

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 602

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 26, 2016]

1 A BILL 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 preverdict settlement; providing for limit on liability for economic
25 damages in causes of actions against a trauma facility to be adjusted for inflation annually
26 beginning January 1, 2016; setting limit on inflation increase; authorizing plaintiff who

27 suffers economic damages in excess of limit of liability to collect economic damages up to
28 an additional \$1 million; clarifying that additional economic liability limit is not subject to
29 inflation; providing that a claimant's attorney fees may not be paid out of the fund; providing
30 that several liability applies in all cases under the Medical Professional Liability Act;
31 increasing filing fee for causes of action under the Medical Professional Liability Act; and
32 directing clerk of court to deposit a portion of the filing fee into Patient Injury Compensation
33 Fund. of persons who have settled claims with plaintiff arising out of same medical injury,
34 in assessing percentages of fault; permitting clarifying manner in which damages are to
35 be determined with respect to each defendant for purposes of entering judgment when
36 there is no pre-verdict settlement; providing for limit on liability for economic damages in
37 causes of actions against a trauma facility to be adjusted for inflation annually beginning
38 January 1, 2016; setting limit on inflation increase; authorizing plaintiff who suffers
39 economic damages in excess of limit of liability to collect economic damages up to an
40 additional \$1 million; clarifying that additional economic liability limit is not subject to
41 inflation; providing that a claimant's attorney fees may not be paid out of the fund; providing
42 that several liability applies in all cases under the Medical Professional Liability Act;
43 increasing filing fee for causes of action under the Medical Professional Liability Act; and
44 directing clerk of court to deposit a portion of the filing fee into Patient Injury Compensation
45 Fund.

Be it enacted by the Legislature of West Virginia:

1 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 the osteopathic physician resumes an active license;
29 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 on trauma centers for each trauma patient treated at a health
43 care facility designated by the Office of Emergency Medical Services as a trauma center, as
44 reported to the West Virginia Trauma Registry. The health care facility shall remit the assessment
45 periodically, but in no event less frequently than once each year, with the first assessment being
46 remitted no later than June 30 2017. The assessment shall be remitted to the Board of Risk and
47 Insurance Management to be deposited in the fund thereafter.

48 (c) *Assessment on claims filed under the Medical Professional Liability Act.* - From July 1,
49 2016, through June 30, 2020, an assessment of one percent of the gross amount of any
50 settlement or judgment in a qualifying claim shall be levied.

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

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

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

68 (d) Termination of assessments. - The requirements of this section shall terminate on the
69 dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund has
70 been paid or has been funded in its entirety. The Board of Risk and Insurance Management shall
71 submit a report to the Joint Committee of Government and Finance each year beginning January
72 1, 2018, giving recommendations based on actuarial analysis of the fund's liability. The
73 recommendations shall include, but not be limited to, discontinuance of the assessments provided
74 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 "plaintiff"
7 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) ~~At the hearing the court shall approve the proposed settlement~~ The authority of the
38 court is limited to denial of the final proposed settlement or, if the court finds it to be valid, just and
39 equitable, approval of the proposed settlement.

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

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

51 (i) (h) The claimant may appeal a final decision made by the board pursuant to the
52 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 pre-verdict settlement arising out of the same medical
27 injury. 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. To
31 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 recoverable damages against each 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.

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

22 ~~(b)~~(d) The limitation of liability in subsection (a) of this section also applies to any act or
23 omission of a health care provider in rendering continued care or assistance in the event that

24 surgery is required as a result of the emergency condition within a reasonable time after the
25 patient's condition is stabilized.

26 ~~(e)~~(e) The limitation on liability provided under subsection (a) of this section does not apply
27 to any act or omission in rendering care or assistance which:

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

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

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

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

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

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

46 (2) In clear violation of established written protocols for triage and emergency health care
47 procedures developed by the Office of Emergency Medical Services in accordance with
48 subsection (e) of this section. In the event that the Office of Emergency Medical Services has not
49 developed a written triage or emergency medical protocol by the effective date of this section, the

50 limitation on liability provided under subsection (a) of this section does not apply where health
51 care or assistance is rendered under this section in violation of nationally recognized standards
52 for triage and emergency health care procedures.

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

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

64 ~~(i)~~(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 ~~(j)~~(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 ~~(k)(m)~~ The Legislature hereby finds that an emergency exists compelling promulgation of
76 an 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.

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

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, 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.