

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 576

BY SENATORS GAUNCH, PALUMBO, FERNS, TRUMP, AND

PLYMALE

[Introduced February 16, 2018; Referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §29-12D-1a of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §59-1-11 and §59-1-28a of said code, all relating to the Patient
3 Injury Compensation Fund; changing the dates for collection of fees to be deposited in the
4 Patient Injury Compensation Fund; updating definitions; providing for transfer of remaining
5 funds; and changing the amount of certain circuit clerk filing fees.

Be it enacted by the Legislature of West Virginia:

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~~ December 31, 2021; *Provided*, That the following physicians shall be
8 exempt from the 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 §30-3-10a or §30-14-12b of this code;

17 (D) A physician who holds an inactive license pursuant to §30-3-12(j) or §30-14-10 of this
18 code, or a physician who voluntarily surrenders his or her license: *Provided*, That a retired
19 osteopathic physician who submits to the Board of Osteopathic Medicine an affidavit asserting
20 that he or she receives no monetary remuneration for any medical services provided, executed
21 under the penalty of perjury and if executed outside the State of West Virginia, verified, may be
22 considered to be licensed on an inactive basis: *Provided, however*, That if a physician or
23 osteopathic physician elects to resume an active license to practice in the state and the physician
24 or osteopathic physician has not paid the assessments during his or her inactive status, then as
25 a condition of receiving an active status license, the physician or osteopathic physician shall pay
26 the assessment due in the year in which physicians or the osteopathic physician resumes an
27 active license; and

28 (E) A physician who practices less than 40 hours a year providing medical genetic services
29 to patients within this state.

30 (2) The entire proceeds of the annual assessment collected pursuant to §29-12D-1a(a) of
31 this code shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine and
32 the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance
33 Management all amounts collected pursuant to this subsection for deposit in the fund.

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

39 (b) *Assessment on trauma centers.* — ~~From July 1, 2016 through June 30, 2020, an~~
40 ~~assessment of \$25 shall be levied by the Board of Risk and Insurance Management on trauma~~
41 ~~centers for each trauma patient treated at a health care facility designated by the Office of~~
42 ~~Emergency Medical Services as a trauma center, as reported to the West Virginia Trauma~~

43 ~~Registry. Beginning July 1, 2016, and annually thereafter until June 30, 2020, the Board of Risk~~
44 ~~and Insurance Management shall assess each trauma center for trauma patients treated from~~
45 ~~January 1 to December 31 of the previous year. Provided, That the assessment to be collected~~
46 ~~by the Board of Risk and Insurance Management on June 30, 2017, shall be based on each~~
47 ~~trauma patient treated from January 1, 2016, to December 31, 2016. The Board of Risk and~~
48 ~~Insurance Management shall levy an assessment of \$25 for each trauma patient treated at a~~
49 ~~health care facility designated by the Office of Emergency Medical Services as a trauma center,~~
50 ~~as reported to the West Virginia Trauma Registry, from January 1, 2016, through June 30, 2021.~~
51 ~~The assessment is due June 30 following each calendar year for which assessments are levied:~~
52 ~~Provided, That the assessment for the period January 1, 2021, through June 30, 2021, shall be~~
53 ~~due by December 31, 2021.~~

54 (c) *Assessment on claims filed under the Medical Professional Liability Act.* — From July
55 1, 2016, through ~~June 30, 2020~~ December 31, 2021, an assessment of one percent of the gross
56 amount of any settlement or judgment in a qualifying claim shall be levied.

57 (1) For purposes of this subsection, a qualifying claim is any claim for which a screening
58 certificate of merit ~~as that term is defined in section six, article seven-b, chapter fifty-five of this~~
59 ~~code~~ is required, or for which a statement setting forth the basis of the alleged liability of the health
60 care provider is allowed in lieu of the screening certificate of merit, as defined in §55-7B-6 of this
61 code.

62 (2) For any assessment levied pursuant to this subsection for which a judgment is entered
63 by a court, the date of the entry of judgment shall be used to determine applicability of this
64 provision. The defendant or defendants shall remit the assessment to the clerk of the court in
65 which the qualified claim was filed. The clerk of the court shall then remit the assessment monthly
66 to the State Treasury to be deposited in the fund.

67 (3) For any assessment levied pursuant to this subsection on a settlement entered into by
68 the parties, the date on which the agreement is formalized in writing by the parties shall be used

69 to determine applicability of this provision. At the time that an action alleging a qualified claim is
 70 dismissed by the parties, the assessment shall be ~~paid~~ remitted by the plaintiff of his or her
 71 counsel to the clerk of the court, who shall then remit the assessment to the State Treasury to be
 72 deposited in the fund. Collected assessments shall be remitted no less often than monthly. If a
 73 qualifying claim is settled prior to the filing of an action, the claimant, or his or her counsel, shall
 74 remit the payment to the Board of Risk and Insurance Management within 60 days of the date of
 75 the settlement agreement to be paid into the fund.

76 (d) ~~Termination of assessments~~ Annual Report; transfer of fund balance. — The
 77 requirements of this section shall terminate on the dates set forth in this section or sooner if the
 78 liability of the Patient Injury Compensation Fund has been paid or has been funded in its entirety.
 79 The Board of Risk and Insurance Management shall submit a report to the Joint Committee of
 80 Government and Finance each year beginning January 1, 2018, giving recommendations based
 81 on actuarial analysis of the fund's liability. The recommendations shall include, but not be limited
 82 to, discontinuance of the assessments provided for in this section, closure of the fund and transfer
 83 of the fund's liability. Any funds remaining in the fund on June 30, 2022, and determined by the
 84 Board of Risk and Insurance Management to not be necessary for claim payments or
 85 administrative costs of the fund, shall be transferred to the General Revenue 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 §59-1-11(a)(2) and §59-1-11(a)(3) of this code, for instituting

5 any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any
6 extraordinary remedy, the docketing of civil appeals or removals of civil cases from magistrate
7 court, or any other action, cause, suit or proceeding, \$200, of which \$30 shall be deposited in the
8 Courthouse Facilities Improvement Fund created by §29-26-6 of this code and \$45 shall be
9 deposited in the special revenue account designated the Fund for Civil Legal Services for Low
10 Income Persons, established by §59-1-10(c)(4)(B) of this code, and \$20 deposited in the special
11 revenue account created in §48-26-603 of this code to provide legal services for domestic
12 violence victims;

13 (2) For instituting an action for medical professional liability, \$400, of which \$10 shall be
14 deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code:
15 Provided, That on and after December 31, 2021, the filing fee for instituting an action for medical
16 professional liability shall be \$280;

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;

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 §59-1-10(c)(4)(B) of
25 this code: *Provided*, That this subdivision and the fee it imposes does not apply in family court
26 cases nor may more than one such fee be imposed on any one party in any one civil action; and

27 (7) Except for civil actions within the jurisdiction of family courts, for each defendant or
28 respondent named in the initial pleading upon the institution of a civil action in which there are
29 two or more named defendants, and for each additional defendant, respondent, or third-party
30 defendant subsequently named in a pleading filed in the civil action, \$15, payable upon the

31 institution of the civil action or upon the filing of the initial pleading that names the additional
32 defendant, respondent, or third-party defendant, of which \$10 shall be deposited in the general
33 fund of the county in which the office of the circuit clerk is located, and \$5 shall be deposited in
34 the State Police Forensic Laboratory Fund, established under §15-2-24d of this code: *Provided,*
35 That for purposes of this subdivision, “defendant or respondent named” does not include those
36 defendants or respondents identified as “John/Jane Doe”.

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

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

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

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

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

43 (5) For issuing or renewing a suggestee execution and serving notice to the debtor by
44 certified mail, \$25;

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

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

48 (8) For arranging the papers in a certified question, writ of error, appeal, or removal to any
49 other court, \$10, of which \$5 shall be deposited in the Courthouse Facilities Improvement Fund
50 created by §29-26-6 of this code;

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

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

55 (11) For administering funds deposited into a federally insured interest-bearing account or
56 interest-bearing instrument pursuant to a court order, \$50, to be collected from the party making

57 the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

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

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

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

64 (2) In the case of a felony, \$105, of which \$10 shall be deposited in the Courthouse
65 Facilities Improvement Fund created by §29-26-6 of this code.

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

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

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

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

74 (4) For 10 percent recognizance bonds with surety, the fee shall be paid by the person
75 serving as surety; and

76 (5) For 10 percent recognizance bonds without surety, the fee shall be paid by the person
77 tendering 10 percent of the bail amount.

78 In instances in which the total of the bond is posted by more than one bond instrument,
79 the above fee shall be collected at the time of issuance of each bond instrument processed by
80 the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse
81 Facilities Improvement Fund created by §29-26-6 of this code. Nothing in this subsection
82 authorizes the clerk to collect the above fee from any person for the processing of a personal

83 recognizance bond.

84 (f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered
85 by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of
86 issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse
87 Facilities Improvement Fund created by §29-26-6 of this code.

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

91 (h) Fees for removal of civil cases from magistrate court shall be collected by the
92 magistrate court when the case is still properly before the magistrate court. The magistrate court
93 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 §59-1-28a(b) of this code, and except for those
3 payments to be made from amounts equaling filing fees received for the institution of actions for
4 divorce, separate maintenance, and annulment as prescribed in §59-1-28a(b) of this code, for
5 each civil action instituted under the rules of civil procedure, any statutory summary proceeding,
6 any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit, or
7 proceeding in the circuit court the clerk of the court shall, at the end of each month, pay into the
8 funds or accounts described in this subsection an amount equal to the amount set forth in this
9 subsection 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 §31-20-10 of this code the amount of \$60;

12 (2) Into the Court Security Fund in the State Treasury established pursuant to the
13 provisions of §51-3-14 of this code the amount of \$5; and

14 (3) Into the Regional Jail Operations Partial Reimbursement Fund established pursuant to

15 the provisions of §31-20-10b of this code the amount of \$20.

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

21 (1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury
22 established pursuant to the provisions of §31-20-10 of this code the amount of \$10;

23 (2) Into the special revenue account of the State Treasury established pursuant to §48-2-
24 604 of this code an amount of \$30;

25 (3) Into the Family Court Fund established under §51-2A-22 of this code an amount of
26 \$70; and

27 (4) Into the Court Security Fund in the State Treasury established pursuant to the
28 provisions of §51-3-14 of this code the amount of \$5.

29 (c) Notwithstanding any provision of §59-1-28a(a) or §59-1-28a(b) of this code to the
30 contrary, the clerk of the court shall, at the end of each month, pay into the Family Court Fund
31 established under §51-2A-22 of this code an amount equal to the amount of every fee received
32 for petitioning for the modification of an order involving child custody, child visitation, child support,
33 or spousal support as determined by §11-1-11(a)(3) of this code and for petitioning for an
34 expedited modification of a child support order as provided in §11-1-11(a)(4) of this code.

35 (d) The clerk of the court from which a protective order is issued shall, at the end of each
36 month, pay into the Family Court Fund established under §51-2A-22 of this code an amount equal
37 to every fee received pursuant to the provisions of §48-27-508 of this code.

38 (e) Of every fee for service received in any criminal case against any respondent convicted
39 in circuit court, the clerk of each circuit court shall, at the end of each month, pay into the Regional
40 Jail and Correctional Facility Authority Fund in the State Treasury an amount equal to \$40, into

41 the Court Security Fund in the State Treasury established pursuant to the provisions of §51-3-14
42 of this code an amount equal to \$5, and into the Regional Jail Operations Partial Reimbursement
43 Fund established pursuant to the provisions of §31-20-10b of this code an amount equal to \$30.

44 (f) The clerk of the circuit court shall, at the end of each month, pay into the ~~Medical Liability~~
45 ~~Fund~~ Patient Injury Compensation Fund established under ~~article twelve-b, chapter twenty-nine~~
46 §29-12D-1 of this code, an amount equal to \$285 of every filing fee received for instituting a
47 medical professional liability action: *Provided*, That ~~effective July 1, 2016, payment shall be into~~
48 ~~the Patient Injury Compensation Fund created by the provisions of article twelve-d, chapter~~
49 ~~twenty-nine of this code~~ the payments into the Patient Injury Compensation Fund required by this
50 subsection shall cease following payment by the clerk based on filing fees received through
51 December 31, 2021.

52 (g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse
53 Facilities Improvement Fund created by §29-26-6 of this code those amounts received by the
54 clerk which are dedicated for deposit in the fund.

55 (h) The clerk of each circuit court shall, at the end of each month, pay into the Regional
56 Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the
57 provisions of §31-20-10b of this code those amounts received by the clerk which are dedicated
58 for deposit in the fund.

NOTE: The purpose of this bill is to change the dates for collection of fees to be deposited in the Patient Injury Compensation Fund and providing for transfer of remaining funds. It also reduces the fee for instituting an action for medical professional liability.

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