

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 602**

BY SENATOR TRUMP, *original sponsor*

[Passed March 12, 2016; to take effect July 1, 2016]

1 AN ACT to amend and reenact §29-12B-10 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §29-12D-1 and §29-12D-3 of said code; to amend said code by adding  
3 thereto a new section, designated §29-12D-1a; to amend and reenact §55-7B-9 and §55-  
4 7B-9c of said code; and to amend and reenact §59-1-11 and §59-1-28a of said code, all  
5 relating generally to the Patient Injury Compensation Fund; transferring funds from  
6 Medical Liability Fund to Patient Injury Compensation Fund and thereafter closing Medical  
7 Liability Fund; prohibiting direct recovery of legal fees from Patient Injury Compensation  
8 Fund; providing that fund may not compensate claimants who have not filed a claim with  
9 the fund before July 1, 2016; imposing an assessment on medical licenses; providing  
10 exceptions to assessment on medical licenses; prohibiting granting or renewal of medical  
11 license for failure to pay assessment; imposing an assessment on trauma centers based  
12 upon the number of patients treated; imposing an assessment on claims filed under the  
13 Medical Professional Liability Act; defining “qualifying claim”; establishing a date for  
14 purposes of determining applicability of section; directing entities collecting assessments  
15 to remit payment to Board of Risk and Insurance Management; setting schedule for  
16 remittance of payments to Board of Risk and Insurance Management; providing for  
17 termination of assessments upon certain deadlines being met; limiting authority of court  
18 reviewing an award from the board to approval or disapproval of final award; clarifying  
19 authority of Board of Risk and Insurance Management make periodic payments or place  
20 claims in nonpayment status in its discretion; permitting trier of fact to consider fault of all  
21 alleged parties, including fault of persons who have settled claims with plaintiff arising out  
22 of same medical injury, in assessing percentages of fault; clarifying manner in which  
23 damages are to be determined with respect to each defendant for purposes of entering  
24 judgment when there is no pre-verdict settlement; providing for limit on liability for  
25 economic damages in causes of actions against a trauma facility to be adjusted for inflation  
26 annually beginning January 1, 2016; setting limit on inflation increase; authorizing plaintiff

27 who, as a result of an injury suffered prior to or after July 1, 2016, suffers or has suffered  
28 economic damages in excess of limit of liability to collect economic damages up to an  
29 additional \$1 million; clarifying that additional economic liability limit is not subject to  
30 inflation; providing that a claimant's attorney fees may not be paid out of the fund; providing  
31 that several liability applies in all cases under the Medical Professional Liability Act;  
32 increasing filing fee for causes of action under the Medical Professional Liability Act; and  
33 directing clerk of court to deposit a portion of the filing fee into Patient Injury Compensation  
34 Fund.

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

1 That That §29-12B-10 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that §29-12D-1 and §29-12D-3 of said code be amended and reenacted; that said  
3 code be amended by adding thereto a new section, designated §29-12D-1a; that §55-7B-9 and  
4 §55-7B-9c of said code be amended and reenacted; and that §59-1-11 and §59-1-28a of said  
5 code be amended and reenacted, all to read as follows:

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICES.**

### **ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL LIABILITY INSURANCE AVAILABILITY ACT.**

#### **§29-12B-10. Deposit, expenditure and investment of premiums.**

1 (a) The premiums charged and collected by the board under this article shall be deposited  
2 into a special revenue account hereby created in the state Treasury known as the "Medical  
3 Liability Fund", and shall not be part of the general revenues of the state. Disbursements from the  
4 special revenue fund shall be upon requisition of the executive director and in accordance with  
5 the provisions of chapter five-a of this code. Disbursements shall pay operating expenses of the  
6 board attributed to these programs and the board's share of any judgments or settlements of  
7 medical malpractice claims. Funds shall be invested with the consolidated fund managed by the

8 West Virginia Investment Management Board and interest earned shall be used for purposes of  
9 this article.

10 (b) Start-up operating expenses of the medical liability fund, not to exceed \$500,000, may  
11 be transferred to the medical liability fund pursuant to an appropriation by the Legislature from  
12 any special revenue funds available. The medical liability fund shall reimburse the board within  
13 twenty-four months of the date of the transfer.

14 (c) For purposes of establishing a pool from which settlements and judgments may be  
15 paid, notwithstanding any other provision of this code to the contrary, a portion of the initial  
16 capitalization of the pool may be provided through a transfer of no greater than \$4,000,000 from  
17 the State Special Insurance Fund established in section five, article twelve of this chapter. All  
18 funds transferred pursuant to this section are to be repaid by transfer from the Medical Liability  
19 Fund to the State Special Insurance Fund, together with interest that would have accrued in the  
20 State Special Insurance Fund, by July 1, 2006. Funds are to be transferred only as needed for  
21 expenditures from the Medical Liability Fund created in this section. The Treasurer shall effect  
22 these transfers pursuant to this section upon written request of the Director of the Board of Risk  
23 and Insurance Management.

24 (d) On July 1, 2016, all funds in the Medical Liability Fund, including all funds currently  
25 invested pursuant to the terms of subsection (a) of this section, shall be transferred to the West  
26 Virginia Patient Injury Compensation Fund established by section one, article twelve-d of this  
27 chapter. Thereafter, the Medical Liability Fund established pursuant to this section shall be closed.

## **ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.**

### **§29-12D-1. Creation of the Patient Injury Compensation Fund; purpose; initial funding of Patient Injury Compensation Fund.**

1 (a) There is created the West Virginia Patient Injury Compensation Fund, for the purpose  
2 of providing fair and reasonable compensation to claimants in medical malpractice actions for any  
3 portion of economic damages awarded that is uncollectible as a result of limitations on economic

4 damage awards for trauma care, or as a result of the operation of the joint and several liability  
5 principles and standards, set forth in article seven-b, chapter fifty-five of this code. The fund shall  
6 consist of all contributions, revenues and moneys which may be paid into the fund, from time to  
7 time, by the State of West Virginia or from any other source whatsoever, together with any and  
8 all interest, earnings, dividends, distributions, moneys or revenues of any nature whatsoever  
9 accruing to the fund.

10 (b) Initial funding for the fund shall be provided as follows: during fiscal year 2005,  
11 \$2,200,000 of the revenues that would otherwise be transferred to the tobacco account  
12 established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to  
13 the provisions of section fourteen, article three, chapter thirty-three of this code shall be  
14 transferred to the fund; during fiscal year 2006, \$2,200,000 of the revenues that would otherwise  
15 be transferred to the tobacco account established in subsection (b), section two, article eleven-a,  
16 chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-  
17 three of this code shall be transferred to the fund; and during fiscal year 2007, \$2,200,000 of the  
18 revenues that would otherwise be transferred to the tobacco account established in subsection  
19 (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section  
20 fourteen, article three, chapter thirty-three of this code shall be transferred to the fund.

21 (2) Beginning fiscal year 2008, if and to the extent additional funding for the fund is  
22 required, from time to time, to maintain the actuarial soundness of the fund, the additional funding  
23 may be provided by further act of the Legislature, either from the revenue stream identified in this  
24 subsection or otherwise. Payments to the tobacco fund shall be extended until the tobacco fund  
25 is repaid in full.

26 (c) The fund is not and shall not be considered a defendant in any civil action arising under  
27 article seven-b, chapter fifty-five of this code.

28 (d) The fund is not and shall not be considered an insurance company or insurer for any  
29 purpose under this code.

30 (e) Legal fees of claimants may not be recovered directly from the fund.

31 (f) The fund shall not provide compensation to claimants who file a claim with the Patient  
32 Injury Compensation Fund on or after July 1, 2016.

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

1 (a) *Annual assessment on licensed physicians.* -

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

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

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

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

18 (D) A physician who holds an inactive license pursuant to subsection (j), section twelve,  
19 article three, chapter thirty of this code or section ten, article fourteen, of said chapter, or a  
20 physician who voluntarily surrenders his or her license: *Provided*, That a retired osteopathic  
21 physician who submits to the Board of Osteopathic Medicine an affidavit asserting that he or she

22 receives no monetary remuneration for any medical services provided, executed under the  
23 penalty of perjury and if executed outside the State of West Virginia, verified, may be considered  
24 to be licensed on an inactive basis: *Provided, however,* That if a physician or osteopathic  
25 physician elects to resume an active license to practice in the state and the physician or  
26 osteopathic physician has not paid the assessments during his or her inactive status, then as a  
27 condition of receiving an active status license, the physician or osteopathic physician shall pay  
28 the assessment due in the year in which physicians or the osteopathic physician resumes an  
29 active license; and

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

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

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

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

48 by the Board of Risk and Insurance Management on June 30, 2017, shall be based on each  
49 trauma patient treated from January 1, 2016, to December 31, 2016.

50 (c) *Assessment on claims filed under the Medical Professional Liability Act.* - From July 1,  
51 2016, through June 30, 2020, an assessment of one percent of the gross amount of any  
52 settlement or judgment in a qualifying claim shall be levied.

53 (1) For purposes of this subsection, a qualifying claim is any claim for which a screening  
54 certificate of merit, as that term is defined in section six, article seven-b, chapter fifty-five of this  
55 code, is required.

56 (2) For any assessment levied pursuant to this subsection for which a judgment is entered  
57 by a court, the date of the entry of judgment shall be used to determine applicability of this  
58 provision. The defendant or defendants shall remit the assessment to the clerk of the court in  
59 which the qualified claim was filed. The clerk of the court shall then remit the assessment quarterly  
60 to the Board of Risk and Insurance Management to be deposited in the fund.

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

70 (d) *Termination of assessments.* - The requirements of this section shall terminate on the  
71 dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund has  
72 been paid or has been funded in its entirety. The Board of Risk and Insurance Management shall  
73 submit a report to the Joint Committee of Government and Finance each year beginning January



74 1, 2018, giving recommendations based on actuarial analysis of the fund's liability. The  
75 recommendations shall include, but not be limited to, discontinuance of the assessments provided  
76 for in this section, closure of the fund and transfer of the fund's liability.

**§29-12D-3. Payments from the Patient Injury Compensation Fund.**

1 (a) Other than payments in connection with the ongoing operation and administration of  
2 the fund, no payments may be made from the fund other than in satisfaction of claims for  
3 economic damages to qualified claimants who would have collected economic damages but for  
4 the operation of the limits on economic damages set forth in article seven-b, chapter fifty-five of  
5 this code.

6 (b) For purposes of this article, a qualified claimant must be both a "patient" and a  
7 "plaintiff" as those terms are defined in article seven-b, chapter fifty-five of this code.

8 (c) Any qualified claimant seeking payment from the fund must establish to the satisfaction  
9 of the board that he or she has exhausted all reasonable means to recover from all applicable  
10 liability insurance an award of economic damages, following procedures prescribed by the board  
11 by legislative rule.

12 (d) Upon a determination by the board that a qualified claimant to the fund for  
13 compensation has exhausted all reasonable means to recover from all applicable liability  
14 insurance an award of economic damages arising under article seven-b, chapter fifty-five of this  
15 code, the board shall make a payment or payments to the claimant for economic damages. The  
16 economic damages must have been awarded but be uncollectible after the exhaustion of all  
17 reasonable means of recovery of applicable insurance proceeds. In no event shall the amount  
18 paid by the board in respect to any one occurrence exceed \$1 million or the maximum amount of  
19 money that could have been collected from all applicable insurance prior to the creation of the  
20 patient injury compensation fund under this article, regardless of the number of plaintiffs or the  
21 number of defendants or, in the case of wrongful death, regardless of the number of distributees.

22 (e) The board, in its discretion, may make payments to a qualified claimant in a lump sum

23 amount or in the form of periodic payments. Periodic payments are to be based upon the present  
24 value of the total amount to be paid by the fund to the claimant by using federally approved  
25 qualified assignments.

26 (f) In its discretion, the board may make a payment or payments out of the fund to a  
27 qualified claimant in connection with the settlement of claims arising under article seven-b,  
28 chapter fifty-five of this code all according to rules promulgated by the board. The board shall prior  
29 to making payment determine that payment from the fund to a qualified claimant is in the best  
30 interests of the fund. When the claimant and the board agree upon a settlement amount, the  
31 following procedure shall be followed:

32 (1) A petition shall be filed by the claimant with the court in which the action is pending, or  
33 if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between  
34 the claimant and the board.

35 (2) The court shall set the petition for hearing as soon as the court's calendar permits.  
36 Notice of the time, date and place of hearing shall be given to the claimant and to the board.

37 (3) The authority of the court is limited to denial of the final proposed settlement or, if the  
38 court finds it to be valid, just and equitable, approval of the proposed settlement.

39 (g) If and to the extent that any payment to one or more qualified claimants under this  
40 section would deplete the fund during any fiscal year, payments to and among qualified  
41 claimant's shall, at the discretion of the board, be prorated, made in periodic installments during  
42 the fiscal year according to the rules promulgated by the board or be placed in a nonpayment  
43 status until such time as sufficient moneys are received by the fund to initiate or resume payments.  
44 Any amounts due and unpaid to qualified claimants in any fiscal year shall be paid in subsequent  
45 fiscal years from available funds, but only to the extent funds are available in any fiscal year,  
46 according to the board's rules.

47 (h) The claimant may appeal a final decision made by the board pursuant to the provisions  
48 of article five, chapter twenty-nine-a of this code.

## **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

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

#### **§55-7B-9. Several liability.**

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

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

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

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

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

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

12          (b) The trier of fact shall, in assessing percentages of fault, consider the fault of all alleged  
13 parties, including the fault of any person who has settled a claim with the plaintiff arising out of  
14 the same medical injury.

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

18          (d) To determine the amount of judgment to be entered against each defendant, the court  
19 shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the  
20 adjusted verdict by the amount of any pre-verdict settlement arising out of the same medical  
21 injury. The court shall then, with regard to each defendant, multiply the total amount of damages  
22 remaining, with prejudgment interest recoverable by the plaintiff, by the percentage of fault

23 attributed to each defendant by the trier of fact. The resulting amount of damages, together with  
24 any post-judgment interest accrued, shall be the maximum recoverable against the defendant. To  
25 determine the amount of judgment to be entered against each defendant when there is no  
26 preverdict settlement, the court shall first, after adjusting the verdict as provided in section nine-a  
27 of this article, multiply the total amount of damages remaining with any prejudgment interest  
28 recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of  
29 fact. The resulting amount of damages, together with any post-judgment interest accrued, shall  
30 be the maximum amount recoverable damages against each defendant.

31 (e) When any defendant's percentage of the verdict exceeds the remaining amounts due  
32 the plaintiff after the mandatory reductions, each defendant shall be liable only for the defendant's  
33 pro rata share of the remainder of the verdict as calculated by the court from the remaining  
34 defendants to the action. The plaintiff's total award may never exceed the jury's verdict less any  
35 statutory or court-ordered reductions.

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

38 (g) Nothing in this article is meant to preclude a health care provider from being held  
39 responsible for the portion of fault attributed by the trier of fact to any person acting as the health  
40 care provider's agent or servant or to preclude imposition of fault otherwise imputable or  
41 attributable to the health care provider under claims of vicarious liability. A health care provider  
42 may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible  
43 agency unless the alleged agent does not maintain professional liability insurance covering the  
44 medical injury which is the subject of the action in the aggregate amount of at least \$1 million for  
45 each occurrence.

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

1 (a) In any action brought under this article for injury to or death of a patient as a result of

2 health care services or assistance rendered in good faith and necessitated by an emergency  
3 condition for which the patient enters a health care facility designated by the Office of Emergency  
4 Medical Services as a trauma center, including health care services or assistance rendered in  
5 good faith by a licensed emergency medical services authority or agency, certified emergency  
6 medical service personnel or an employee of a licensed emergency medical services authority or  
7 agency, the total amount of civil damages recoverable may not exceed \$500,000, for each  
8 occurrence, exclusive of interest computed from the date of judgment, and regardless of the  
9 number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of  
10 the number of distributees.

11 (b) On January 1, 2016, and in each year thereafter, the limitation on the total amount of  
12 civil damages contained in subsection (a) of this section shall increase to account for inflation as  
13 determined by the Consumer Price Index published by the United States Department of Labor:  
14 *Provided*, That increases on the limitation of damages shall not exceed one hundred fifty percent  
15 of the amounts specified in said subsection.

16 (c) Beginning July 1, 2016, a plaintiff who, as a result of an injury suffered prior to or after  
17 said date, suffers or has suffered economic damages, as determined by the trier of fact or the  
18 agreement of the parties, in excess of the limitation of liability in section (a) of this section and for  
19 whom recovery from the Patient Injury Compensation Fund is precluded pursuant to section one,  
20 article twelve-d, chapter twenty-nine of this code may recover additional economic damages of  
21 up to \$1 million. This amount is not subject to the adjustment for inflation set forth in subsection  
22 (b) of this section.

23 ~~(b)~~(d) The limitation of liability in subsection (a) of this section also applies to any act or  
24 omission of a health care provider in rendering continued care or assistance in the event that  
25 surgery is required as a result of the emergency condition within a reasonable time after the  
26 patient's condition is stabilized.

27 ~~(e)~~(e) The limitation on liability provided under subsection (a) of this section does not apply

28 to any act or omission in rendering care or assistance which:

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

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

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

39 (g) There is a rebuttable presumption that a medical condition which arises in the course  
40 of follow-up care provided by the designated trauma center health care provider who rendered  
41 good faith care or assistance for the original emergency condition is directly related to the original  
42 emergency condition where the follow-up care is provided within a reasonable time after the  
43 patient's admission to the designated trauma center.

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

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

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

54 (i) The Office of Emergency Medical Services shall, prior to the effective date of this  
55 section, develop a written protocol specifying recognized and accepted standards for triage and  
56 emergency health care procedures for treatment of emergency conditions necessitating  
57 admission of the patient to a designated trauma center.

58 (j) In its discretion, the Office of Emergency Medical Services may grant provisional trauma  
59 center status for a period of up to one year to a health care facility applying for designated trauma  
60 center status. A facility given provisional trauma center status is eligible for the limitation on liability  
61 provided in subsection ~~(a)~~(i) of this section. If, at the end of the provisional period, the facility has  
62 not been approved by the Office of Emergency Medical Services as a designated trauma center,  
63 the facility is no longer eligible for the limitation on liability provided in subsection (a) of this section.

64 (k) The Commissioner of the Bureau for Public Health may grant an applicant for  
65 designated trauma center status a one-time only extension of provisional trauma center status,  
66 upon submission by the facility of a written request for extension, accompanied by a detailed  
67 explanation and plan of action to fulfill the requirements for a designated trauma center. If, at the  
68 end of the six-month period, the facility has not been approved by the Office of Emergency  
69 Medical Services as a designated trauma center, the facility no longer has the protection of the  
70 limitation on liability provided in subsection (a) of this section.

71 (l) If the Office of Emergency Medical Services determines that a health care facility no  
72 longer meets the requirements for a designated trauma center, it shall revoke the designation, at  
73 which time the limitation on liability established by subsection (a) of this section ceases to apply  
74 to that health care facility for services or treatment rendered thereafter.

75 (m) The Legislature hereby finds that an emergency exists compelling promulgation of an  
76 emergency rule, consistent with the provisions of this section, governing the criteria for  
77 designation of a facility as a trauma center or provisional trauma center and implementation of a  
78 statewide trauma/emergency care system. The Legislature therefore directs the Secretary of the  
79 Department of Health and Human Resources to file, on or before July 1, 2003, emergency rules

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

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

86 (2) Regulation of facility designation, categorization and credentialing, including the  
87 establishment and collection of reasonable fees for designation; and

88 (3) System accountability, including medical review and audit to assure system quality.

89 Any medical review committees established to assure system quality shall include all levels of  
90 care, including emergency medical service providers, and both the review committees and the  
91 providers shall qualify for all the rights and protections established in article three-c, chapter thirty  
92 of this code.

## **CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.**

### **ARTICLE 1. FEES AND ALLOWANCES.**

#### **§59-1-11. Fees to be charged by clerk of circuit court.**

1 (a) The clerk of a circuit court shall charge and collect for services rendered by the clerk  
2 the following fees which shall be paid in advance by the parties for whom services are to be  
3 rendered:

4 (1) Except as provided in subdivisions (2) and (3) of this subsection, for instituting any civil  
5 action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary  
6 remedy, the docketing of civil appeals or removals of civil cases from magistrate court, or any  
7 other action, cause, suit or proceeding, \$200, of which \$30 shall be deposited in the Courthouse  
8 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this



9 code and \$45 shall be deposited in the special revenue account designated the Fund for Civil  
10 Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection  
11 (c), section ten of this article, and \$20 deposited in the special revenue account created in section  
12 six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for  
13 domestic violence victims;

14 (2) For instituting an action for medical professional liability, \$400, of which \$10 shall be  
15 deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-  
16 six, chapter twenty-nine of this code;

17 (3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate  
18 maintenance or annulment, \$135;

19 (4) For petitioning for the modification of an order involving child custody, child visitation,  
20 child support or spousal support, \$85;

21 (5) For petitioning for an expedited modification of a child support order, \$35; and

22 (6) For filing any pleading that includes a counterclaim, cross claim, third-party complaint  
23 or motion to intervene, \$200, which shall be deposited in the special revenue account designated  
24 the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B),  
25 subdivision (4), subsection (c), section ten of this article: *Provided*, That this subdivision and the  
26 fee it imposes does not apply in family court cases nor may more than one such fee be imposed  
27 on any one party in any one civil action.

28 (b) In addition to the foregoing fees, the following fees shall be charged and collected:

29 (1) For preparing an abstract of judgment, \$5;

30 (2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise  
31 to go out of the office, for each page, \$1;

32 (3) For issuing a suggestion and serving notice to the debtor by certified mail, \$25;

33 (4) For issuing an execution, \$25;

34 (5) For issuing or renewing a suggestee execution and serving notice to the debtor by

35 certified mail, \$25;

36 (6) For vacation or modification of a suggestee execution, \$1;

37 (7) For docketing and issuing an execution on a transcript of judgment from magistrate  
38 court, \$3;

39 (8) For arranging the papers in a certified question, writ of error, appeal or removal to any  
40 other court, \$10, of which \$5 shall be deposited in the Courthouse Facilities Improvement Fund  
41 created by section six, article twenty-six, chapter twenty-nine of this code;

42 (9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party  
43 requesting the same, 50 cents;

44 (10) For additional service, plaintiff or appellant, where any case remains on the docket  
45 longer than three years, for each additional year or part year, \$20; and

46 (11) For administering funds deposited into a federally insured interest-bearing account or  
47 interest-bearing instrument pursuant to a court order, \$50, to be collected from the party making  
48 the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

49 (c) In addition to the foregoing fees, a fee for the actual amount of the postage and express  
50 may be charged and collected for sending decrees, orders or records that have not been ordered  
51 by the court to be sent by mail or express.

52 (d) The clerk shall tax the following fees for services in a criminal case against a defendant  
53 convicted in such court:

54 (1) In the case of a misdemeanor, \$85; and

55 (2) In the case of a felony, \$105, of which \$10 shall be deposited in the Courthouse  
56 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
57 code.

58 (e) The clerk of a circuit court shall charge and collect a fee of \$25 per bond for services  
59 rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of  
60 issuance by the person or entity set forth below:

61 (1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

62 (2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of  
63 the real estate serving as surety;

64 (3) For recognizance bonds secured by a surety company, the fee shall be paid by the  
65 surety company;

66 (4) For ten percent recognizance bonds with surety, the fee shall be paid by the person  
67 serving as surety; and

68 (5) For ten percent recognizance bonds without surety, the fee shall be paid by the person  
69 tendering ten percent of the bail amount.

70 In instances in which the total of the bond is posted by more than one bond instrument,  
71 the above fee shall be collected at the time of issuance of each bond instrument processed by  
72 the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse  
73 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
74 code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for  
75 the processing of a personal recognizance bond.

76 (f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered  
77 by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of  
78 issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse  
79 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
80 code.

81 (g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of  
82 any other officer or party not payable into the county treasury except on written order of the court  
83 or in compliance with the provisions of law governing such fees, costs or accounts.

84 (h) Fees for removal of civil cases from magistrate court shall be collected by the  
85 magistrate court when the case is still properly before the magistrate court. The magistrate court  
86 clerk shall forward the fees collected to the circuit court clerk.

**§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from amounts equaling filing fees received for  
2 the institution of divorce actions as prescribed in subsection (b) of this section, and except for  
3 those payments to be made from amounts equaling filing fees received for the institution of actions  
4 for divorce, separate maintenance and annulment as prescribed in said subsection, for each civil  
5 action instituted under the rules of civil procedure, any statutory summary proceeding, any  
6 extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding  
7 in the circuit court the clerk of the court shall, at the end of each month, pay into the funds or  
8 accounts described in this subsection an amount equal to the amount set forth in this subsection  
9 of every filing fee received for instituting the action as follows:

10 (1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury  
11 established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code  
12 the amount of \$60;

13 (2) Into the Court Security Fund in the State Treasury established pursuant to the  
14 provisions of section fourteen, article three, chapter fifty-one of this code the amount of \$5; and

15 (3) Into the Regional Jail Operations Partial Reimbursement Fund established pursuant to  
16 the provisions of section ten-b, article twenty, chapter thirty-one of this code the amount of \$20.

17 (b) For each action for divorce, separate maintenance or annulment instituted in the circuit  
18 court, the clerk of the court shall, at the end of each month, report to the Supreme Court of Appeals  
19 the number of actions filed by persons unable to pay and pay into the funds or accounts in this  
20 subsection an amount equal to the amount set forth in this subsection of every filing fee received  
21 for instituting the divorce action as follows:

22 (1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury  
23 established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code  
24 the amount of \$10;

25 (2) Into the special revenue account of the State Treasury, established pursuant to section

26 six hundred four, article two, chapter forty-eight of this code an amount of \$30;

27 (3) Into the Family Court Fund established under section twenty-two, article two-a, chapter  
28 fifty-one of this code an amount of \$70; and

29 (4) Into the Court Security Fund in the State Treasury, established pursuant to the  
30 provisions of section fourteen, article three, chapter fifty-one of this code the amount of \$5.

31 (c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary,  
32 the clerk of the court shall, at the end of each month, pay into the Family Court Fund established  
33 under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the  
34 amount of every fee received for petitioning for the modification of an order involving child custody,  
35 child visitation, child support or spousal support as determined by subdivision (3), subsection (a),  
36 section eleven of this article and for petitioning for an expedited modification of a child support  
37 order as provided in subdivision (4) of said subsection.

38 (d) The clerk of the court from which a protective order is issued shall, at the end of each  
39 month, pay into the Family Court Fund established under section twenty-two, article two-a,  
40 chapter fifty-one of this code an amount equal to every fee received pursuant to the provisions of  
41 section five hundred eight, article twenty-seven, chapter forty-eight of this code.

42 (e) Of every fee for service received in any criminal case against any respondent convicted  
43 in circuit court, the clerk of each circuit court shall, at the end of each month, pay into the Regional  
44 Jail and Correctional Facility Authority Fund in the State Treasury an amount equal to \$40, into  
45 the Court Security Fund in the State Treasury established pursuant to the provisions of section  
46 fourteen, article three, chapter fifty-one of this code an amount equal to \$5 and into the Regional  
47 Jail Operations Partial Reimbursement Fund established pursuant to the provisions of section  
48 ten-b, article twenty, chapter thirty-one of this code an amount equal to \$30.

49 (f) The clerk of the circuit court shall, at the end of each month, pay into the Medical Liability  
50 Fund established under article twelve-b, chapter twenty-nine of this code, an amount equal to  
51 ~~\$165~~ \$285 of every filing fee received for instituting a medical professional liability action:

52 *Provided*, That effective July 1, 2016, payment shall be into the Patient Injury Compensation Fund  
53 created by the provisions of article twelve-d, chapter twenty-nine of this code.

54 (g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse  
55 Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this  
56 code those amounts received by the clerk which are dedicated for deposit in the fund.

57 (h) The clerk of each circuit court shall, at the end of each month, pay into the Regional  
58 Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the  
59 provisions of section ten-b, article twenty, chapter thirty-one of this code those amounts received  
60 by the clerk which are dedicated for deposit in the fund.