

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 602**

BY SENATOR TRUMP

[Introduced February 15, 2016;

Referred to the Committee on the Judiciary; and then  
to the Committee on Finance.]

1 A BILL to amend and reenact §29-12D-1 and §29-12D-3 of the Code of West Virginia, 1931, as  
 2 amended; to amend said code by adding thereto a new section, designated §29-12D-1a;  
 3 to amend and reenact §55-7B-9, §55-7B-9c and §55-7B-9d of said code; and to amend  
 4 and reenact §59-1-11 and §59-1-28a of said code, all relating to the Patient Injury  
 5 Compensation Fund; providing that the board may not compensate claimants who have  
 6 not filed a claim by a specific date; providing an assessment on licenses; providing an  
 7 assessment on trauma center interventions; amending the limit on liability for economic  
 8 damages in causes of actions against a trauma facility; providing that a claimant's attorney  
 9 fees may not be paid out of the fund; providing that several liability applies in all cases  
 10 under the Medical Professional Liability Act; amending the filing fee for causes of action  
 11 under the Medical Professional Liability Act; and directing the clerk of the court to deposit  
 12 a portion of the filing fee into the fund.

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

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

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

### **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, enacted during  
6 the 2003 Regular Session of the Legislature. The fund shall consist of all contributions, revenues  
7 and moneys which may be paid into the fund from time to time by the State of West Virginia or  
8 from any other source whatsoever, together with any and all interest, earnings, dividends,  
9 distributions, moneys or revenues of any nature whatsoever accruing to the fund.

10 (b) (1) 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 from the fund.

31 (f) The fund shall not provide compensation to claimants who have filed a cause of action  
32 pursuant to article seven-b of chapter fifty-five on or after July 1, 2016.

**§29-12D-1a. Assessment on licensees.**

1 (a) Annual assessment on licensed physicians. –

2 (1) The Board of Medicine and the Board of Osteopathic Medicine shall collect an annual  
3 assessment in the amount of \$500, 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 annual assessment shall be collected as part of licensing  
6 or license renewal, beginning in calendar year 2016 and continuing until terminated as provided  
7 by subsection (d) of this section: *Provided*, That the following physicians shall be exempt from the  
8 assessment:

9 (A) A faculty physician who meets the criteria for full-time faculty under subsection (c),  
10 section one, article eight, chapter eighteen-b of this code, who is a full-time employee of a school  
11 of medicine or osteopathic medicine in this state, and who does not maintain a private practice;

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

15 (C) A physician who has presented suitable proof that he or she is on active duty in Armed  
16 Forces of the United States and who will not be reimbursed by the Armed Forces for the  
17 assessment;

18 (D) A physician who receives more than fifty percent of his or her practice income from  
19 providing services to federally qualified health center as that term is defined in 42 U.S.C.  
20 §1396d(l)(2);

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

23 (F) A physician who is licensed on an inactive basis pursuant to subsection (j), section

24 twelve, article three, chapter thirty of this code or section ten, article fourteen, chapter thirty or a  
25 physician who voluntarily surrenders his or her license: *Provided*, That a retired osteopathic  
26 physician, who submits to the board of osteopathy an affidavit asserting that he or she receives  
27 no monetary remuneration for any medical services provided, executed under the penalty of  
28 perjury and if executed outside the State of West Virginia, verified, may be considered to be  
29 licensed on an inactive basis: *Provided, however*, That if a physician elects to resume an active  
30 license to practice in the state and the physician has not paid the assessments during his or her  
31 inactive status, then as a condition of receiving an active status license, the physician must pay  
32 the assessment due in the year in which the physician resumes an active license; and

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

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

39 (3) A physician licensed by the Board of Medicine or Board of Osteopathic Medicine who  
40 fails to pay the annual assessment pursuant to subdivision (1) of this subsection when the license  
41 is issued or due for renewal, and who has received written notice of the assessment and option  
42 to elect inactive status, at least thirty days before the licensure issuance or renewal date, is subject  
43 to a civil penalty in the amount of \$250 payable to either the Board of Medicine or the Board of  
44 Osteopathic Medicine. Furthermore, and notwithstanding any provision of chapter thirty to the  
45 contrary, the Board of Medicine or the Board of Osteopathic Medicine shall immediately suspend  
46 the license to practice medicine or podiatry of any physician who received notice and failed to pay  
47 the annual assessment. Any license to practice medicine suspended pursuant to this section shall  
48 remain suspended until both the assessment and the civil penalty are paid in full.

49 (4) The entire proceeds of the civil penalty collected pursuant to subdivision (3) of this

50 subsection shall be dedicated to the fund. The Board of Medicine and the Board of Osteopathic  
51 Medicine shall promptly pay over to the Board of Risk and Insurance Management all amounts  
52 collected pursuant to subdivision (3) of this subsection to the board for deposit in the fund.

53 (b) Assessment on hospitals. –

54 (1) Beginning July 1, 2016, an annual assessment, in the amount of \$100 per number of  
55 patient beds as reported to the Health Care Authority annually shall be imposed on every hospital  
56 licensed under article five-b of chapter sixteen. The assessment shall be collected by the  
57 Department of Health and Human Resources as part of the licensing or license renewal process  
58 on forms prescribed by the department. The entire proceeds of the annual assessment collected  
59 shall be dedicated to the Patient Injury Compensation Fund. The department shall promptly pay  
60 over to the Board of Risk and Insurance Management all amounts collected pursuant to this  
61 subsection for deposit in the fund.

62 (2) A licensed hospital that does not remit the assessment at the time of license issuance  
63 or renewal pursuant to subdivision (1) of this subsection, and has received at least thirty days  
64 written notice of the assessment, is subject to a civil penalty in the amount of \$500 per patient  
65 bed, payable to the Department of Health and Human Resources. Furthermore, and  
66 notwithstanding any provision of chapter thirty to the contrary, the Secretary of the Department of  
67 Health and Human Resources shall immediately suspend the license of any facility that received  
68 notice and failed to pay the assessment. Any license issued pursuant to article five-b of chapter  
69 sixteen which has been suspended pursuant to this section shall remain suspended until both the  
70 assessment and the civil penalty are paid in full.

71 (3) The entire proceeds of the civil penalty collected pursuant to subdivision (2) of this  
72 subsection shall be dedicated to the fund. The Department of Health and Human Resources shall  
73 promptly pay over to the board all amounts collected pursuant to this subsection to the board for  
74 deposit in the fund.

75 (c) Assessment on trauma centers. - Beginning July 1, 2016, an assessment in the

76 amount of \$50 shall be levied on each patient treated at a health care facility designated by the  
77 Office of Emergency Medical Services as a trauma center. The health care facility shall remit the  
78 assessment quarterly to the Board of Risk and Insurance Management to be deposited in the  
79 fund.

80 (d) The requirements of this section shall terminate when the liability of the Patient Injury  
81 Compensation Fund has been paid or has been provided in its entirety. The Board of Risk and  
82 Insurance Management is directed to submit a report to the Joint Committee of Government and  
83 Finance by January 1, 2018, giving recommendations based on actuarial analysis of the fund  
84 liability. The recommendations shall include, but may not be limited to, the discontinuance of the  
85 assessments as provided in this section, closure of the fund or transfer of fund 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 Apatient@ and a  
7 Aplaintiff@ 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  
29 prior to making payment determine that payment from the fund to a qualified claimant is in the  
30 best 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) ~~At the hearing the court shall approve the proposed settlement~~ The jurisdiction of the  
38 court is limited to approval of the final award, if the court finds it to be valid, just and equitable.

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 be prorated during the fiscal year according to the rules promulgated by the  
 42 board. Any amounts due and unpaid to qualified claimants shall be paid in subsequent fiscal years  
 43 from available funds, but only to the extent funds are available in any fiscal year, according to the  
 44 board=s rules.

45 ~~(h) Payments out of the fund may be used to pay reasonable attorney fees of attorneys~~  
 46 ~~representing qualified claimants receiving compensation in respect of economic damages as~~  
 47 ~~established by the board of Risk and Insurance Management~~

48 ~~(i)~~ (h) The claimant may appeal a final decision made by the board pursuant to the  
 49 provisions 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) In assessing percentages of fault, the trier of fact shall consider only the fault of the~~  
 13 ~~parties in the litigation at the time the verdict is rendered and may not consider the fault of any~~

14 ~~other person who has settled a claim with the plaintiff arising out of the same medical injury;~~  
15 ~~Provided, That, upon the creation of the Patient Injury Compensation Fund provided for in article~~  
16 ~~twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a~~  
17 ~~plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has~~  
18 ~~been unable to collect, the~~ The trier of fact shall, in assessing percentages of fault, consider the  
19 fault of all alleged parties, including the fault of any person who has settled a claim with the plaintiff  
20 arising out of the same medical injury.

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

24 (d) To determine the amount of judgment to be entered against each defendant, the court  
25 shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the  
26 adjusted verdict by the amount of any preverdict settlement arising out of the same medical injury.  
27 The court shall then, with regard to each defendant, multiply the total amount of damages  
28 remaining, with prejudgment interest recoverable by the plaintiff, by the percentage of fault  
29 attributed to each defendant by the trier of fact. The resulting amount of damages, together with  
30 any post-judgment interest accrued, shall be the maximum recoverable against the defendant.  
31 To determine the amount of judgment to be entered against each defendant when there is no  
32 preverdict settlement, the court shall first, after adjusting the verdict as provided in section nine-a  
33 of this article, multiply the total amount of damages remaining with any prejudgment interest  
34 recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of  
35 fact. The resulting amount of damages, together with any post-judgment interest accrued, shall  
36 be the maximum amount of recoverable against said defendant.

37 (e) ~~Upon the creation of the Patient Injury Compensation Fund provided for in article~~  
38 ~~twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a~~  
39 ~~plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has~~

40 ~~been unable to collect, the court shall, in determining the amount of judgment to be entered~~  
41 ~~against each defendant, first multiply the total amount of damages, with interest, recoverable by~~  
42 ~~the plaintiff by the percentage of each defendant=s fault and that amount, together with any post-~~  
43 ~~judgment interest accrued, is the maximum recoverable against said defendant. Prior to the~~  
44 ~~court=s entry of the final judgment order as to each defendant against whom a verdict was~~  
45 ~~rendered, the court shall reduce the total jury verdict by any amounts received by a plaintiff in~~  
46 ~~settlement of the action~~ When any defendant=s percentage of the verdict exceeds the remaining  
47 amounts due the plaintiff after the mandatory reductions, each defendant shall be liable only for  
48 the defendant=s pro rata share of the remainder of the verdict as calculated by the court from the  
49 remaining defendants to the action. The plaintiff=s total award may never exceed the jury=s verdict  
50 less any statutory or court-ordered reductions.

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

53 (g) Nothing in this article is meant to preclude a health care provider from being held  
54 responsible for the portion of fault attributed by the trier of fact to any person acting as the health  
55 care provider=s agent or servant or to preclude imposition of fault otherwise imputable or  
56 attributable to the health care provider under claims of vicarious liability. A health care provider  
57 may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible  
58 agency unless the alleged agent does not maintain professional liability insurance covering the  
59 medical injury which is the subject of the action in the aggregate amount of at least \$1 million for  
60 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: Provided, That for claims filed on or after July 1, 2016, the total amount  
11 of civil damages recoverable may not exceed \$750,000 for each occurrence exclusive of interest  
12 computed from the date of judgment, and regardless of the number of plaintiffs or the number of  
13 defendants or, in the case of wrongful death, regardless of the number of distributees.

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

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

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

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

23 (d) In the event that: (1) A physician provides follow-up care to a patient to whom the  
24 physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical  
25 condition arises during the course of the follow-up care that is directly related to the original  
26 emergency condition for which care or assistance was rendered pursuant to said subsection,  
27 there is rebuttable presumption that the medical condition was the result of the original emergency

28 condition and that the limitation on liability provided by said subsection applies with respect to that  
29 medical condition.

30 (e) There is a rebuttable presumption that a medical condition which arises in the course  
31 of follow-up care provided by the designated trauma center health care provider who rendered  
32 good faith care or assistance for the original emergency condition is directly related to the original  
33 emergency condition where the follow-up care is provided within a reasonable time after the  
34 patient=s admission to the designated trauma center.

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

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

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

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

49 (h) In its discretion, the Office of Emergency Medical Services may grant provisional  
50 trauma center status for a period of up to one year to a health care facility applying for designated  
51 trauma center status. A facility given provisional trauma center status is eligible for the limitation  
52 on liability provided in subsection (a) of this section. If, at the end of the provisional period, the  
53 facility has not been approved by the Office of Emergency Medical Services as a designated

54 trauma center, the facility is no longer eligible for the limitation on liability provided in subsection  
55 (a) of this section.

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

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

67 (k) The Legislature hereby finds that an emergency exists compelling promulgation of an  
68 emergency rule, consistent with the provisions of this section, governing the criteria for  
69 designation of a facility as a trauma center or provisional trauma center and implementation of a  
70 statewide trauma/emergency care system. The Legislature therefore directs the Secretary of the  
71 Department of Health and Human Resources to file, on or before July 1, 2003, emergency rules  
72 specifying the criteria for designation of a facility as a trauma center or provisional trauma center  
73 in accordance with nationally accepted and recognized standards and governing the  
74 implementation of a statewide trauma/emergency care system. The rules governing the statewide  
75 trauma/emergency care system shall include, but not be limited to:

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

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

80 (3) System accountability, including medical review and audit to assure system quality.  
81 Any medical review committees established to assure system quality shall include all levels of  
82 care, including emergency medical service providers, and both the review committees and the  
83 providers shall qualify for all the rights and protections established in article three-c, chapter thirty  
84 of this code.

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

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

1 A verdict for past medical expenses is limited to:

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

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

5 (a) There shall be assessed on each verdict of a claim filed pursuant to this article an  
6 amount equal to five percent of the fees to be paid to counsel for the plaintiff. This assessment  
7 shall become due upon payment of the moneys from the defendant, or from each defendant in  
8 proportion to his or her share of the overall liability, and shall be paid directly to the board of Risk  
9 and Insurance Management for deposit into the Patient Injury Compensation Fund.

10 (b) There shall be assessed on each settlement of a claim filed pursuant to this article an  
11 amount equal to five percent of the fees to be paid to counsel for the plaintiff, as evidenced either  
12 by the settlement agreement or by a combination of the settlement agreement and the fee  
13 agreement between the attorney and his or her client. This assessment shall become due upon  
14 payment of the moneys from the defendant, or from each defendant in proportion to his or her  
15 share of the overall liability, and shall be paid directly to the Board of Risk and Insurance  
16 Management for deposit into the Patient Injury Compensation Fund.

**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, ~~\$280~~ \$400, of which \$10 shall  
15 be 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, fifty 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 bailpiece 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~~ Patient Injury  
51 Compensation Fund created by article twelve-d of chapter twenty-nine of this code, an amount  
52 equal to ~~\$165~~ \$285 of every filing fee received for instituting a medical professional liability action.

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

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

NOTE: This purpose of this bill is to close the Patient Injury Compensation Fund and satisfy the liability of the fund.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.