

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 454**

BY SENATORS TRUMP, WELD, MILLER AND GAUNCH

[Originating in the Committee on the Judiciary;

reported on March 11, 2017]



1 A BILL to repeal §38-5B-8 of the Code of West Virginia, 1931, as amended; to amend and reenact  
2 §29-12D-1a of said code; to amend and reenact §38-5B-5 and §38-5B-9 of said code; to  
3 amend and reenact §49-4-716 of said code; and to amend and reenact §51-2A-8 of said  
4 code, all relating to providing more efficient collection and submission of state moneys  
5 received as a result of certain court transactions or court services; eliminating certain fees  
6 generated by suggestee executions; providing for monthly remittance of moneys collected  
7 by clerk of court from assessments on claims filed under Medical Professional Liability  
8 Act; directing clerk of court to remit certain assessments on claims filed under Medical  
9 Professional Liability Act to State Treasury; directing payment of certain sums collected  
10 pursuant to execution of judgment to be paid to judgment creditor; directing clerk of court  
11 of conviction to collect any fees collected for teen court program and remit monthly to  
12 sheriff for deposit in appropriate account; directing circuit clerk to remit moneys received  
13 for duplication of family court records to remit amounts received to State Treasury for  
14 deposit in West Virginia Supreme Court of Appeals Fund; and making technical  
15 corrections.

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

1 That §38-5B-8 of the Code of West Virginia, 1931, as amended, be repealed; that §29-  
2 12D-1a of said code be amended and reenacted; that §38-5B-5 and §38-5B-9 of said code be  
3 amended and reenacted; that §49-4-716 of said code be amended and reenacted; and that §51-  
4 2A-8 of said code be amended and reenacted, all to read as follows:

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

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

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

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

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

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

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

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

18 (D) A physician who holds an inactive license pursuant to subsection (j), section twelve,  
19 article three, chapter thirty of this code or section ten, article fourteen of said chapter, or a  
20 physician who voluntarily surrenders his or her license: *Provided*, That a retired osteopathic  
21 physician who submits to the Board of Osteopathic Medicine an affidavit asserting that he or she  
22 receives no monetary remuneration for any medical services provided, executed under the  
23 penalty of perjury and if executed outside the State of West Virginia, verified, may be considered  
24 to be licensed on an inactive basis: *Provided, however*, That if a physician or osteopathic  
25 physician elects to resume an active license to practice in the state and the physician or  
26 osteopathic physician has not paid the assessments during his or her inactive status, then as a  
27 condition of receiving an active status license, the physician or osteopathic physician shall pay

28 the assessment due in the year in which physicians or the osteopathic physician resumes an  
29 active license; and

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

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

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

41 (b) *Assessment on trauma centers.* — From July 1, 2016, through June 30, 2020, an  
42 assessment of \$25 shall be levied by the Board of Risk and Insurance Management on trauma  
43 centers for each trauma patient treated at a health care facility designated by the Office of  
44 Emergency Medical Services as a trauma center, as reported to the West Virginia Trauma  
45 Registry. Beginning July 1, 2016, and annually thereafter until June 30, 2020, the Board of Risk  
46 and Insurance Management shall assess each trauma center for trauma patients treated from  
47 January 1 to December 31 of the previous year: *Provided*, That the assessment to be collected  
48 by the Board of Risk and Insurance Management on June 30, 2017, shall be based on each  
49 trauma patient treated from January 1, 2016, to December 31, 2016.

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

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

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

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

71 (d) *Termination of assessments.* — The requirements of this section shall terminate on  
72 the dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund  
73 has been paid or has been funded in its entirety. The Board of Risk and Insurance Management  
74 shall submit a report to the Joint Committee of Government and Finance each year beginning  
75 January 1, 2018, giving recommendations based on actuarial analysis of the fund's liability. The  
76 recommendations shall include, but not be limited to, discontinuance of the assessments provided  
77 for in this section, closure of the fund and transfer of the fund's liability.

## CHAPTER 38. LIENS.

### ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUBDIVISIONS; GARNISHMENT AND SUGGESTION OF PUBLIC OFFICERS.

#### §38-5B-5. Service of suggestee execution and vacating or modifying order.

1           An execution issued under this article against money due and owing or to become due  
2           and owing from the state, or a state agency which shall be payable on the warrant of the State  
3           Auditor for the payment thereof directed to the judgment debtor must be served upon the State  
4           Auditor at his or her office in Charleston. In the case of money payable directly by any state  
5           agency the execution shall be served upon the auditor of such agency or, lacking such, upon the  
6           officer thereof whose duty it is to audit and/or to issue warrants, checks or orders for the payment  
7           of such claims. Such service shall be made by exhibiting and at the same time delivering a true  
8           copy of the original execution, ~~and paying the prescribed fee~~ to the proper officer, or to a person  
9           in his or her office designated and authorized by the State Auditor or head of such department,  
10          institution or agency, as the case may be, by writing filed in such office to receive it. Service of  
11          such an execution may be made by mail by the court or the clerk of the court who issued the  
12          execution or by the officer to whom the same is delivered or by any credible person, by enclosing  
13          the original suggestee execution in a postpaid wrapper addressed to the proper officer and  
14          agency together with a true copy ~~thereof and the amount of the prescribed fee~~ of the suggestee  
15          execution. Service by mail shall not be deemed to be complete until duly admitted and until the  
16          original execution shall have been returned to the court or the clerk of the court who issued said  
17          execution. Such admission shall be made as soon as may be in the regular course of  
18          administration after receipt of the execution. The admission may be subscribed by the officer upon  
19          whom the service is required by this section to be made or by a person in his or her office  
20          designated and authorized by the State Auditor or the head of a state agency, as the case may  
21          be, by writing filed in such office to admit service of suggestee executions.

22 A suggestee execution against a political subdivision of the state shall be served upon the  
23 auditor thereof or the officer who, or the clerk of the board or any body which is charged with the  
24 duty of auditing and/or issuing warrants, checks or orders for the payment of such claims, in like  
25 manner as service hereunder upon state officers, except that service by mail shall not be sufficient  
26 or binding.

27 Service of a vacating or modifying order issued pursuant to section six of this article shall  
28 be made in the manner herein prescribed for the service of a suggestee execution.

**§38-5B-9. Payments in satisfaction of execution; liability of officer for payment or failure  
to pay; action against political subdivision failing to pay; declaratory judgment as  
to right against state.**

1 It shall be the duty of the proper officer, after service of an execution under this article,  
2 bearing the notation required by section four of this article if directed against salary or wages, to  
3 pay to the ~~court or the clerk of the court who issued the execution or to the officer presenting the~~  
4 ~~same~~ judgment creditor such sums as may be or shall thereafter become due to the judgment  
5 debtor from the suggestee, or the amount thereof prescribed in section three of this article in the  
6 case of salary or wages, during the life of the execution until it shall be wholly satisfied. The proper  
7 officer or suggestee upon whom the execution or any renewal execution is served shall once  
8 every ninety days during the life of such execution and any renewal execution pay over as  
9 aforesaid the full amount of money payable, held or retained pursuant to such execution or  
10 renewal execution during the preceding ninety days.

11 A public officer who shall either pay over or fail or refuse to pay over, in satisfaction of  
12 such execution, money due the judgment debtor shall be personally liable therefor only if he or  
13 she shall have acted in bad faith, even though such payment or failure or refusal to pay shall have  
14 been in violation of the rights of one or more parties in interest.

15 If a political subdivision be the suggestee and shall fail or refuse to pay over to the ~~officer~~  
16 ~~who served the execution~~ judgment creditor the amount due the judgment debtor or the required



17 percentage thereof in the case of salary or wages, it shall be liable to an action therefor by the  
18 judgment creditor named in the execution and the amount recovered in the action shall be applied  
19 toward the payment of the execution.

20 No judgment may be recovered against the state as suggestee but a judgment creditor  
21 may bring an action against the proper officer for a declaratory judgment establishing his or her  
22 right to have sums due or to become due to his or her judgment debtor or from the state or a state  
23 agency applied in satisfaction of a suggestee execution issued on his or her judgment pursuant  
24 to this article. Such an action may be brought against the State Auditor only in the circuit court of  
25 Kanawha County. Costs shall be in the discretion of the court.

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 4. COURT ACTIONS.

#### **§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation; requirements; fees.**

1 (a) Notwithstanding any provision of this article to the contrary, any county or municipality  
2 may choose to institute a teen court program in accordance with this section.

3 (b) ~~An~~ A juvenile may be given the option of proceeding in a teen court program as an  
4 alternative to the filing of a formal proceeding pursuant to section seven hundred four or section  
5 seven hundred fourteen of this article if:

6 (1) The juvenile is alleged to have committed a status offense or an act of delinquency  
7 that would be a misdemeanor if committed by an adult;

8 (2) The juvenile is alleged to have violated a municipal ordinance over which municipal  
9 court and state court have concurrent jurisdiction; or

10 (3) The juvenile is otherwise subject to the provisions of this article.

11 (c) If the circuit court or municipal court finds that the offender is a suitable candidate for  
12 the teen court program, it may extend the option to enter the program as an alternative procedure.

13 A juvenile may not enter the teen court program unless he or she and his or her parent or guardian  
14 consent to participating in the program.

15 (d) Any juvenile who does not successfully cooperate in, and complete, the teen court  
16 program and any disposition imposed during the juvenile's participation shall be returned to the  
17 circuit court for further disposition as provided by section seven hundred twelve or seven hundred  
18 fourteen of this article, as the case may be, or returned to the municipal court for further disposition  
19 for cases originating in municipal court consistent with any applicable ordinance.

20 (e) The following provisions apply to all teen court programs:

21 (1) The judge for each teen court proceeding shall be an acting or retired circuit court  
22 judge or an active member of the West Virginia State Bar, who serves on a voluntary basis.

23 (2) Any juvenile who selects the teen court program as an alternative disposition shall  
24 agree to serve thereafter on at least two occasions as a teen court juror.

25 (3) Volunteer students from grades seven through twelve of the schools within the county  
26 shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors  
27 for each proceeding.

28 (4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform  
29 sixteen to forty hours of community service, the duration and type of which shall be determined  
30 by the teen court jury from a standard list of available community service programs provided by  
31 the county juvenile probation system and a standard list of alternative consequences that are  
32 consistent with the purposes of this article. The performance of the juvenile shall be monitored by  
33 the county juvenile probation system for cases originating in the circuit court's jurisdiction, or  
34 municipal teen court coordinator or other designee for cases originating in the municipal court's  
35 jurisdiction. The juvenile shall also perform at least two sessions of teen court jury service and, if  
36 considered appropriate by the circuit court judge or teen court judge, participate in an education

37 program. Nothing in this section may be construed so as to deny availability of the services  
38 provided under section seven hundred twelve of this article to juveniles who are otherwise eligible  
39 for the service.

40 (f) The rules for administration, procedure and admission of evidence shall be determined  
41 by the chief circuit judge or teen court judge, but in no case may the court require a juvenile to  
42 admit the allegation against him or her as a prerequisite to participation in the teen court program.  
43 A copy of these rules shall be provided to every teen court participant.

44 (g) Each county or municipality that operates, or wishes to operate, a teen court program  
45 as provided in this section is hereby authorized to adopt a mandatory fee of up to \$5 to be  
46 assessed as provided in this subsection. Municipal courts may assess a fee pursuant to this  
47 section upon authorization by the city council of the municipality. The clerk of the court of  
48 conviction shall collect the fees established in this subsection. Assessments collected by the clerk  
49 of the court pursuant to this subsection shall be deposited into an account specifically for the  
50 operation and administration of a the municipal teen court program. ~~The clerk of the court of~~  
51 ~~conviction shall collect the fees established in this subsection and shall remit the fees to the teen~~  
52 ~~court program~~ Assessments collected by the clerk of the circuit court or magistrate court pursuant  
53 to this subsection shall be remitted monthly to the sheriff for deposit into an account specifically  
54 for the operation and administration of the county teen court program.

55 (h) Any mandatory fee established by a county commission or city council in accordance  
56 with this subsection shall be paid by the defendant on a judgment of guilty or a plea of nolo  
57 contendere for each violation committed in the county or municipality of any felony, misdemeanor  
58 or any local ordinance, including traffic violations and moving violations but excluding municipal  
59 parking ordinances. Municipalities operating teen courts are authorized to use fees assessed in  
60 municipal court pursuant to this subsection for operation of a teen court in their municipality.

## CHAPTER 51. COURTS AND THEIR OFFICERS.

### ARTICLE 2A. FAMILY COURTS.

#### **§51-2A-8. Rules of practice and procedure; applicability of rules of evidence; record of hearings; duties of clerk of circuit court.**

1 (a) Pleading, practice and procedure in matters before a family court judge are governed  
2 by rules of practice and procedure for family law promulgated by the Supreme Court of Appeals.

3 (b) The West Virginia Rules of Evidence apply to proceedings before a family court judge.

4 (c) Hearings before a family court shall be recorded electronically. A magnetic tape or  
5 other electronic recording medium on which a hearing is recorded shall be indexed and securely  
6 preserved by the secretary-clerk of the family court judge and shall not be placed in the case file  
7 in the office of the circuit clerk: *Provided*, That upon the request of the family court judge, the  
8 magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court.  
9 When requested by either of the parties, a family court judge shall provide a duplicate copy of the  
10 tape or other electronic recording medium of each hearing held. For evidentiary purposes, a  
11 duplicate of such electronic recording prepared by the secretary-clerk shall be a “writing” or  
12 “recording” as those terms are defined in rule 1001 of the West Virginia Rules of Evidence and  
13 unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an  
14 original in the same manner that data stored in a computer or similar data is regarded as an  
15 original under such rule. The party requesting the copy shall pay the circuit clerk an amount equal  
16 to the actual cost of the tape or other medium or the sum of \$5, whichever is greater. Unless  
17 otherwise ordered by the court, the preparation of a transcript and the payment of the cost thereof  
18 shall be the responsibility of the party requesting the transcript. The circuit clerk shall remit those  
19 amounts received monthly to the State Treasury for deposit in the West Virginia Supreme Court  
20 of Appeals fund designated for receipt of such moneys.

21           (d) The recording of the hearing or the transcript of testimony, as the case may be, and  
22 the exhibits, together with all documents filed in the proceeding, constitute the exclusive record  
23 and, on payment of lawfully prescribed costs, shall be made available to the parties.

24           (e) In any proceeding in which a party has filed an affidavit that he or she is financially  
25 unable to pay the fees and costs, the family court judge shall determine whether either party is  
26 financially able to pay the fees and costs based on the information set forth in the affidavit or on  
27 any evidence submitted at the hearing. If a family court judge determines that either party is  
28 financially able to pay the fees and costs, the family court judge shall assess the payment of such  
29 fees and costs accordingly as part of an order. The provisions of this subsection do not alter or  
30 diminish the provisions of section one, article two, chapter fifty-nine of this code.

31           (f) The clerks of the circuit court shall have, within the scope of the jurisdiction of family  
32 courts, all the duties and powers prescribed by law that clerks exercise on behalf of circuit courts:  
33 *Provided*, That a family court judge may not require the presence or attendance of a circuit clerk  
34 or deputy circuit clerk at any hearing before the family court.

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