;**

20          **That the provision of the clinical services significantly**  
21          **contributes to the ongoing quality, effectiveness and scope of**  
22          **the state's health care delivery system;**

23          **That the provision of the clinical services also raises the**  
24          **public profile and reputation of the respective institutions**  
25          **both regionally and nationally, thereby facilitating the**  
26          **recruitment of talented faculty, residents, fellows and**  
27          **students to their programs of study;**

28 That the provision of the clinical services generates  
29 additional revenues needed to fund faculty salaries and other  
30 costs associated with the overall operation of the state  
31 medical school and state's medical and dental schools;

32 That the continued availability of the revenues to the state  
33 medical school and state's medical and dental schools is  
34 necessary to their ongoing operation and delivery of the  
35 benefits described above;

36 That the continued availability of the revenues is  
37 compromised by the cost of medical professional liability  
38 insurance, the cost of defending medical professional liability  
39 claims, and the cost of compensating patients who suffer  
40 medical injury or death;

41 That the state concurrently has an interest in providing a  
42 system that makes available adequate and fair compensation  
43 to those individual patients who suffer medical injury or  
44 death;

45 That it is the duty and responsibility of the Legislature to  
46 balance the rights of individual patients to obtain adequate  
47 and fair compensation, with the substantial and compelling  
48 state interests set forth herein supporting the need for a  
49 financially viable system of medical and dental schools;

50 That, in balancing these important state interests, the  
51 Legislature acknowledges the sovereign immunity set forth  
52 in the West Virginia Constitution under Article VI, Section  
53 35, to prevent the diversion of state moneys from legislatively  
54 appropriated purposes;

55 That, in conjunction with the provision of clinical  
56 services to patients by faculty members, residents, fellows  
57 and students of the state's medical and dental schools, or state

58 medical school, it is a common practice both here and in  
59 other states to create one or more clinical practice plans as  
60 nonprofit corporations;

61 That the clinical practice plans, among other things,  
62 administratively support clinical activities by holding real and  
63 personal property, offering personnel and financial  
64 management, providing billing and collection for services  
65 rendered, and disbursing excess revenues back to the  
66 respective medical and dental schools;

67 That the clinical practice plans become integrated with  
68 their respective state medical school and state's medical and  
69 dental schools and exclusively serve the interests of these  
70 schools and their faculty;

71 That any moneys the clinical practice plans expend for  
72 the defense, settlement, and satisfaction of medical  
73 professional liability claims inevitably result in a shortfall of  
74 funds available to the medical and dental schools for faculty  
75 compensation and other operational purposes, thereby  
76 undermining the sovereign immunity otherwise granted to  
77 state institutions by the West Virginia Constitution;

78 That it is therefore reasonable and appropriate for the  
79 Legislature to provide immunity from civil liability to clinical  
80 practice plans and their respective directors, officers,  
81 employees and agents given the substantial and compelling  
82 state interests being served; and

83 That it is further reasonable and appropriate to require the  
84 state's medical and dental schools to maintain a level of  
85 medical professional liability insurance to adequately and  
86 fairly compensate patients who suffer medical injuries or  
87 death.

**§55-7E-2. Definitions.**

1           For purposes of this article:

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

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

17          (3) "Employee" means a director, officer, employee,  
18 agent or servant, whether compensated or not, who is  
19 licensed as a health care professional under chapter thirty of  
20 this code and who is acting within the scope of his or her  
21 authority or employment for a state's medical and dental  
22 schools, a state medical school or a clinical practice plan.

23          (4) "Health care" means any act or treatment performed  
24 or furnished, or which should have been performed or  
25 furnished, by any director, officer, employee, agent or  
26 contractor of a state medical school, state's medical and  
27 dental schools, or a clinical practice plan for, to or on behalf  
28 of a patient during the patient's medical care, treatment or  
29 confinement.

30 (5) "Medical injury" means injury or death to a patient  
31 arising or resulting from the rendering or failure to render  
32 health care.

33 (6) "Medical professional liability insurance" means a  
34 contract of insurance, or any self-insurance retention program  
35 established under the provisions of section ten, article five,  
36 chapter eighteen-b of this code, that pays for the legal  
37 liability arising from a medical injury.

38 (7) "Patient" means a natural person who receives or  
39 should have received health care from a director, officer,  
40 employee, agent or contractor of a state medical school,  
41 state's medical and dental schools, or a clinical practice plan  
42 under a contract, express or implied.

43 (8) "Scope of authority or employment" means  
44 performance by a director, officer, employee, agent or  
45 contractor acting in good faith within the duties of his or her  
46 office, employment or contract with a state medical school,  
47 state's medical and dental schools, or a clinical practice plan,  
48 but does not include corruption or fraud.

49 (9) "State's medical and dental schools" or "state medical  
50 school" means the Marshall University School of Medicine,  
51 the West Virginia School of Osteopathic Medicine, the West  
52 Virginia University School of Medicine and the West  
53 Virginia University School of Dentistry.

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

1 Notwithstanding any other provision of this code, all  
2 clinical practice plans, and all employees and contractors of  
3 a state's medical and dental schools, state medical school or  
4 a clinical practice plan, are only liable up to the limits of

5 insurance coverage procured through the State Board of Risk  
6 and Insurance Management in accordance with section four,  
7 article seven-e, chapter fifty-five of the code, arising from a  
8 medical injury to a patient, including death resulting, in  
9 whole or in part, from the medical injury, either through act  
10 or omission, or whether actual or imputed, while acting  
11 within the scope of their authority or employment for a state's  
12 medical and dental schools, state medical school or a clinical  
13 practice plan. The provisions of this article apply to the acts  
14 and omissions of all full-time, part-time, visiting and  
15 volunteer directors, officers, faculty members, residents,  
16 fellows, students, employees, agents and contractors of a  
17 state's medical and dental schools, state medical school or a  
18 clinical practice plan, regardless of whether the persons are  
19 engaged in teaching, research, clinical, administrative or  
20 other duties giving rise to the medical injury, regardless of  
21 whether the activities were being performed on behalf of a  
22 state's medical and dental schools, state medical school or on  
23 behalf of a clinical practice plan and regardless of where the  
24 duties were being carried out at the time of the medical  
25 injury.

**§55-7E-4. Medical professional liability insurance for state's medical and dental schools and state medical schools.**

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



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

**§55-7E-5. Applicability of provisions.**

1 The provisions of this article are applicable prospectively  
2 to all claims that occur and are commenced on or after July  
3 1, 2015.

**§55-7E-6. Construction.**

1 The provisions of this article operate in addition to, and  
2 not in derogation of, any of the provisions contained in article  
3 seven-b of this chapter.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker of the House of Delegates

The within *is approved* ..... this the *24th*  
Day of *March* ....., 2015.

*[Signature]*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 23 2015

Time 10:51 AM